Office of the Information & Privacy Commissioner for British Columbia

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Order F15-31

CITY OF RICHMOND

Hamish Flanagan
Adjudicator

July 6, 2015

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Summary: A former employee requested that the City of Richmond disclose the total amount paid to settle disputes with two former employees, as well as the total legal fees incurred for those matters. The City withheld the total amount paid to settle disputes under ss. 14 and 17 of FIPPA, and the legal fee information under ss.14, 17 and 22. The adjudicator determined that none of the exceptions applied and ordered the information disclosed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 14, 17, 22.

Authorities Considered: BC: Order F08-22, 2008 CanLII 70316 (BC IPC); Order F10-44, 2010 CanLII 77329 (BC IPC); Order F15-16, 2015 BCIPC 17 (CanLII); Order F14-16, 2014 BCIPC 19 (CanLII); Order F13-03, 2013 BCIPC 3 (CanLII); Order F15-20, 2015 BCIPC 22 (CanLII); Order 01-06, 2001 CanLII 21560 (BC IPC); Order No. 67-1995, 1995 CanLII 390 (BC IPC); Order F15-04, 2015 BCIPC 4 (CanLII); Order 02-50, 2002 CanLII 42486 (BC IPC); Order F14-58, 2014 BCIPC 62 (CanLII). **ON:** Order MO-2601, 2011 CanLII 9754 (ON IPC); Order PO-2548, 2007 CanLII 5679 (ON IPC);Order PO-2484, 2006 CanLII 50827 (ON IPC); Order MO-2294, 2008 CanLII 24744 (ON IPC). **AB:** Order F2007-014, 2008 CanLII 88778 (AB OIPC).

Cases Considered: *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31; *Merck Frosst Canada Ltd. v. Canada (Health),* 2012 SCC 3; *Imperial Oil v Calgary (City)* 2014 ABCA 231; *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665 (CanLII); *Maranda v. Richer*, 2003 SCC 67; *Central Coast School District No.*

49 v. British Columbia (Information and Privacy Commissioner), 2012 BCSC 427; *Donell v. GJB Enterprises Inc.,* 2012 BCCA 135 (CanLII); *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner), 2007 CanLII 65615 (ON SCDC); Corporation of the City of Waterloo v. Cropley and Higgins, 2010 ONSC 6522 (CanLII); Corp. Of The District Of North Vancouver v. B.C. (The Information and Privacy Commissioner)*, 1996 CanLII 521 (BC SC).

INTRODUCTION

[1] The applicant is a former employee of the City of Richmond ("City") who is engaged in an employment dispute with the City. He requested records relating to settlement agreements the City entered with two named former employees, including the settlement amounts the City agreed to pay and the legal fees the City incurred to resolve each dispute.

[2] The City withheld all of the responsive records under s. 14 (solicitor-client privilege), s. 17 (disclosure harmful to the financial or economic interests of a public body) and s. 22 (disclosure an unreasonable invasion of the personal privacy of third parties) of the *Freedom of Information and Protection of Privacy Act* ("FIPPA").

[3] The applicant requested that the Office of the Information and Privacy Commissioner review the City's decision. Mediation did not resolve this matter, and the applicant requested that it proceed to an inquiry.

ISSUES

Preliminary Issue- narrowed request

[4] In his submissions for this inquiry, the applicant narrowed the scope of his request to "a single figure of the Aggregate Total Amount of the two Settlements and a single figure of the Aggregate Total Amount of the Legal Costs of the two Settlements."[1] In other words, the applicant wants just one figure comprising the amount the City paid to the two named former employees to settle each of their disputes (the "settlement amount") and also one figure comprising the total amount the City paid in legal fees to deal with each of the disputes with the two former employees ("legal fee amount") (collectively, the "narrowed request"). He states he does not want any breakdown or other information regarding the legal fee amount, or any personal information of third parties.[2] The applicant argues ss. 14, 17 and 22 do not apply to the information that is responsive to his narrowed request.

