Office of the Information & Privacy Commissioner for British Columbia

Protecting privacy. Promoting transparency.

Order F19-05

VANCOUVER COASTAL HEALTH AUTHORITY

Laylí Antinuk
Adjudicator

February 4, 2019

CanLII Cite: 2019 BCIPC 06
Quicklaw Cite: [2019] B.C.I.P.C.D. No. 06

Summary: A third party requested a review of a public body's decision to release information to an applicant. The third party submitted that s. 21(1) requires the public body to withhold the disputed information because the release of the information would harm its business interests. The adjudicator determined that s. 21(1) does not require the public body to refuse access to the information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 21(1).

INTRODUCTION

[1] This inquiry involves a third party request for review by Retirement Concepts (Terraces).[1] Terraces opposes a decision by the Vancouver Coastal Health Authority (VCHA) to disclose the contract VCHA had with Terraces for seniors' assisted living units and related correspondence. The applicant is a journalist who requested the contract and correspondence related to its termination.

[2] VCHA decided that s. 21(1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) does not apply to the majority of the information in the

[1] In March of 2017, the third party involved in this inquiry changed its name from "Retirement Concepts Senior Services 2 Ltd." to "PR Seniors Housing Management 2 Ltd." (Terraces' affidavit at para. 10). For clarity and convenience, I will use the name "Terraces" to refer to the third party throughout this order because the facility that contains the assisted living units dealt with in the records at issue is called "Terraces on 7th."

responsive records. Terraces disagrees, opposing the disclosure of all the information in the responsive records and asserting that disclosure will harm its business interests within the meaning of s. 21(1). Terraces requested that the Office of the Information and Privacy Commissioner (OIPC) review VCHA's decision respecting s. 21(1). Mediation did not resolve the matter and it proceeded to inquiry.

[3] Both VCHA and Terraces provided submissions for this inquiry. The applicant had the opportunity to provide submissions but chose not to do so beyond stating that she supports VCHA's position in this case.[2]

ISSUE

[4] The issue I must decide in this inquiry is whether s. 21(1) of FIPPA requires VCHA to refuse to disclose the information in the records at issue. Terraces bears the burden of proving that the applicant has no right to access the information.[3]

DISCUSSION

Background

[5] Terraces is a privately held Canadian company that provides services and retirement living alternatives for seniors in retirement communities and assisted/independent living services facilities.[4] Terraces had an agreement with VCHA to provide assisted living units and services at the Terraces on 7th facility.

[6] An applicant made a request to VCHA for a copy of the agreement and related correspondence. Upon receipt of the request, VCHA provided Terraces with notice of the request and gave it the opportunity to consent or make written representations explaining why the information should not be disclosed.

[7] In response, Terraces requested that VCHA withhold the records in their entirety. Terraces provided representations to VCHA asserting the following:

1) section 21(1) applies to all the information in the records; and

2) VCHA mistakenly identified some records as responsive to the applicant's request when, in reality, those records fell outside the scope of that request.

---

[2] Applicant's October 15, 2018 email to the OIPC Registrar of Inquiries.
[3] Section 57(3)(b) of FIPPA.
[4] Terraces' affidavit at paras. 4 and 6.

[8] Taking these representations into account, VCHA decided that s. 21(1) only applied to a small portion of the information contained in the records. VCHA agreed that some of the records it had initially identified as responsive to the applicant's access request did fall outside the scope of that request.[5] In the final result, VCHA decided to disclose most of the records to the applicant and only withhold a small portion of them pursuant to s. 21(1) and s. 22 (harm to personal privacy).[6]

[9] The s. 22 aspect of VCHA's decision is not an issue in this inquiry[7] and I will not make any determination about it. Additionally, I will not consider the records that VCHA and Terraces agree fall outside the scope of the applicant's request because those records are not in dispute.

Records in dispute

[10] The records in dispute comprise:

- two Assisted Living Agreements (contract 1 and contract 2), each of which contains a set of six schedules; and
- multiple emails (some with attachments).

