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Order F18-50

## BRITISH COLUMBIA OIL AND GAS COMMISSION

Elizabeth Barker  
Senior Adjudicator

December 4, 2018

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**Summary:** An applicant requested access to records related to a permit to build and operate a liquefied natural gas facility. The public body refused access under s. 21(1) (harm to third party business interests) of the *Freedom of Information and Protection of Privacy Act*. The applicant claims the records should be disclosed under s. 25 (disclosure in public interest). The adjudicator found that s. 25 did not apply. The applicant narrowed his request significantly during the inquiry and the adjudicator found that s. 21(1) did not apply to the information remaining in dispute and ordered the public body to disclose it to the applicant.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 21(1), 21(1)(a), 21(1)(b), 21(1)(c), 25(1)(a) and 25(1)(b).

### INTRODUCTION

[1] This inquiry is about access to records related to a permit to allow LNG Canada Development Inc. (LNGC) to build and operate a liquefied natural gas facility in Kitimat, BC. An applicant requested the British Columbia Oil and Gas Commission (Commission) access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to records related to LNGC's permit application under the *Liquefied Natural Gas Facility Regulation*.<sup>1</sup> The Commission consulted with LNGC before making a decision regarding the applicant's request. LNGC objected to disclosure of the requested records on the basis that s. 21(1) (harm to third party business interests) of FIPPA applied. Ultimately, the Commission

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<sup>1</sup> BC Reg 146/2014.

decided to refuse the applicant access to the records under s. 21(1) and informed him of its decision.

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Commission's decision. He also claimed that disclosure of the records was in the public interest under s. 25(1)(b) of FIPPA. Mediation did not resolve the matters in dispute and they proceeded to inquiry. The applicant, the Commission and LNGC provided inquiry submissions. LNGC requested and received the OIPC's approval to provide some of its submissions and evidence *in camera*.

## ISSUES

[3] The issues to be decided in this inquiry are as follows:

1. Is the Commission required to disclose the information under s. 25(1)(b)?
2. Is the Commission required to refuse to disclose the information under s. 21(1)?

[4] Section 57 of FIPPA says that the burden of proving that an applicant has no right of access under s. 21(1) rests with the public body. FIPPA does not say who has the burden of proving that s. 25 applies. Previous BC orders have said that it is in the interests of both parties to provide the adjudicator with whatever evidence and argument they have regarding s. 25.<sup>2</sup>

## DISCUSSION

### **Background**

[5] The *Oil and Gas Activities Act* gives the Commission statutory authority over applications for permits to construct and operate LNG facilities.<sup>3</sup> The *Liquefied Natural Gas Facility Regulation*, enacted under that Act, sets out the specific requirements for permitting, construction and operation of LNG facilities.

[6] LNGC is a joint venture company created to develop a liquefied natural gas (LNG) facility near Kitimat BC (Project). LNGC is comprised of Shell Canada Energy, Diamond LNG Canada Ltd., Kogas Canada Ltd. and PetroChina Kitimat LNG Partnership.<sup>4</sup> The Commission granted LNGC a permit for the Project in December 2015.<sup>5</sup>

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<sup>2</sup> For example, see: Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 39.

<sup>3</sup> *Oil and Gas Activities Act*, SBC 2008 c 36, s. 4.

<sup>4</sup> LNGC Chief Engineer's affidavit at para 4.

<sup>5</sup> A copy is in the Applicant's submission at attachment #22.

### ***Information in Dispute***

[7] The applicant's access request is worded as follows:

All documents submitted to the BCOGC by LNG Canada as required under 2(g), 2(h), 2(i), 3(1)(c), 3(1)(d) and 3(1)(e) of the LNG Facilities Regulation as part of the proponent's application for a permit for their LNG facility (subsequently approved by the BCOGC under facility permit 9709124).<sup>6</sup>

[8] The provisions in the *Liquefied Natural Gas Facility Regulation* that the applicant cites stipulate what information must be included in an LNG facility permit application for the proposed site.<sup>7</sup> The Commission located 300 pages of records as responsive to the access request and refused to disclose any part of them to the applicant.