[1] Applicant reply submission at para 12.
[2] Applicant reply submission at para 7.

[5] The settlement amount and legal fee amount the applicant seeks in his narrowed request do not appear in the records at issue, but each is easily calculated from information that is contained in the records before me that the City identified as responsive to the applicant's initial request.[3] Given this, and the applicant's narrowed request, I will only consider whether the City is required or authorized to refuse to disclose the information in the narrowed request.

[6] The issues in this inquiry are therefore whether the Ministry is:

1. authorized to withhold the legal fee amount and/or the settlement amount under s. 14 of FIPPA because the information is subject to solicitor client privilege;
2. authorized to withhold the legal fee amount and/or the settlement amount under s. 17 of FIPPA because disclosure could reasonably be expected to harm the financial interests of the City; and/or
3. required to refuse to disclose the legal fee amount[4] under s. 22 of FIPPA because disclosure would be an unreasonable invasion of third party personal privacy.

[7] Pursuant to s. 57(1) of FIPPA the City has the burden of proof in relation to ss. 14 and 17 of FIPPA. The applicant has the burden of proof pursuant to s. 57(2) of FIPPA for the information withheld under s. 22 of FIPPA.

DISCUSSION

[8] **Information at issue**—The information at issue, as identified in the applicant's narrowed request, is the total legal fees incurred in the City's disputes with two named former employees, and the total amount paid to the named employees pursuant to settlement agreements.

Solicitor client privilege –s. 14

[9] Section 14 of FIPPA states:

> **14** The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

[10] The law is well established that s.14 of FIPPA encompasses both types of solicitor client privilege found at common law: "legal advice", the privilege

[3] The narrowed request would therefore fall within the circumstances in s. 6 of FIPPA where the City is obligated to create a record in response to a request.

[4] The City concedes it would not be an unreasonable invasion of third party personal privacy to disclose the settlement amount, given the application of s. 22 to settlement amounts has been considered and decided in Order F10-44, 2010 CanLII 77329 (BC IPC).

applicable to communications between solicitor and client for the purposes of obtaining legal advice; and "litigation privilege", which applies to communications and material produced or brought into existence for the dominant purpose of litigation.[5]

Legal advice privilege

[11] The City submits that legal advice privilege applies to the legal fee amount.

[12] The applicant says that the legal fee amount is not confidential because the information represents public expenditure which should be open to public scrutiny and that the legal fee amount is not directly related to "seeking, formulating or giving advice."

[13] In 2003, the Supreme Court of Canada confirmed in *Maranda v. Richer*[6] [*Maranda*] that there is a rebuttable presumption that lawyers' billing information in statements of accounts or other documents are subject to solicitor client privilege.[7] This presumption recognizes the importance of solicitor client privilege, as well as the inherent difficulties in determining the extent to which the information contained in lawyers' bills of account disclose communications protected by privilege as opposed to "neutral information".[8] Therefore, there is a presumption that the legal fee amount in this case is subject to solicitor client privilege. The issue then becomes whether the presumption has been rebutted.

[14] *Central Coast School District No. 49 v. British Columbia (Information and Privacy Commissioner) ("Central Coast"*) states that "the presumption of privilege will prevail unless it is rebutted by evidence or argument[9] that is sufficient to satisfy the adjudicator"[10] that the answer is "no" to the two following questions:

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[5] *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665 (CanLII) at para. 26.
[6] *Maranda v. Richer*, 2003 SCC 67.
[7] *Central Coast School District No. 49 v. British Columbia (Information and Privacy Commissioner),* 2012 BCSC 427 at para. 100, citing *Maranda v. Richer*, 2003 SCC 67 at paras. 33 and 34. Also, see *Donell v. GJB Enterprises Inc.,* 2012 BCCA 135 (CanLII) at paras. 30 to 66 for a discussion of circumstances in which financial records of lawyers are presumed to be subject to solicitor client privilege.
[8] *Maranda* at para 33. This does not necessarily mean that information cannot be severed from legal accounts in some cases. For example, see *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2007] OJ No. 2769 at para. 21.
[9] The City argues that the applicant has not provided evidence to rebut the presumption. This is not necessary for the presumption to be rebutted, see *Central Coast* at paras 107-115.
[10] *Central Coast School District No. 49 v. British Columbia (Information and Privacy Commissioner),* 2012 BCSC 427 at para. 122.

