Order F21-43

PROVINCIAL HEALTH SERVICES AUTHORITY

Ian C. Davis
Adjudicator

September 9, 2021

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Summary: The applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Provincial Health Services Authority (PHSA) for access to records relating to a contract for parking management services between Imperial Parking Canada Corporation (Impark) and the Fraser Health Authority (FHA). PHSA decided to disclose the records, except for some minimal information it decided it was required to withhold under s. 22 (unreasonable invasion of third-party personal privacy) and s. 21 (harm to third-party business interests). Impark requested a review of PHSA's decision, arguing that more information should be withheld under s. 21. The adjudicator confirmed PHSA's decision in part and concluded that it is required to refuse the applicant access to some, but not all, of the information in dispute under s. 21.

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

INTRODUCTION

[1] The applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Provincial Health Services Authority (PHSA) for access to records. The requested records relate to a contract for parking management services between Imperial Parking Canada Corporation (Impark) and the Fraser Health Authority (FHA). Specifically, the applicant requested "the full year of financial statements that were produced by Impark and submitted to FHA for 2018".[1] The applicant told PHSA that he was seeking "the financial information for parking revenues, infractions given out, how many cars were towed, etc."[2]

[1] Email dated January 10, 2019 at 7:00 AM from PHSA to the applicant confirming the applicant's access request. Regarding the relationship between FHA and PHSA, see *infra* at paras. 13-16.
[2] Email dated January 10, 2019 at 8:49 AM from the applicant to PHSA.

[2] Under s. 23 of FIPPA, PHSA asked Impark to provide its position on disclosure. Impark took the position that PHSA must sever certain information in the records under s. 22 (unreasonable invasion of third-party personal privacy) and s. 21 (harm to third-party business interests). Impark also stated that some of the records PHSA identified as responsive to the applicant's access request were not actually responsive.

[3] PHSA disagreed with the third party's position and decided it was required to disclose the records to the applicant, except for certain bank account numbers it severed under s. 21[3] and some personal information it severed under s. 22.

[4] Impark asked the Office of the Information and Privacy Commissioner (OIPC) to review PHSA's decision. The issue of PHSA's application of s. 22 to the records was resolved during mediation when the applicant confirmed that he only wanted the information withheld under s. 21.[4] Mediation did not resolve the s. 21 issue and Impark requested that it proceed to inquiry. PHSA and Impark made inquiry submissions, but the applicant did not.

PRELIMINARY MATTERS

Records no longer in dispute

[5] In its submissions, Impark says that, leading up to this inquiry, it reviewed the records in closer detail and determined it will no longer oppose disclosure of several hundred pages of records.[5] Given Impark's position, I am satisfied that the records it no longer opposes PHSA disclosing are not in dispute in this inquiry.

Should I consider whether some records are non-responsive?

[6] Impark argues that some of the records PHSA identified as responsive to the applicant's access request are not actually responsive.[6] This issue is not listed as an issue in the OIPC Investigator's Fact Report or the Notice of Inquiry.

[7] It is not clear to me that Impark even has standing to raise the non-responsive records argument. There is some authority to suggest that a third

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[3] The bank account numbers are not in dispute here because this is a third-party review by Impark under s. 52(2) of FIPPA and Impark is not challenging PHSA's decision to withhold that information.

[4] Investigator's Fact Report at para. 7; Records at pp. 445-446; Impark's initial submissions at para. 8. Impark says the information PHSA is withholding under s. 22 is also protected by settlement privilege: Impark's initial submissions at paras. 23-24. Since this information is not in dispute, it is not necessary to consider settlement privilege.

[5] Impark's initial submissions at para. 7; Affidavit #1 of Impark's Executive Vice President (EVP) at para. 21.

[6] Impark's initial submissions at paras. 9-22.

party notified by the public body under s. 23 is not entitled to challenge the public body's discretionary decisions other than its decisions regarding severing under ss. 21 or 22.[7]

[8] That said, none of the parties addressed standing and PHSA did not object to Impark making this argument. Indeed, rather than objecting, PHSA's submissions are almost entirely devoted to engaging with Impark's argument and defending its position that all of the records are responsive. In these circumstances, I find it would not be appropriate to disregard Impark's argument based on an issue that none of the parties raised or made submissions on.

[9] The question is whether I should decline to consider Impark's non-responsive records argument because it is not listed in the Fact Report or the Notice of Inquiry. The OIPC will generally not consider a new issue at inquiry unless a party seeks, and the OIPC grants, permission to add the issue.