[9] In his inquiry submission, the applicant appears to narrow his access request when he says:

I seek information related to LNG Canada's assessment of the risks associated with terminal site selection (or "siting") – the matter of choosing among a number of potential sites for the facility and assessing risks associated with those sites.

...

If a finding is made for release of some or all of Records at issue, I would accept as appropriate that the Commission sever all information on site and building layout and design from the requested records and provide only information related to site selection and related risk assessments.<sup>8</sup>

[10] In response, the Commission says that very little information in the records is about where to locate LNG facilities generally or the choice of site selection for LNG facilities.<sup>9</sup> It says that the only information of this type is on pages 49 and 100 of the records. LNGC says that the applicant should be refused access to the records because they do not contain the site selection information he requested.<sup>10</sup>

[11] The OIPC subsequently wrote to the applicant to ask him to clarify if he had narrowed his access request. He responded as follows:

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<sup>6</sup> Applicant's February 3, 2017 access request.

<sup>7</sup> For instance, s. 2(g) requires that an application include design and safety studies respecting the siting of the proposed LNG facility and all of its equipment, and s. 3(1)(c) requires detailed plot plans be submitted before construction.

<sup>8</sup> Applicant submission at pp. 7 and 9.

<sup>9</sup> Commission reply submission at paras. 1.17, 1.21-1.22.

<sup>10</sup> LNGC reply submission at para. 9.

I request information about the comparative risks between the different potential sites for the facility as identified by LNG Canada and its contractors or partners, LNG Canada's (and contractors or partners) processes for assessing and comparing risks associated with those different sites, and any input that the BCOGC may have provided into these processes.<sup>11</sup>

[12] Based on what the applicant says, I conclude that he has narrowed his request and now only wants access to information about the comparative risks between the different potential sites for the facility and the assessment of the risks associated with those sites.

[13] Having reviewed the records, I agree with the Commission that pages 49 and 100 are the only pages that have the type of information the applicant seeks. Page 49 is part of a record called *LNG Plant Concept ALARP Demonstration*.<sup>12</sup> Page 100 is part of record called *LNG Canada Plant QRA and Facility Siting Summary Report*. The responsive information on these pages consists of two identical excerpts about why LNGC chose the site it did.

[14] Therefore, I find that the two excerpts about site selection on pages 49 and 100 are the only information in dispute in this inquiry. I will not make any determination about the Commission's decision to refuse to disclose the balance of the records to the applicant. I will, however, consider all of the records to understand the context of the two excerpts on pages 49 and 100.

### **Public Interest – s. 25**

[15] Section 25 of FIPPA requires the disclosure of information by a public body where the disclosure is in the public interest. Section 25 reads as follows:

- 25(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
  - (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
  - (b) the disclosure of which is, for any other reason, clearly in the public interest.
- (2) Subsection (1) applies despite any other provision of this Act.
- (3) Before disclosing information under subsection (1), the head of a public body must, if practicable, notify
  - (a) any third party to whom the information relates, and
  - (b) the commissioner.

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<sup>11</sup> Applicant's November 6, 2018 email to OIPC Registrar, copied to the Commission and LNGC.

<sup>12</sup> ALARP stands for "as low as reasonably practicable" hazard risk.

*Section 25(1)(a)*

[16] The Commission and LNGC submit that s. 25(1)(a) does not apply. The applicant concedes that s. 25(1)(a) does not apply.

[17] The information in dispute on pages 49 and 100 is background information about site selection, but it is not at all about a risk of harm to the environment or the health or safety of the public or a group of people. For that reason, I find that s. 25(1)(a) does not apply.