> (1) Is there any reasonable possibility that disclosure of the amount of the fees paid will directly or indirectly reveal any communication protected by the privilege? and
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> (2) Could an assiduous inquirer, aware of background information, use the information requested to deduce or otherwise acquire privileged communications?[11]

[15] The City submits that the presumption applies, and has not been rebutted, for the legal fee amount. It cites *Central Coast*, and Orders F14-16[12] and F13-03[13] in support of its position that disclosing the legal fee amount would reveal to the applicant information that is subject to solicitor client privilege.[14]

[16] In *Central Coast*, the applicant's request was for the public body's legal expenses related to its ongoing litigation with him. That fact was significant, and the court described the type of information the applicant in that case could infer from the total of interim fees, such as (among other things): the state of a party's preparation for trial; whether the expense of expert opinion evidence had been incurred; and whether the amount of the fees indicated only minimal expenditure, thus showing an expectation of compromise or capitulation.[15] In contrast to *Central Coast*, the information the applicant in this case seeks is not about legal fees for ongoing litigation to which he is a party. The City does not argue that disclosing the legal fee amount the applicant seeks will reveal privileged information about any ongoing litigation he is currently involved in, and I see no evidence that this would occur.

[17] Order F14-16 dealt with legal invoices, proofs of payment and cover letters accompanying the invoices. The adjudicator found that all of this comprised actual communications between lawyer and client. Here, the request is for the legal fee amount, and that sum is separate from any actual communications between lawyer and client. The legal fee amount in this case contains none of the detail in the legal invoices, proofs of payment and cover letters at issue in Order F14-16, which makes it more difficult to deduce privileged communications from the information.

[18] In Order F13-03, the applicant was a former employee of the public body with in depth knowledge of the public body's affairs. Adjudicator Barker found that he would be able to use that knowledge to discern privileged information from the monthly legal billing amounts. The applicant here clearly does not have the same level of knowledge or access to information as the applicant in

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[11] *Central Coast School District No. 49 v. British Columbia (Information and Privacy Commissioner),* 2012 BCSC 427 at paras. 104 to 106.
[12] 2014 BCIPC 19 (CanLII).
[13] 2013 BCIPC 3 (CanLII).
[14] City initial submission at para. 26.
[15] *Central Coast* at para. 133 citing *Corp. Of The District Of North Vancouver v. B.C. (The Information And Privacy Commissioner)*, 1996 CanLII 521 (BC SC) at para. 49.

Order F13-03. While he knows the name of the two employees involved in the disputes to which the legal fee amount relates, there is nothing that suggests that he knows any further information about the mediation and settlement agreements in those cases other than that he believes they involved allegations of harassment. I also note that the submissions do not suggest that the applicant has any special legal training or knowledge as the applicant did in Order F13-03.

[19] Several orders dealing with requests for legal fee information have found the presumption of legal privilege was rebutted. The difference between a request limited to legal fee information and a broader request is illustrated in Order F15-16:

> "…in Order F14-16 I determined that legal invoices from a law firm to the Agency, and proofs of the Agency's payments, were subject to solicitor client privilege. In that order, the invoices contained dates and descriptive information of the legal services rendered. Further, the Agency had already disclosed part of an email in which the Agency communicated instructions to its lawyer to provide specified legal services for a previously agreed price.[16] The only part of the email that had not been disclosed to the applicant was the agreed price. In that case, the applicant could have used the legal invoices and proofs of payment, in combination with the portions of the email that had already been disclosed to the applicant, to deduce privileged communications.[17]
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> However, the facts in this inquiry are different, and the records are summary documents that do not contain the specific details found in Orders F13-03 and F14-16. The information in dispute here is the aggregate totals of legal expenses paid to different law firms in specified fiscal years with no descriptions, pricing breakdowns or specific date ranges for legal services.[18]