[11] All the emails and their attachments relate to the termination of contract 2. The email attachments consist of two one page proposals (proposals) related to the termination of contract 2, two one page funding tables and several pages of communication materials. The only information that VCHA decided to withhold under s. 21(1) is in two red boxes in the proposals.[8]

[12] As noted above, Terraces opposes the release of all the information contained in each record, asserting that s. 21(1) applies to it all.

Harm to third party business interests – section 21

[13] Section 21(1) requires a public body to withhold information if its disclosure could reasonably be expected to harm the business interests of a third

---

[5] VCHA's submission at para. 10; confirmed in January 7, 2019 email from VCHA's senior legal counsel to the OIPC Registrar of Inquiries.

[6] Whenever I refer to section numbers throughout the remainder of this order, I refer to sections of FIPPA unless otherwise stated.

[7] VCHA's submission at para. 5. I note once again that the applicant stated that she supports VCHA's position in this case.

[8] VCHA decided to withhold all the information contained within the two red boxes on pages 18 and 22 of the records. The OIPC confirmed this (December 18, 2018 email from VCHA's senior counsel to the OIPC Registrar of Inquiries) because counsel for Terraces appeared to believe that VCHA had decided to withhold only the information highlighted in yellow on those pages. Terraces' submissions at paras. 1 and 37. For the sake of certainty, I have considered all of the information in the red boxes as if it is in dispute.

party. The section sets out a three-part test for determining whether a public body must refuse disclosure. The party that bears the burden of proof – in this case Terraces – must satisfy all three parts of this test in order for s. 21(1) to apply.

[14] The relevant portions of s. 21(1) follow:

> 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…

Each of subsections (a), (b) and (c) above sets out one part of the three-part test, so Terraces must provide evidence establishing all the following things:

1) The information at issue qualifies as the type of information described in s. 21(1)(a).

2) It supplied the information to VCHA in confidence (s. 21(1)(b)).

3) The disclosure of the information could reasonably be expected to cause one of the harms listed in s. 21(1)(c).

[15] For the reasons that follow, I find that Terraces has not established that s. 21(1) applies to the information in the responsive records.

Parties' Positions

[16] Terraces submits that all the information in the responsive records satisfies the test in s. 21(1). It argues that the information qualifies as commercial and financial information that it supplied to VCHA in confidence and that the release of this information could reasonably be expected to interfere significantly with its competitive position or result in undue financial loss.

[17] VCHA's submissions do not directly address the test outlined in s. 21(1). Instead, they focus on VCHA's s. 4(2) duty to sever releasable information from that which it must withhold under FIPPA.

[18] As noted above, the applicant provided no submissions for this inquiry.

Type of Information – section 21(1)(a)

[19] Terraces must establish that all the information qualifies as either commercial, financial, labour relations, scientific or technical information in order to satisfy the first part of the test. Terraces asserts that all the information at issue is commercial or financial information.

[20] FIPPA does not define the terms "commercial" or "financial." However, previous orders have found that commercial information relates to the buying, selling or exchanging of goods and services.[9] Past orders have also held that commercial and financial information includes the terms and conditions for the buying or selling of goods and services. For example, a contractor's fees or the commission rate for a contractor's services qualifies as commercial information.[10] Other examples of commercial information from previous orders[11] include:

- prices or amounts contained within a contract;
- hourly rates, expenses and other fees payable under a contact;
- invoicing information about amounts billed, services and products provided, hourly rates and the number of hours needed to perform services;
- information respecting methods for supplying goods and services;
- information related to services provided by a third party in exchange for payment; and
- information that demonstrates the extent to which a third party is meeting its contractual obligations.