*Section 25(1)(b)*

[18] The applicant submits the records must be disclosed under s. 25(1)(b) because they contain information about how sites for LNG facilities are selected. He says this would increase public understanding of government decision making about where LNG facilities are located and enable informed public contributions to that decision making process. He says:

I think it is reasonable to assume that members of the public would prefer to know the risks associated with terminal siting, would wish to form an opinion on preferred locations for LNG terminals near their communities, and would want to engage in the decision making process to influence decisions on terminal siting. However, without access to the information contained in the Records at issue, it is not clear how the public could effectively engage in the decision making process around LNG terminal siting.<sup>13</sup>

[19] The applicant submits that public access to information about LNG terminal site selection will shed light on the operation of the Commission and enhance confidence in the process and reassure the public that the Commission is acting in the public interest.<sup>14</sup> He also says that the information will “be of interest to local and regional governments, first responders, public health authorities and First Nations as they develop land use planning, zoning, preparedness and response strategies to address proposed and planned LNG facilities near their interests.”<sup>15</sup>

[20] The applicant also says that the development of an LNG export industry and the approval of LNG terminals is an issue of public interest and concern in BC. He provides a news article from *The Tyee* as well as snippets of CBC news stories about the LNG industry as examples of the public interest. He also points to the public’s participation in the “numerous public input processes in response to LNG facility applications across the province,” including the environmental

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<sup>13</sup> Applicant submission at pp. 9-10.

<sup>14</sup> Applicant submission at p. 11.

<sup>15</sup> Applicant submission at p. 7.

assessment process.<sup>16</sup> The applicant says that the public interest has not been exhaustively addressed by the environmental assessment process because it does not incorporate consideration of alternative locations or comparative risks for various sites.

[21] The Commission says that disclosing the records would not contribute to the public's understanding of site selection and comparative risks between different potential sites. The records in dispute are about permit requirements for the already chosen Kitimat site, the Commission says, and only brief comments about LNGC's site selection are included on pages 49 and 100 of the records. The Commission explains that permit applicants are not required to identify alternative possible sites and develop comparative risk assessments between sites as part of the permit application under s. 2 of the *Liquefied Natural Gas Facility Regulation*. The Commission also says that its mandate does not include identifying alternative possible sites for facilities.<sup>17</sup>

[22] The Commission says it provides public information about how it reviews and evaluates the information provided by permit applicants about risks associated with their site. The Commission adds that it maintains a major project page on its website with information about proposed projects and contact information for Commission staff so members of the public can seek further details. Its *Liquefied Natural Gas Facility Permit Application and Operations Manual* also gives details on the process.<sup>18</sup> The Commission identifies that the *Oil and Gas Activities Act* and the *Consultation and Notification Regulation* provide for stakeholder and general public input in the LNG facility application process. The Commission also says the BC Environmental Assessment Office's processes and website publicly provide information and analysis about the potential risks and impacts of the Project.<sup>19</sup>

[23] The Commission says that the applicant's opinions about the sufficiency of the Commission's analysis of the Project, and his desire to scrutinize the records, is not an objective basis to conclude that there is a serious issue with the location of LNG facilities in BC or the Commission's mandate, processes and analysis in relation to the issuance of a permit for the Project.<sup>20</sup>

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<sup>16</sup> Applicant submission at p. 3. The applicant also provides a copy of LNGC's October 2014 *Environmental Assessment Certificate Application*.

<sup>17</sup> Commission reply submission at paras. 1.17-1.20.

<sup>18</sup> Although the Commission does not provide a copy of any of the published information it references, the applicant's submission includes a copy of the Commission's *Liquefied Natural Gas Facility Permit Application and Operations Manual* as well as the Commission's *Oil and Gas Activity Application Manual*.

<sup>19</sup> Commission reply submission at paras. 1.27-1.29.

<sup>20</sup> Commission reply submission at paras. 1.30-1.32.