[20] Order F15-16[19] involved a request for a list of the public body's suppliers and contractors that were paid more than $10,000.[20] Order F15-16 found that the presumption that this information was subject to solicitor client privilege was rebutted so s. 14 did not apply. I note that in Order F15-16 the legal costs disclosed the identity of the law firm that had acted for the public body, but the applicant did not know what specific disputes the legal fees related to, only that the fees related to a specific law firm and time period. In this case, the applicant does not know the law firm but he does know that the legal fee amount relates to two disputes. However, I do not consider this difference between the present case and Order F15-16 to be significant because several other cases I will now

[16] This severed email was the record at issue in Order F14-15.
[17] Order F14-16 was issued in conjunction with Order F14-15.
[18] Order F15-16, 2015 BCIPC 17 (CanLII) at paras. 22-23.
[19] See Order F15-16 at para. 24.
[20] Like the applicant here, the request was not for interim legal fees for ongoing litigation involving the applicant.

discuss have ordered disclosure of legal fees, including aggregate amounts in specific invoices for specific disputes.

[21] *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*[21] was a judicial review of two decisions in which adjudicators had ordered disclosure of legal fee information. In one,[22] the adjudicator ordered the Ontario Ministry of the Attorney General ("MAG") to disclose the aggregate amounts of fees and disbursements contained in each invoice for legal services provided to two public bodies regarding two specific disputes. The second[23] related to a request for access to records detailing the expenses billed by the MAG in connection with a series of appeals. The adjudicator ordered the MAG to disclose the total dollar figure from each of nine invoices. In both orders, the adjudicator found the disclosure asked for would only reveal total legal fees, which would not allow for deduction of privileged information such as litigation strategies. The Court agreed the presumption of privilege was rebutted in both cases.

[22] In Ontario Order MO-2601[24] the applicant was a member of the media. Solicitor client privilege was found to not apply to a single figure representing the total amount of legal fees in connection with four legal actions. In reaching this conclusion, Adjudicator Higgins determined that disclosure, by itself, would not disclose anything confidential about solicitor client communications, noting that the information at issue was a single dollar figure for legal expenses relating to four different lawsuits spanning a period of almost four years.[25]

[23] Ontario Order MO-2294[26] addressed a request for the total dollar figures of legal invoices in relation to named businesses and individuals over a specified period of time. In that case, it was determined that this information was "neutral information" (i.e. information that does not reveal anything in the nature of a privileged communication),[27] so the presumption of privilege was rebutted.

[24] Alberta Order F2007-014[28] involved accounts for legal services from a named law firm to a public body in relation to the public body's complaints to the Law Society about the applicant. In that case, it was determined that solicitor client privilege did not apply to the total amount of these accounts, the law firm

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[21] *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner),* 2007 CanLII 65615 (ON SCDC).
[22] Order PO-2548, 2007 CanLII 5679 (ON IPC).
[23] Order PO-2484, 2006 CanLII 50827 (ON IPC).
[24] Order MO-2601, 2011 CanLII 9754 (ON IPC).
[25] Order MO-2601 at para. 37.
[26] Order MO-2294, 2008 CanLII 24744 (ON IPC). Upheld on judicial review in *Corporation of the City of Waterloo v. Cropley and Higgins,* 2010 ONSC 6522 (CanLII).
[27] See Order PO-2484, 2006 CanLII 50827 (ON IPC) at para. 68 for this explanation about neutral information.
[28] Order F2007-014, 2008 CanLII 88778 (AB OIPC).

