



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
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Order F16-16

## INSURANCE CORPORATION OF BRITISH COLUMBIA

Celia Francis  
Adjudicator

March 31, 2016

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**Summary:** The BC Shorthand Reporters Association (“BCSRA”) requested access to the service agreement for court reporting services between ICBC and Premiere Verbatim Reporting (“PVR”). PVR objected to disclosure of pricing information in the agreement, on the grounds that disclosure could harm its business interests under s. 21(1). The adjudicator found that the pricing information was PVR’s financial information, but that it had not been “supplied” to ICBC for the purposes of s. 21(1)(b). It was therefore not necessary to consider whether the pricing information had been supplied “in confidence” under s. 21(1)(b), nor whether its disclosure could harm PVR’s business interests under s. 21(1)(c). The adjudicator ordered ICBC to disclose the pricing information to BCSRA.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 21(1), 21(1)(a)(ii), 21(1)(b).

**Authorities Considered: B.C.:** Order 03-02, 2003 CanLII 49166 (BC IPC); Order 03-15, 2003 CanLII 49185 (BC IPC), and Order 01-39, 2001 CanLII 21593 (BC IPC); Order 03-15, 2003 CanLII 49185 (BC IPC); Order 00-22, 2000 CanLII 14389 (BC IPC); Order F05-05, 2005 CanLII 14303 (BC IPC); Order F13-06, 2013 BCIPC 6 (CanLII); Order F13-07, 2013 BCIPC 8 (CanLII); Order F15-53, 2015 BCIPC 56 (CanLII); Order 04-06, 2004 CanLII 34260 (BC IPC); Order 01-39, 2001 CanLII 21593 (BC IPC); Order F14-28, 2014 BCIPC 31 (CanLII); Order F13-22, 2014 BCIPC No. 4 (CanLII); Order F08-22, 2008 CanLII 70316 (BC IPC).

**Cases Considered:** *Jill Schmidt Health Services Inc. v. British Columbia (Information and Privacy Commissioner)*, [2001] B.C.J. No. 79, 2001 BCSC 101; *Canadian Pacific Railway v. British Columbia (Information and Privacy Commissioner)*, [2002] B.C.J. No. 848, 2002 BCSC 603.

## INTRODUCTION

[1] This order concerns pricing information in a service agreement for court reporting services between the Insurance Corporation of British Columbia (“ICBC”) and Premiere Verbatim Reporting Ltd (“PVR”). In mid-2014, the British Columbia Shorthand Reporters Association (“BCSRA”) requested access under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) to contracts between ICBC and any court reporting firms. Only one record — the service agreement with PVR — was responsive to the request.

[2] ICBC gave PVR notice of the request under s. 23 of FIPPA and told PVR that it intended to disclose the agreement. PVR asked that ICBC withhold its rates in a schedule to the agreement, arguing that their disclosure could reasonably be expected to harm PVR’s business interests under s. 21(1) of FIPPA. ICBC told PVR that it still planned to disclose the contract. PVR asked that the Office of the Information and Privacy Commissioner (“OIPC”) review ICBC’s decision not to refuse disclosure of the rates under s. 21(1). Mediation of this third-party review was not successful and the matter proceeded to inquiry. The OIPC received submissions from PVR and BCSRA. ICBC did not provide a submission.

## ISSUE

[3] The issue before me is whether ICBC is required by s. 21(1) of FIPPA to withhold the rates in a schedule to the service agreement between ICBC and PVR. Under s. 57(3)(b), PVR has the burden of proving that BCSRA has no right of access to the information under s. 21(1).

## DISCUSSION

### ***Background***

[4] In September 2013, ICBC issued a Request for Pre-Qualification (“RFPQ”) for the provision of court reporter services.<sup>1</sup> The material before me indicates that PVR was the only firm to respond to the RFPQ. It entered into a two-year service agreement with ICBC in January 2014.

### ***Record in dispute***

[5] The record in dispute is the 20-page “Court Reporter Services Agreement” of January 1, 2014 between PVR and ICBC. ICBC has disclosed the entire agreement except for the information of concern to PVR, which is: hourly and daily rates, both for court reporters and for boardroom facilities; cancellation fees;

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<sup>1</sup> For example, recording and transcribing court proceedings, providing transcripts of proceedings and providing facilities to conduct proceedings.

copying and transcribing fees; certificate fees; and fees for travel time. I refer to this information below as “pricing information”.

### ***Harm to third-party business interests***

[6] PVR argued that some information and records should be withheld under s. 21(1). The relevant parts of s. 21(1) of FIPPA read as follows:

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

[7] Previous orders and court decisions have established the principles for determining whether s. 21(1) applies.<sup>2</sup> All three parts of the s. 21(1) test must be met in order for the information in dispute to be properly withheld.

[8] As PVR has the burden of proof regarding s. 21(1), it must first demonstrate that disclosing the pricing information in issue would reveal commercial, financial, labour relations, scientific or technical information of, or about, a third party. Next, PVR must demonstrate that the information was supplied to the public body (ICBC), implicitly or explicitly, in confidence. Finally, PVR must demonstrate that disclosure of the information could reasonably be expected to cause one of the harms in s. 21(1)(c). In assessing the parties' arguments on s. 21(1), I have taken the approach set out in previous orders and court decisions, bearing in mind that the burden of proof is on PVR.