[24] LNGC says that there is no urgency, significant risk or clear public interest that would justify disclosure under s. 25. It says the applicant's submissions with respect to "alleged deficiencies in the British Columbia regulatory regime with respect to LNG facility site selection are not relevant to whether the specific technical, commercial and confidential third party information of LNG Canada should be released pursuant to section 25(1)(b) of *FIPPA*."<sup>21</sup> It says that while the applicant argues there is a public interest in LNG export development in general, he has provided no evidence of a public interest in LNGC's technical, commercial and confidential information in particular.<sup>22</sup> Disclosure would not be in the public interest because the records in dispute are preliminary and reflect a stage of design that is now out of date. Thus, it submits, the records in dispute have the potential to create confusion and misinformation about the Project.<sup>23</sup>

[25] LNGC also says that any public interest in the Project was "exhaustively addressed" through LNGC's Environmental Assessment Certificate application, which was "an in depth process of public review and consultation that provided all relevant stakeholders with numerous opportunities to provide input with respect to the proposed project plans."<sup>24</sup>

*Analysis and finding, s. 25(1)(b)*

[26] There is a high threshold before s. 25 applies because it overrides all of the exceptions to disclosure and the privacy protections in *FIPPA*. It only applies in serious situations justifying mandatory disclosure.<sup>25</sup> Analyzing the application of s. 25(1)(b) in a specific situation begins by considering whether the information at issue concerns a subject, circumstance, matter or event that might warrant mandatory disclosure. Once it is determined that the information is about a matter that may engage s. 25(1)(b), the nature of the information must be considered to determine whether it meets the threshold for disclosure. Disclosure will be required under s. 25(1)(b) where a disinterested and reasonable observer, knowing the information and knowing all of the circumstances, would conclude that disclosure is plainly and obviously in the public interest.<sup>26</sup>

[27] I have considered the nature and context of the information in dispute on pages 49 and 100 and the parties' submissions and conclude the threshold required for s. 25(1)(b) is not met in this case. The two excerpts provide background information about site selection. While I can see that the issue of LNG is topical and of interest to the public, I am not persuaded that the specific information in dispute in these excerpts would add in any meaningful way to the

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<sup>21</sup> LNGC reply submission at para. 3 (b).

<sup>22</sup> LNGC reply submission at para. 15.

<sup>23</sup> LNGC initial submission at para. 49

<sup>24</sup> LNGC initial submission at para. 50.

<sup>25</sup> Investigation Report F16-02, 2016 BCIPC 36 at p. 36.

<sup>26</sup> *Ibid* at p. 26 and Investigation Report F15-02, 2015 BCIPC 30 at p. 34.

public discourse. The information is very general and is a high level summary of why LNGC chose the site it did. It says nothing about alternative sites and assessing environmental impacts or the role of the Commission in site selection. In my view, disclosing the information in dispute on pages 49 and 100 is not clearly in the public interest in the way required for s. 25(1)(b) to be engaged.

[28] In conclusion, the Commission is not required to disclose the information under ss. 25(1)(a) or (b).

### ***Harm to Third Party Business Interests – s. 21(1)***

[29] Section 21(1) requires a public body to withhold information the disclosure of which would harm the business interests of a third party. The portions of s. 21(1) that are relevant in this case state:

21(1) The head of a public body must refuse to disclose to an applicant information

(a) that would reveal

(i) trade secrets of a third party, or

(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,

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

[30] The principles for applying s. 21(1) are well established. The following three elements must be proven in order for s. 21(1) to apply:

- Disclosure would reveal one or more of the types of information listed in s. 21(1)(a);
- The information was supplied, implicitly or explicitly, in confidence; and
- Disclosure of the information could reasonably be expected to cause one or more of the harms in s. 21(1)(c).