[21] Looking first at the emails, I find that there is information in some of them about the termination of contract 2 and the financial and administrative arrangements made between VCHA and Terraces as a result of that termination. I find that this is commercial information. However, the balance of the information in the emails is not the type of information captured by s. 21(1)(a) because it is about meeting arrangements and minor administrative details.[12]

---

[9] For example, see Order F16-39, 2016 BCIPC 43 at para. 17; and Order F08-03, 2008 CanLII 13321 (BC IPC) at paras. 62-63.
[10] Order F18-40, 2018 BCIPC 43 at para. 8.
[11] Order F18-50, 2018 BCIPC 54 at para. 35; Order F14-58, 2014 BCIPC 62 at para. 19; Order F17-50, 2017 BCIPC 55 at para. 10; Order F18-21, 2018 BCIPC 24 at para. 8; Order F11-08, 2011 BCIPC 10 at para. 17; Order F13-20, 2013 BCIPC 27 at para. 14.
[12] For similar reasoning, see Order F13-20, *ibid* at para. 15.

[22] I find that the contracts (including schedules) qualify as commercial information because they contain the terms and conditions for the provision of residential units and services by Terraces in exchange for payment by VCHA. The proposals also qualify as commercial information for the same reason. Similarly, the communications materials, which include letters to individuals impacted by the contract termination and an information sheet for residents, relate to the manner in which Terraces met its contractual obligations with VCHA. Accordingly, I find that the communications materials qualify as commercial information. Additionally, I find that the funding tables contain financial information because they set out payment amounts owed to Terraces for each assisted living residential unit covered by the contracts.

[23] In summary, other than parts of the emails about meeting arrangements and minor administrative details (described in paragraph 21 above), I find that the information in the records relates to services provided by Terraces in exchange for payment and the manner in which Terraces met its contractual obligations with VCHA. Therefore, I find that the information is financial or commercial information and s. 21(1)(a) applies.

[24] The next part of the test requires that Terraces prove that it supplied the financial or commercial information to VCHA in confidence. I will not consider the information that failed the first part of the test any further.

Supplied in confidence – section 21(1)(b)

[25] The test in s. 21(1)(b) involves a two-part query.

1) Did the third party[13] *supply* the information to a public body?

2) If so, did the third party supply the information *in confidence*?

Supplied

[26] I find that the proposals contain information Terraces supplied to VCHA. These records consist of Terraces' proposals, combined with VCHA's responses, about how they will deal with payments and notice for residents impacted by the contract termination. It is clear that Terraces supplied the proposals. It is also clear that VCHA's responses to these proposals could allow an observer to make accurate inferences about Terraces' proposals. As such, I find that all the

[13] I note that previous orders establish that s. 21(1)(b) is not limited to instances where the information was supplied directly by the third party opposing disclosure: Order F13-30, 2013 BCIPC 39 at para. 23; Order F13-20 *supra* note 11 at para. 20; Order 01-26, 2001 CanLII 21580 (BC IPC) at para. 29. However, given the facts involved in this particular inquiry, I need only consider whether Terraces supplied the information in question to VCHA. No other parties supplied information about Terraces to VCHA.

information in the proposals qualifies as supplied information. Additionally, I find that Terraces supplied the information contained in the funding tables.

[27] In my view, Terraces also supplied the information in some of the emails. Specifically, I find that the following types of emails contain supplied information.

- Emails sent by Terraces' employees providing answers to questions from VCHA.
- Emails sent by Terraces' employees providing updates related to specific residents or residential units impacted by the contract termination.
- Emails sent internally within VCHA repeating information previously supplied by Terraces about specific residents or residential units impacted by the contract termination.
- Emails sent by VCHA employees to Terraces asking questions about information that Terraces had supplied which, if disclosed, would allow an individual to make accurate inferences about the contents of the supplied information.

[28] I find that the rest of the emails, however, do not contain information that was supplied to VCHA. Instead, these emails contain new information or questions from VCHA that VCHA sent to Terraces.