#### *Is the information “financial information”?*

[9] FIPPA does not define “financial information”. However, previous orders have held that hourly rates, global contract amounts, breakdowns of these

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<sup>2</sup> See, for example, Order 03-02, 2003 CanLII 49166 (BC IPC), Order 03-15, 2003 CanLII 49185 (BC IPC), and Order 01-39, 2001 CanLII 21593 (BC IPC).

figures, prices, expenses and other fees payable under contract are “financial” information of or about third parties.<sup>3</sup>

[10] PVR argued that disclosure of the pricing information would reveal its financial information.<sup>4</sup> BCSRA did not specifically address this issue.

[11] The pricing information consists of the hourly rates and other fees which PVR would be paid for performing certain services for ICBC. I am satisfied that it is “financial information” as past orders have interpreted this term. I find that s. 21(1)(a)(ii) applies to the pricing information.

*Was the information “supplied in confidence”?*

[12] The next step is to determine whether the information in issue was “supplied in confidence”. The information must be both “supplied” and “supplied in confidence”.<sup>5</sup> I will first deal with whether the information was “supplied” for the purposes of s. 21(1)(b).

[13] A number of orders have found that information in an agreement or contract will not normally qualify as “supplied” by the third party for the purposes of s. 21(1)(b), because the information is the product of negotiations between the parties. This is so, even where the information was subject to little or no back and forth negotiation. There are two exceptions to this general rule:

- where the information the third party provided was “immutable” – and thus not open or susceptible to negotiation – and was incorporated into the agreement without change;
- where the information in the agreement could allow someone to draw an “accurate inference” about underlying information a third party had supplied in confidence to the public body but which does not expressly appear in the agreement.<sup>6</sup>

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<sup>3</sup> For example, Order 03-15, 2003 CanLII 49185 (BC IPC) at para. 41, Order 00-22, 2000 CanLII 14389 (BC IPC) at p. 4, Order F05-05, 2005 CanLII 14303 (BC IPC) at para. 46, Order F13-06, 2013 BCIPC 6 (CanLII) at para. 16, Order F13-07, 2013 BCIPC 8 (CanLII) at para. 36, Order F15-53, 2015 BCIPC 56 (CanLII), at para. 11. In Order 04-06, 2004 CanLII 34260 (BC IPC), at para. 36, former Commissioner Loukidelis found that such information was also “about” the public body.

<sup>4</sup> PVR’s initial submission, para. 2.

<sup>5</sup> See Order 01-39, 2001 CanLII 21593 (BC IPC), at para. 26, for example. See also Order F14-28, 2014 BCIPC 31 (CanLII), at paras. 17-18.

<sup>6</sup> See, for example, Order 01-39 2001 CanLII 21593 (BC IPC) at para. 45, and Order F13-22, 2014 BCIPC No. 4 (CanLII) at para. 17.

[14] Key judicial review decisions have confirmed the reasonableness of these findings.<sup>7</sup>

[15] PVR said its strategy was not to negotiate pricing with ICBC but instead to supply the “confidential pricing and service delivery” it offers its clients in its market.<sup>8</sup> I note first that not all of the pricing information that PVR provided in its response to the RFPQ was incorporated into the service agreement. Moreover, the agreement states that the parties “agree” to the terms of the contract, which include the fees which ICBC would pay PVR for performing specified services. This supports the conclusion that the pricing information in issue was negotiated, not supplied.

[16] PVR also said disclosure of specific parts of the pricing information would enable the reader to draw an accurate inference about underlying information it had supplied in confidence to ICBC. PVR outlined its concerns over disclosure of this information in an *in camera* portion of its submission.<sup>9</sup> However, disclosure of this particular information would reveal information that expressly appears in the agreement. It would not reveal “underlying information” that was supplied in confidence. This does not meet the “accurate inference” test as set out above.

[17] For reasons given above, I find that the pricing information in issue was not “supplied” to ICBC for the purposes of s. 21(1)(b). Given that, it is unnecessary in this case to decide if the information was supplied “in confidence” for the purposes of s. 21(1)(b). As noted above, the information in dispute must meet both parts of the s. 21(1)(b) test. I find that s. 21(1)(b) does not apply to the information and records in dispute.

#### *Conclusion on s. 21(1)*

[18] I found above that s. 21(1)(a)(ii) applies to the pricing information in issue. However, I found that s. 21(1)(b) does not apply. As noted above, information must meet all three parts of the test in s. 21(1). This means that s. 21(1) does not apply and it is not necessary for me to decide whether disclosure could reasonably be expected to result in harm under s. 21(1)(c). PVR has not met its burden of proof regarding s. 21(1). I find that s. 21(1) does not apply to the pricing information in dispute in this case.

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<sup>7</sup> See Order F08-22, 2008 CanLII 70316 (BC IPC), at para. 58, referring to *Jill Schmidt Health Services Inc. v. British Columbia (Information and Privacy Commissioner)*, [2001] B.C.J. No. 79, 2001 BCSC 101 and *Canadian Pacific Railway v. British Columbia (Information and Privacy Commissioner)*, [2002] B.C.J. No. 848, 2002 BCSC 603.

<sup>8</sup> PVR’s initial submission, para. 3.

<sup>9</sup> PVR’s initial submission, paras. 4-6.

**CONCLUSION**

[19] For reasons given above, under s. 58(2)(a) of FIPPA, I require ICBC to disclose the pricing information in dispute to BCSRA. I require ICBC to give BCSRA access to this information by May 12, 2016. ICBC must concurrently copy the OIPC Registrar of Inquiries on its cover letter to BCSRA, together with a copy of the records.

March 31, 2016

**ORIGINAL SIGNED BY**

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Celia Francis, Adjudicator

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