*Type of information, s. 21(1)(a)*

[31] LNGC says the information is technical information that is also commercial in nature. LNGC says that professional engineers prepared all of the information and it relates to the technical and engineering considerations for LNGC's site design, layout and associated health and safety hazards. LNGC's Chief Engineer says the records were created as part of LNGC's permit application pursuant to the *Liquefied Natural Gas Facility Regulation*. The Chief Engineer describes the type of information in detail.<sup>27</sup>

[32] The Commission submits that the information is commercial information because it is about LNGC's proposed commercial enterprise (i.e., the LNG facility) and because it is the product of engineers and other professionals. The Commission also says the information is "technical" information for the reasons the LNGC provides. An engineer with the Commission's Engineering Division says the records contain information and analysis of a technical nature generated and developed by LNGC. She describes the records in some detail, including that they contain technical engineering details.<sup>28</sup>

[33] The applicant says the Commission and LNGC are applying too broad an interpretation of commercial information and they seem to be arguing that virtually any report produced by a commercial third party is commercial information. He also disputes that the information is technical information as that term has been defined in previous orders.

[34] FIPPA does not define the term "technical" information, but previous orders have said it means information belonging to an organized field of knowledge in the general categories of applied science or mechanical arts.<sup>29</sup> It usually involves information prepared by a professional with the relevant expertise and describes the construction, operation and maintenance of a structure, process, equipment or entity.<sup>30</sup> Examples of the type of information which previous orders have said are technical information include: engineering information regarding a retractable roof; information about heat tape installation for a residential water metering system; architectural building plans; environmental testing reports about gasoline contamination; schematic flow designs for a metal finishing operation and information about the properties and uses of chemicals.<sup>31</sup>

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<sup>27</sup> LNGC Chief Engineer's affidavit at paras. 6 and 10.

<sup>28</sup> The Commission engineer's affidavit at paras. 21-22.

<sup>29</sup> For example: Order F16-31, 2016 BCIPC 34 (CanLII) and Order F12-13, 2012 BCIPC 18 (CanLII).

<sup>30</sup> *Ibid.*

<sup>31</sup> Order F14-40, 2014 BCIPC 43 (CanLII); Order F16-31, 2016 BCIPC 34 (CanLII); Order F09-14, 2009 CanLII 58552 (BC IPC); Order No. 246-1998, 1998 CanLII 1449 (BC IPC); Order F18-07, 2018 BCIPC 9 (CanLII) and Order F07-06, 2007 CanLII 9597 (BC IPC).

[35] The term “commercial” information is also undefined in FIPPA. Past orders have said that “commercial” information relates to commerce, or the buying, selling, exchanging or providing of goods and services, but the information does not need to be proprietary in nature or have an independent monetary or marketable value.<sup>32</sup> Examples of the type of information which previous orders have said are commercial information include: methods for supplying goods and services, invoicing information about amounts billed, services and products provided, hourly rates and the number of hours needed to perform services and loan details (proposed amount, interest rate, repayment terms and security).<sup>33</sup>

[36] While the 300 pages of records contain plenty of “technical” and “commercial” information, the two excerpts in dispute do not. The excerpts are a general or high level layperson’s summary about the reason the site was selected, and they do not contain the sort of specificity or detail that previous orders have said is “technical” or “commercial” information. Therefore, I find that s. 21(1)(a) does not apply.

[37] Given that all three parts of s. 21(1) must be proven, it is not necessary to consider if ss. 21(1)(b) and (c) apply. I have done so, however, for the sake of completeness.

*Supplied in confidence, s. 21(1)(b)*

[38] For s. 21(1)(b) to apply, the information must have been supplied, either implicitly or explicitly, in confidence. The first step is to decide if the information was “supplied” to a public body. The second step is to determine if the information was supplied “in confidence”.

*Supplied*

[39] The Commission and LNGC’s evidence is that LNGC generated and supplied the information to the Commission as part of LNGC’s permit application, that the information did not originate with the Commission and it was not the subject of negotiation between the Commission and LNGC.<sup>34</sup>

[40] The applicant disputes that the information was supplied and he submits that it was negotiated.<sup>35</sup> This is a reference to BC orders that have said that information in an agreement or contract is generally negotiated, not supplied

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<sup>32</sup> Order 01-36, 2001 CanLII 21590 (BC IPC), para. 17.