[29] Similarly, the communications materials do not contain supplied information within the meaning of s. 21(1)(b). It is clear from the evidence before me that the two parties developed the communications materials together. For example, the letter to impacted residents is signed by a director from VCHA and the director of operations from Terraces. Additionally, the body of several emails between VCHA and Terraces employees describe attaching the various communications documents with additional edits, revisions and adjustments. From this, I find it clear that both parties engaged in drafting and editing the communications materials. Therefore, I find that Terraces did not supply the information contained in the communications materials.

[30] Turning to the contracts and their schedules, previous orders have stated that parties to a contract do not generally "supply" the information contained within a contract's terms; rather, they negotiate the terms of the contract together.[14] Therefore, information contained within a contract's terms does not generally meet the test for supplied information under s. 21(1)(b).

[14] For examples, see Order F17-44, 2017 BCIPC 48 at para. 12 and Order 01-39, 2001 CanLII 21593 (BC IPC) at para. 43.

Two exceptions to this general rule exist, specifically:[15]

1) If a third party provides immutable information during contract negotiation (i.e. information not susceptible to negotiation, such as fixed overhead or labour costs), it may qualify as supplied information.
2) If the information in the contract could allow someone to accurately infer underlying information that a third party supplied in confidence during negotiations with the public body, it may qualify as supplied information.

[31] Terraces submits that all the information in the contracts and their schedules qualifies for either one of these two exceptions. I disagree and find that Terraces has only established that one of the schedules, Schedule B-1 to each contract, contains immutable information. Schedule B-1 is titled "Budget" and it contains a break-down of Terraces' actual expenses from the previous year.[16] I find that this information was not susceptible to negotiation and that Terraces supplied it to VCHA.

[32] As for the body of each contract and the remaining schedules, I find that it all amounts to negotiated information and the two exceptions to the general rule do not apply. Terraces did not satisfactorily explain how anything other than Schedule B-1 amounts to immutable information that was not susceptible to negotiation. Further, I fail to see how anything in the contracts or the remaining schedules contains information that could lead to accurate inferences about underlying confidential information supplied by Terraces in the course of contract negotiations. As described by Adjudicator Iyer:

> In order to invoke this sense of "supplied", [the third party opposing disclosure] must point to specific evidence showing what accurate inferences could be drawn from which contractual terms about what underlying confidentially supplied information.[17]

[33] Terraces has not pointed to specific evidence showing what accurate inferences could be drawn from which contractual terms about what underlying confidentially supplied information. Taking all this into account, I reject the claim that the two exceptions apply to any of the information in the contracts or the remaining schedules.

[34] In summary, I find that Terraces has established that the following records contain supplied information:

---

[15] Order 01-39, *ibid* at paras. 45 and 50. Upheld on judicial review in *Canadian Pacific Railway v. British Columbia (Information and Privacy Commissioner)*, 2002 BCSC 603. For other examples see: Order F08-22, 2008 CanLII 70316 (BC IPC) at para. 60; and Order F14-28, 2014 BCIPC 31 at paras. 15-18.
[16] Terraces' submissions at para. 35; Terraces' affidavit at para. 19.
[17] Order 01-39, *supra* note 14 at para. 50.

- the emails with the exception of those that contain questions or new information from VCHA (identified in para. 28 above);
- Schedule B-1 to each contract;
- the proposals; and
- the funding tables.

[35] I will now turn to the question of whether or not Terraces supplied this information in confidence.

In confidence

[36] The test for whether a third party supplied information "explicitly or implicitly, in confidence" involves an objective question of fact. Evidence of the third party's subjective intentions with respect to confidentiality will not suffice.[18] Terraces must show that it had an "objectively reasonable expectation of confidentiality" at the time it supplied the information to VCHA and that it maintained this expectation.[19]

[37] I find that Terraces sent the emails that contain supplied information with an objectively reasonable expectation that VCHA would keep them confidential. I make this finding primarily because of the personal and private nature of the information contained in these emails. For example, one of the emails involves a communication respecting a resident who passed away and when the family would move that resident's belongings from the now-vacant suite. Another email outlines the type of suite selected by a current resident and describes a voice message left by the child of that resident in relation to the types of suites available at the facility.