letterhead, and the name and address of the public body because this information would not enable the applicant to acquire privileged communications. In reaching this conclusion, Adjudicator Cunningham stated the following:

> As the Applicant will not receive information relating to the dates of the bills of account, the services provided, or the individual lawyers providing the services, the total amount billed by the law firm remains neutral information from which the Applicant will be unable to glean information about advice received from counsel or the legal strategies employed by the Public Body.[29]

[25] What the above cases consistently demonstrate is that the question of whether the presumption that the legal fee amount is subject to solicitor client privilege has been rebutted turns on the circumstances of the particular case.[30] I am satisfied in the circumstances of this case that the presumption is rebutted.

[26] There is no reasonable possibility that disclosure of the legal fee amount will directly or indirectly reveal any communication protected by privilege. The legal fee amount comprises an aggregate amount of the legal fees for two legal disputes involving named individuals. No other information is being disclosed. I am satisfied that in the context of this case, that information is "neutral information" that does not directly or indirectly reveal any communication protected by privilege.

[27] I find that disclosure of the information at issue would not enable an assiduous inquirer to deduce or otherwise acquire privileged communications. The information at issue in this case is neutral information that is insufficiently detailed to disclose privileged communications, even when combined with background information that is known by – or could be acquired by – an assiduous inquirer.

[28] In summary, I find the presumption that disclosure of the legal fee amount is subject to solicitor client privilege has been rebutted. I reach this conclusion because there is no reasonable possibility that disclosure of the legal fee amount will directly or indirectly reveal any communication protected by the privilege, or that an assiduous inquirer, aware of background information (such as the two specific disputes the legal fee amount relates to), could use the information requested to deduce or otherwise acquire privileged communications.

Settlement privilege

[29] The City submits that the settlement amount is subject to the common law "settlement privilege" and that the s. 14 exemption applies to such information.[31]

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[29] Order F2007-014, 2008 CanLII 88778 (AB OIPC) at para. 54.
[30] Order F15-16 at para. 29.
[31] City initial submission at paras. 30-42.

[30] The City argues the settlement amounts can be withheld under s. 14 because s. 14 of FIPPA provides a disclosure exemption for information that is protected by settlement privilege. The same argument was recently considered in detail in Order F15-20.[32] Senior Adjudicator Barker agreed with the approach taken in previous Orders[33] that the words used in s. 14 of FIPPA do not encompass a disclosure exemption for information that is protected by settlement privilege. I adopt and apply the reasoning in Order F15-20.[34] The settlement amounts cannot be withheld on the basis of settlement privilege under s. 14.

[31] I will now consider whether s. 17 applies to the legal fee amount or settlement amount.

Disclosure harmful to financial or economic interests– s. 17

[32]The City is withholding the responsive information under s. 17, which states in part:

> The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy…

[33] Section 17 lists specific examples of the types of harm that s. 17 covers. However, the list is not exhaustive and disclosing information that does not fit into these enumerated examples may still constitute harm under s. 17(1).[35] The City identifies s. 17(1)(d) (information the disclosure of which could reasonably be expected to result in undue financial loss or gain to a third party), s. 17(1)(e) (information about negotiations carried on by or for the City) and s. 17(1)(f) (information the disclosure of which could reasonably be expected to harm the City's negotiating position) as particularly relevant to this inquiry.

[34] The standard of proof for s. 17 is whether disclosure could reasonably be expected to result in the specified harm. The Supreme Court of Canada has described this standard as requiring a reasonable expectation of probable harm from disclosure of the information.[36] It can be described as a middle ground between what is probable and that which is merely possible.[37] A public body must provide evidence "well beyond" or "considerably above" a mere possibility

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[32] 2015 BCIPC 22 (CanLII).
[33] Order 01-06, 2001 CanLII 21560 (BC IPC) and Order No. 67-1995, 1995 CanLII 390 (BC IPC).
[34] 2015 BCIPC 22 (CanLII) at paras. 39-46.
[35] Order F08-22, 2008 CanLII 70316 (BC IPC) at para. 40.
[36] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54 citing *Merck Frosst Canada Ltd. v. Canada (Health),* 2012 SCC 3.
[37] Ibid.