<sup>33</sup> Order F05-09, 2005 CanLII 11960 (BC IPC); Order F14-58, 2014 BCIPC 62 (CanLII); Order F16-39, 2016 BCIPC 43 (CanLII); Order F18-20, 2018 BCIPC 23 (CanLII).

<sup>34</sup> Commission initial submission at para. 5.47; LNGC initial submission at para 23 and LNGC Chief Engineer’s affidavit at para. 5.

<sup>35</sup> Applicant submission at pp. 13-14

information.<sup>36</sup> In support of his argument that the information in this case is “negotiated,” the applicant observes that LNGC and the Commission say the records in dispute are preliminary and subject to revision. For instance, LNGC’s Project Director says, “approval for a facility permit requires several engagements with the Oil and Gas Commission (the “OCG”) to confirm the expected information requirements for a complete application.”<sup>37</sup> The applicant also points out that the cover document that accompanied LNGC’s permit application says that LNGC has taken into account the Commission’s comments during the pre-application process and updated the application to include the additional information the Commission requested.

[41] I am not persuaded by the applicant’s submission that the information in the excerpts on pages 49 and 100 is negotiated. I can clearly see that the excerpts are in records containing the information that s. 2 of the *Liquefied Natural Gas Facility Regulation* requires LNGC provide in its permit application. The fact that some of the records may be preliminary and LNGC added more information to them at the Commission’s request does not establish that the information added was negotiated or subject to negotiation. Instead, the content and context of the records show that LNGC provided the permit application to the Commission as well as additional information to flesh-out missing details in the application. There is no evidence that the information in the records was negotiated. In conclusion, I find that two excerpts on pages 49 and 100 contain information that was “supplied” by LNGC to the Commission.

*In Confidence*

[42] LNGC and the Commission say that all of the information was supplied in confidence. The Commission’s engineer says that none of the records are public, and he provides detailed evidence about how the Commission treated the records as confidential.<sup>38</sup> Among other things, he says the Commission and LNGC have a *Confidentiality and Restricted Use Agreement* setting out the conditions by which LNGC agrees to disclose its information to the Commission and the Commission agrees to receive it.<sup>39</sup> Schedule A of the agreement expressly lists the information LNGC considers to be to be confidential, proprietary and valuable.

[43] The Commission’s engineer says that the records were supplied in confidence either because they are: listed in Schedule A of the *Confidentiality and Restricted Use Agreement*, expressly identified as confidential in the cover

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<sup>36</sup> Order 04-06, 2004 CanLII 34260 (BC IPC) at paras. 45-46. See also Order 01-20, 2001 CanLII 21574 (BC IPC) at para. 81.

<sup>37</sup> LNGC Project Director’s affidavit at para. 11.

<sup>38</sup> The Commission engineer’s affidavit at para. 30.

<sup>39</sup> A copy of the *Confidentiality and Restricted Use Agreement* is attached to LNGC Project Director’s affidavit.

document that accompanied LNGC's permit application or they contain their own confidentiality proviso.<sup>40</sup>

[44] The applicant concedes that some of the records were supplied in confidence because they were expressly included in the *Confidentiality and Restricted Use Agreement*. However, he disputes that the balance of the records were supplied in confidence.<sup>41</sup>

[45] The two excerpts I am considering are not listed in Schedule A of the *Confidentiality and Restricted Use Agreement*. However, page 49 is in a record that contains its own confidentiality statement, and the cover document that accompanied LNGC's permit application shows that page 100 should be treated as proprietary and confidential.<sup>42</sup> These explicit indicators of confidentiality, as well as the Chief Engineer's detailed evidence about how the records were treated, satisfactorily demonstrate that the Commission and LNGC had a mutual understanding that LNGC was supplying the information in confidence. Therefore, I find that the information on pages 49 and 100 was supplied in confidence under s. 21(1)(b).