[38] I also note that the Terraces employees who sent these emails never included any recipients other than VCHA employees.[20] In addition, several of the emails from Terraces employees contain a confidentiality proviso following the signature block. On its own, template language of this sort does not support a conclusion that the email itself contains information supplied in confidence.[21] However, that proviso along with the nature, content and recipients of the communications indicates to me that Terraces supplied the information in these emails in confidence.

---

[18] Order F16-39, *supra* note 9 at para. 27.
[19] Order F18-28, 2018 BCIPC 31 at para. 41; Order 01-36, 2001 CanLII 21590 (BC IPC) at para. 23.
[20] In Order F15-59, 2015 BCIPC 62 at para. 49, the adjudicator found that, absent any evidence that an email was not provided in confidence, an email confidentiality disclaimer paired with the fact that the email only involved third party employees and an executive director from the public body supported her conclusion that the third party supplied the information in confidence.
[21] Order F18-19, 2018 BCIPC 22 at para. 67.

[39] However, Terraces has not persuaded me that it supplied the information in Schedule B-1 in confidence. While I accept that the information in Schedule B-1 is not information in the public domain,[22] I do not find Terrace's assertions about confidentiality objectively reasonable in the circumstances for the following reasons.

[40] In the section under the heading "Confidentiality," contract 2 states:

> [T]he Service Provider acknowledges that VCH is subject to the FIPPA (BC), as amended from time to time, and consequently, may be required by law to disclose this Agreement and/or related records. The parties agree that any such disclosure made by VCH, whether under the FIPPA (BC) or other law, is not a breach of VCH's obligations under this [confidentiality] Section...[23]

[41] I have considered this explicit contractual statement[24] in light of the totality of the evidence before me which includes the following pertinent facts.

- Each contract states that VCHA expects Terraces to carry out its operations based on the principles of accountability and transparency.[25]
- Under each contract, Terraces acknowledges that the funding paid by VCHA is public money and commits to using the funding in a manner that is publicly justifiable.[26]
- Each contract sets out the agreed upon rules respecting control and ownership of specified types of records. These rules establish that VCHA retains control and ownership of all heath case documents. Terraces has the right to duplicate and use such documents "provided [Terraces] will keep such documents confidential and not permit their disclosure". Conversely, Terraces retains control and ownership of the accounting and administrative types of records it provides to VCHA as a result of the contract. VCHA has the right to duplicate and use such records and does not have an equivalent obligation to keep such records confidential.[27]
- Schedule B-1 appears on VCHA letterhead and contains no explicit statements respecting confidentiality. It does not seem objectively

[22] VCHA's submission at para. 6.
[23] Section 38 of contract 2.
[24] Explicit contractual statements outlining the potential for the contract's disclosure if required by law do not, in and of themselves, necessarily vitiate the potential for an objectively reasonable expectation of confidentiality (see Order 01-39, *supra* note 14 at paras. 39 and 41). However, in this case, the totality of the evidence before me indicates that Terraces did not have a reasonable expectation of confidentiality in relation to the contents of Schedule B-1.
[25] Section 19 of each contract.
[26] Section 28 of each contract.
[27] Section 48 of each contract.

> reasonable to me that a party to a contract would allow its confidential financial information to appear on the letterhead of a different organization.

Taking all this into account, I find that Schedule B-1 does not contain information that Terraces supplied to VCHA in confidence.

[42] However, I find that Terraces supplied the proposals to VCHA in confidence. The proposals were precisely that – proposals about how Terraces and VCHA would deal with financial and administrative matters in relation to the contract termination. They do not make up part of either contract and are not formalized or finalized. I find that Terraces had an objectively reasonable expectation that the proposals would remain confidential.