of harm in order to reach this standard.[38] The determination of whether the standard of proof has been met is contextual, and the quantity and quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and "inherent probabilities or improbabilities or the seriousness of the allegations or consequences."[39] As the City acknowledges in its submissions, the evidence of harm must establish the reasonable likelihood of the harm occurring in relation to the specific information and the specific context of the disclosure.[40]

[35] The City says that the applicant seeks to use the information in issue to his advantage in negotiations regarding a settlement of his own employment dispute with the City. It says that this can reasonably be expected to cause financial harm to the City and give the applicant an unfair advantage in any negotiations with the City.

[36] In support of its position, the City cites the Alberta Court of Appeal decision *Imperial Oil v. Calgary (City)* [*Imperial Oil*],[41] where the Court dealt with a request under Alberta's equivalent to FIPPA for a settlement agreement. In that case, the Court concluded that disclosure of the settlement agreement between *Imperial Oil* and Alberta Environment would give a significant tactical advantage to the City of Calgary in its own negotiations with *Imperial Oil*. The Court found that it could be a severe disincentive to negotiations generally if a party has the advantage of knowing what other parties have agreed before beginning to negotiate.[42] It went on to find that disclosing the agreement could reasonably be expected to "harm significantly the competitive position or interfere significantly with the negotiating position of *Imperial Oil*, the party to the agreement. The Court also observed that disclosure might also discourage third parties [to an agreement] from providing information to the public body when it is in the public interest that similar information be supplied.[43]

[37] The applicant concedes he intends to use the legal fee amount and settlement amounts as the basis for, and leverage in, negotiating with the City because he believes his dispute and the two previous settlements are similar. However, the applicant's statement about how he intends to use the information does not, in my view, establish that he will be able to use the information for his stated purposes and, therefore, that the harm required to satisfy s. 17 will flow from disclosure.

[38] Further, the applicant submits there is no harm to the City in making the disclosure because the settlements it reached with the named former employees

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[38] Ibid.
[39] Ibid.
[40] City initial submission at para 46.
[41] *Imperial Oil v Calgary (City)*, 2014 ABCA 231, application for leave to appeal dismissed, 2015 CanLII 7336 (SCC).
[42] At para 37.
[43] At para 87.

were by mutual agreement, and were fair and honest settlements. He says that if the City is seeking a fair and honest settlement with him, then disclosing previous fair and honest settlements will not cause the City harm. The applicant cites Order F10-44[44] in support of his position.

[39] In my view, the scope of the information in issue and the nexus between the information requested and the applicant's dispute distinguishes *Imperial Oil* from this case. In *Imperial Oil*, the applicant sought the entire settlement agreement. The applicant in this case seeks only a part of the agreement, namely the settlement amount. A settlement amount typically comprises only one component of a settlement agreement. The limited scope of the information in issue diminishes the likelihood that disclosure of it will cause harm.

[40] The limited scope of the applicant's request also significantly reduces the concern expressed by the court in *Imperial Oil* that "disclosure might discourage third parties (to an agreement) from providing information to the public body when it is in the public interest that similar information be supplied."[45] The information at issue here does not disclose information supplied by third parties.

[41] Many factors influence a party's behaviour in a given negotiation. Without further information that establishes the factual nexus between the applicant's negotiations and the negotiations that led to the settlement agreements, I am not satisfied that a previous negotiation is predictive of behaviour in a future negotiation so that it would result in harm under s. 17. This principle has been recognized frequently in the context of s. 21,[46] where orders have typically found that there is not a reasonable expectation of harm to public bodies or third parties from disclosure of a previous negotiation or bid.[47]

[42] In *Imperial Oil*, there was a nexus between the applicant's claim and the settlement agreements sought. The applicant's claim arose from the very same set of events. The Court in *Imperial Oil* found that disclosure in that case offered a "significant tactical advantage" to the applicant. This is because there was a known, close connection between the existing settlement and a potential settlement involving the applicant.