*Harm, s. 21(1)(c)*

[46] The standard of proof for s. 21(1) is whether disclosure of the information at issue could reasonably be expected to result in the specified harm. Meeting this standard requires demonstrating that disclosure will result in a risk of harm that is well beyond the merely possible or speculative, but it need not be proved on the balance of probabilities that disclosure will in fact result in such harm.<sup>43</sup>

[47] The Commission submits that LNGC has provided persuasive evidence to demonstrate that disclosure can reasonably be expected to cause the type of harms outlined in ss. 21(1)(c)(i) and (iii).

[48] LNGC submits that disclosure could reasonably be expected to harm and interfere significantly with its competitive and negotiating positions and cause it financial harm. LNGC says, "The data, notes, analyses, compilations, forecasts, reports, studies and interpretations set out in the Records are proprietary to LNG Canada and its joint venture partners and, as a collective whole, disclose the 'Shell way' of approaching LNG site layout and design."<sup>44</sup> It says that the information in the records would provide a precedent to its competitors and

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<sup>40</sup> The Commission engineer's affidavit at paras. 24-28.

<sup>41</sup> Applicant submission at p. 14.

<sup>42</sup> *LNG Plant Concept ALARP Demonstration* at p. 43 of the records and the Commission engineer's affidavit exhibit C.

<sup>43</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.

<sup>44</sup> LNGC initial submission at para. 36.

give them a “head start” on the design and development of a LNG plant.<sup>45</sup> It also says that its competitors could “study, replicate and directly benefit from the application of this proprietary institutional knowledge.”<sup>46</sup>

[49] LNGC also submits that disclosure could result in private organizations like LNGC being less willing to provide confidential technical information to public bodies like the Commission when it is in the public interest that such information continues to be supplied.

[50] The applicant says that LNGC’s assertions about harm from disclosure “are too broad.”<sup>47</sup> He also disputes what LNGC says about disclosure resulting in third parties being less willing to provide information to government. He says that “it is hard to conceive that future applicants would not provide documents required under regulation as part of a permitting process if they wished to see their permit applications processed and approved.”<sup>48</sup>

[51] I find that the two excerpts on pages 49 and 100 do not contain the type of technical information that LNGC says it is concerned about disclosing (i.e., data, notes, analyses, compilations, forecasts, reports, studies, interpretations and the “Shell way” of design). The information in the two excerpts is very general and in the nature of a broadly-worded summary about why LNGC chose the site for its Project. If I were considering the balance of the records then what LNGC and OGC say about harm might be more applicable and persuasive. However, the only information in dispute here is on pages 49 and 100. I am not persuaded by the Commission and LNGC’s submissions and evidence that disclosing this specific information could reasonably be expected to cause any of the types of harm under s. 21(1)(c).

[52] In conclusion, the Commission has established that s. 21(1)(b) applies but not ss. 21(1)(a) and (c). All three paragraphs must be proven in order to refuse access under s. 21(1). Therefore, I find that the Commission is not authorized or required by s. 21(1) to refuse the applicant access to the information in the excerpts on pages 49 and 100 of the records.

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<sup>45</sup> LNGC initial submission at para. 36. Also LNGC Project Director’s affidavit at paras. 20-22.

<sup>46</sup> LNGC initial submission at para. 37.

<sup>47</sup> Applicant submission at p.18.

<sup>48</sup> Applicant submission at p.18.

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## **CONCLUSION**

[53] For the reasons above, I make the following order under s. 58 of FIPPA:

1. I confirm the Commission's decision that it is not required to disclose the information in dispute under s. 25.
2. The Commission is not authorized or required to refuse access to the information in dispute under s. 21(1). For clarity, I have highlighted the information in dispute in a copy of pages 49 and 100 that has been sent to the Commission with this order.
3. I require the Commission to give the applicant access to the highlighted information by 18 January, 2019. The Commission must concurrently provide the OIPC Registrar of Inquiries with a copy of its cover letter and the records sent to the applicant.

December 4, 2018

## **ORIGINAL SIGNED BY**

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Elizabeth Barker, Senior Adjudicator

OIPC File F17-70548