[43] I make the same finding in relation to the funding tables for two reasons. First, Terraces provided the funding tables at the same time it provided the proposals. Among other things, the funding tables list the specific amounts Terraces wanted VCHA to pay for each impacted resident pursuant to its proposals. In other words, the funding tables flesh out the broad language contained in the proposals on a per-resident basis. In this sense, the funding tables relate directly to the proposals which I have found contain information Terraces supplied to VCHA in confidence. Second, the funding tables also set out the amount each resident pays Terraces per month for his or her unit. I find it objectively reasonable that Terraces would expect this type of personal information to remain confidential.

[44] To summarize my findings in relation to this part of the s. 21(1) test, I find that the proposals, the funding tables and some of the emails contain information that was supplied to VCHA in confidence within the meaning of s. 21(1)(b).

Reasonable expectation of harm – section 21(1)(c)

[45] The final portion of the s. 21(1) test requires Terraces to establish that disclosure of the commercial and financial information that it supplied in confidence could reasonably be expected to cause Terraces one of the harms listed in s. 21(1)(c). For the reasons outlined above, I found that the following records passed the first two parts of the test:

- the emails that contain information supplied to VCHA in confidence;
- the proposals; and
- the funding tables.

The remainder of my analysis will focus almost exclusively on these three records. With two exceptions, I will not consider the information that failed the first parts of the test any further. The exceptions are Schedules B-1 and B-2. Terraces connects its submissions on the funding tables to Schedules

B-1 and B-2. Accordingly, I will discuss these two schedules in order to address Terraces' submissions fully.

[46] To pass this final part of the test, Terraces must prove that disclosure will result in a risk of harm that goes "well beyond the merely possible or speculative."[28] The Supreme Court of Canada has described this standard as "a middle ground between that which is probable and that which is merely possible."[29] The evidence Terraces provides must demonstrate "a clear and direct connection between the disclosure of specific information and the harm" that Terraces alleges.[30]

[47] In this case, Terraces claims disclosure would harm its competitive position significantly or result in undue financial loss.[31] It says:

> …our industry has a highly competitive market, with a small number of competitors competing to win contracts with public bodies. [Terraces] now owns only two facilities where a loss of a single contract could result in a significant harm to its business.[32]

[48] Terraces asserts that disclosure of the records would "allow competitors to compete unfairly" with Terraces by "providing information to them that they would otherwise not be able to obtain."[33] Allowing competitors to gain access to this information would, according to Terraces, "be an undue loss."[34]

[49] Terraces goes on to submit that disclosure of the records would "divulge information about the efficient management of the facilities which is the basis of [Terraces'] competitive advantage."[35] It claims that some of the information is "a product developed and optimized by [Terraces] by trial and error through the course of its business operations over decades."[36]

[50] Terraces claims that the information in Schedules B-1 and B-2 (which I have found do not contain information supplied in confidence), "when combined with the Average Suite Rate from the Funding Tables" can be used by competitors as "a valuable benchmark pricing or baseline reference."[37] The

---

[28] *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, at para. 206.
[29] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.
[30] Order 04-06, 2004 CanLII 34260 (BC IPC) at para. 58.
[31] Significant harm to a third party's competitive position appears in s. 21(1)(c)(i); undue financial loss appears in s. 21(1)(c)(iii).
[32] Terraces' submissions at para. 53; Terraces' affidavit at para. 28.
[33] Terraces' submissions at para. 54; Terraces' affidavit at para. 29.
[34] *Ibid*.
[35] Terraces' submissions at para. 55; Terraces' affidavit at para. 30.
[36] *Ibid*.
[37] Terraces' submissions at para. 56; Terraces' affidavit at para. 31.

numbers in Schedule B-1 represent some of Terraces' 2014-2015 expenses.[38] The average suite rate in the funding tables comes from the 2017 year. Schedule B-2 contains no numbers at all.[39] I do not understand – and Terraces does not explain – how this combination of information could amount to a valuable benchmark for competitors. I find the potential value of this now-dated information to a competitor dubious at best given that the economy, the competitive landscape and negotiating conditions will inevitably change over time.[40]