[43] Here, the parties agree that the disputes share the common characteristics of being employment disputes between the City and an employee

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[44] 2010 CanLII 77329 (BC IPC).
[45] 2014 ABCA 231 (CanLII) at para. 87.
[46] Section 21(1)(c) of FIPPA contains exceptions to disclosure of information where disclosure would harm the business interests of third parties. Enumerated grounds of harm in s. 21(1)(c) include if disclosure of information could reasonably be expected to cause undue loss or cause significant harm to a party's negotiating position. The s. 21 provisions mirror the wording in ss. 17(1)(d) (undue financial loss or gain) and (f) (harm to negotiating position).
[47] See for example Order F15-04, 2015 BCIPC 4 (CanLII).

involving claims of harassment. However, unlike *Imperial Oil*, the disputes arise from separate factual backgrounds. It is not the City's submission, nor is there evidence before me, that there are factual similarities in the circumstances of the applicant's dispute and the disputes already settled beyond the fact that they all include a claim of harassment. There is no evidence that the applicant's situation is similar to the other disputes whose information is in issue, such that it would influence the outcome of his settlement negotiations. The lack of evidence of any significant similarity between the applicant's dispute and the settled disputes differentiates this case from *Imperial Oil.*

[44] Moreover, the applicant's request is for aggregate amounts for two separate disputes, rather than one entire settlement agreement as in *Imperial Oil*. In my view, that the amount is an aggregate further diminishes the value of the information as a precedent for the applicant to use in negotiations with the City. This is because even if the applicant knew about the merits or factual background of one or both settled disputes, he cannot link that information to the settlement amount because it is an aggregate amount from two disputes.

[45] The City says there is a clear and direct connection between disclosure of the information in issue and potential harm to the City in this specific case. I am not satisfied that disclosing the information in issue will afford the applicant a significantly stronger negotiating position than he has without it. The information sought and the applicant's case include claims of harassment in employment. However, by itself this does not establish a link between the withheld information and the applicant's dispute that is sufficient to show that disclosure of the information could reasonably be expected to harm the financial or economic interests of the City in the ways the City suggests. Ultimately I am not satisfied that the City has established that disclosure of the information the applicant seeks could reasonably be expected to cause it harm under s. 17.

Unreasonable invasion of third party's personal privacy –s. 22

[46] The remaining issue is whether s. 22 applies to the legal fee amount. Section 22 of FIPPA requires public bodies to withhold information if disclosing it would be an unreasonable invasion of a third party's personal privacy.

[47] Section 22 applies to personal information, which is defined as "recorded information about an identifiable individual other than contact information."[48] The legal fee amount is an aggregate of the legal fees the City incurred in reaching settlement of matters with two named individuals. To the extent this information reveals information about the named individuals the fees relate to then the legal fee amount is personal information of the two individuals.

[48] Definitions are in Schedule 1 of FIPPA.

[48] Section 22(4)(f) provides that disclosure of personal information is not an unreasonable invasion of third party personal privacy under s. 22 of FIPPA if it reveals financial and other details of a contract to supply goods and services to a public body. Section 22(4)(f) applies to the legal fee amount because it reveals financial details of a contract for the supply of legal services. The City therefore cannot refuse access to the legal fee amount under s. 22.

CONCLUSION

[49] For the reasons given above, I find that ss. 14, 17 and 22 do not apply to the information in issue. Therefore, under s. 58 of FIPPA, I order that the City is required to disclose the settlement amount and the legal fee amount by August 18, 2015 pursuant to s. 59 of FIPPA. The City must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the information it provides to the applicant.

July 6, 2015

ORIGINAL SIGNED BY

Hamish Flanagan, Adjudicator

OIPC File No.: F13-55316