[51] Furthermore, previous orders have established that putting contractors in a position of having to price their services to public bodies competitively does not amount to undue financial loss or significant harm under s. 21(1)(c).[41] As stated by former Commissioner Loukidelis:

> Mere heightening of competition for future contracts is not significant harm or significant interference with competitive or negotiating positions. Simply putting contractors and potential contractors in a position of having to price their services competitively is not a circumstance of unfairness or undue financial loss or gain.[42]

Taking all this into account, I find that release of the information in dispute in the funding tables[43] cannot reasonably be expected to cause the harms Terraces alleges.

[52] Turning to the final two records – the proposals and the emails supplied in confidence – I find that Terraces has not met the requisite burden of proof in relation to these records. Terraces terminated contract 2[44] and the proposals are a combination of what Terraces proposed, and VCHA said in response, about how they should deal with payments and notice to residents impacted by the contract termination. Terraces asserts that the information in the proposals "can be used by another party to accurately infer what our business requires in order to stay profitable when phasing out existing contractual obligations as a result

---

[38] Terraces' submissions at para. 35; Terraces' affidavit at para. 19.
[39] Schedule B-2 contains a blank template of a financial form on VCHA letterhead. Under the terms of each contract, Terraces commits to using this form when making the semi-annual reports required by each contract.
[40] For similar reasoning in the context of s. 17 see Order F16-05, 2016 BCIPC No. 6 at para. 25. See also *CBC v. Northwest Territories (Commissioner)*, 1999 CanLII 6806 (NWT SC) at para. 65.
[41] For examples, see Order F08-22, *supra* note 15 at para 67; Order F18-28, *supra* note 19 at para. 53; Order F06-20, 2006 CanLII 37940 (BC IPC) at para. 20, Order F07-15, [2007] B.C.I.P.C.D. No. 21 at para 43; Order F15-53, 2015 BCIPC 56 at para. 28; and Order F17-41, 2017 BCIPC 45 at para. 74.
[42] Order F06-20, *ibid*.
[43] VCHA decided to withhold the majority of the information in the funding tables pursuant to s. 22. Terraces does not take issue with VCHA's s. 22 decisions. Therefore, the only information in dispute in the funding tables is the VCHA suite contribution amount and the average suite rate.
[44] Terraces' affidavit at para. 9.

of termination."[45] However, one cannot tell from the proposals what Terraces' bottom line is, what sort of margin they may have worked into their proposals or what Terraces eventually agreed to. Further, even if a competitor could figure out what Terraces requires to stay profitable at contract termination, Terraces has not explained how this could reasonably be expected to significantly harm its competitive position or cause it undue financial loss. I find that Terraces has not provided persuasive argument or evidence to support what it asserts about harm.

[53] In conclusion, I find that Terraces has not discharged its burden of proof in relation to the establishment of harm for these last remaining records.

Summary of findings on s. 21(1)

[54] For the reasons outlined above, I find that much of the information in the records qualifies as commercial or financial information about Terraces. This portion of the information passes the first part of the test. The next part of the test requires that Terraces supplied the information to VCHA in confidence. I find that some of the information was supplied to VCHA in confidence and therefore passes the second part of the test. However, I find that none of this remaining information passes the last part of the test because Terraces has not satisfied me that the disclosure of the information could reasonably be expected to cause the harm Terraces alleges.

[55] In short, I find that none of the information in dispute passes all three parts of the s. 21(1) test.

CONCLUSION

[56] For the reasons above, I make the following order under s.58(2) of FIPPA:

1. VCHA is not authorized or required by s. 21(1) to refuse to disclose the information in dispute.
2. VCHA is required to give the applicant access to the information by March 19, 2019. VCHA must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

February 4, 2019

ORIGINAL SIGNED BY

Laylí Antinuk, Adjudicator

OIPC File No.: F17-70866

[45] Terraces' submissions at para. 40; Terraces' affidavit at para. 23.