[10] I will consider the non-responsive records issue. This issue is not new; Impark raised it with PHSA early on in the FIPPA process, well before mediation and inquiry. PHSA does not object to Impark making the argument here. PHSA and the applicant both had an opportunity to respond to the argument, so I see no prejudice to them in considering it. In my view, it would be unfair to Impark to disregard an argument it has been making throughout the FIPPA process simply because that argument does not appear as an issue in the Fact Report.

ISSUES

[11] The issues to be decided in this inquiry are:

- Are any of the records PHSA identified as responsive to the applicant's access request non-responsive?

- Is PHSA required under s. 21 to refuse to disclose the information in dispute under that section?

[12] Impark has the burden to prove that the applicant has no right of access to the information in dispute.[8]

BACKGROUND

[13] Prior to 2019, Impark provided parking management services to PHSA, FHA and Vancouver Coastal Health Authority (health authorities) pursuant to

[7] See, for example, Saskatchewan OIPC Review Report 119-2018, 2019 CanLII 73817 (SK IPC) at para. 18; Order 04-05, 2004 CanLII 34259 (BC IPC) at paras. 11-14.
[8] FIPPA, s. 57(3)(b).

separate contracts with each health authority.[9] In 2018, Impark and FHA operated on a month-to-month basis pursuant to a contract (2018 FHA Contract).

[14] Impark's obligations under the 2018 FHA Contract included to submit to FHA "[m]onthly statements of revenue and expenses for each site".[10] The contract also required Impark to submit various other quarterly reports relating to matters such as budget variance, revenue trends and customer service.

[15] In 2017-2018, a consolidation process occurred whereby PHSA took the lead for the health authorities on contract procurement for parking management services. FHA became the lead health authority responsible for managing parking and security. Following the consolidation, Impark now provides parking management services to the health authorities pursuant to a contract that commenced on January 1, 2019 and runs until the end of 2023. The contract is between Impark and the health authorities collectively.

[16] On January 10, 2019, the applicant wrote to PHSA requesting "the full year of financial statements that were produced by Impark and submitted to FHA for 2018".[11] The applicant told PHSA that he was seeking "the financial information for parking revenues, infractions given out, how many cars were towed, etc."[12]

RECORDS AND INFORMATION IN DISPUTE

[17] Based on my review, I find that the records in dispute are:

- invoices for payments made to FHA and related documents detailing the amounts paid, such as settlement reports, statements of revenues, and work orders;
- documents titled "Monthly Revenue Analysis" relating to specific parking lots (monthly revenue reports);
- summaries of parking revenues and disbursements by lot; and
- documents detailing general operating expenses.[13]

[9] The information in this background section is based on the evidence, which I accept, in Affidavit #1 of Impark's EVP at paras. 2-5 and Exhibit "A"; and Affidavit #1 of PHSA's Executive Director of Integrated Protection Services (ED) at paras. 2-7 and Exhibit "A". Each Exhibit "A" to the affidavits are excerpts of the 2018 FHA Contract. Hereafter, I will refer to the contract excerpts collectively as the "2018 FHA Contract".
[10] 2018 FHA Contract at pp. 7-8.
[11] Email dated January 10, 2019 at 7:00 AM from PHSA to the applicant confirming the applicant's access request.
[12] Email dated January 10, 2019 at 8:49 AM from the applicant to PHSA.
[13] There are 1168 pages of records before me, many of which Impark is agreeing to disclose in their entirety.

[18] The information in dispute in this inquiry is the information in the above records that Impark says must be severed under s. 21, but that PHSA decided it was not required to sever under s. 21. I describe the disputed information in more detail below.

NON-RESPONSIVE RECORDS

[19] The records in dispute that Impark says are non-responsive are some of the invoices and monthly revenue reports, and the summaries of parking revenues and disbursements by lot.[14]

[20] Impark argues that these records are not responsive because they either:

- do not relate to Impark, but rather a company wholly-owned by another company that was a wholly-owned subsidiary of Impark;
- do not relate to FHA, but rather a "separate legal entity" from FHA;
- were not required to be provided under the 2018 FHA Contract;
- are not themselves "financial statements";
- do not relate to "parking revenues, infractions given out, how many cars were towed, etc."; or
- were not produced by Impark.[15]

[21] Impark argues that the records it considers non-responsive should be withheld from the applicant in their entirety. In the alternative, if I find the records are responsive, Impark argues that certain information in them must be severed under s. 21.

[22] PHSA submits that all of the records are responsive to the applicant's access request.[16] PHSA says Impark's position is contrary to past orders that have consistently held that a public body may not refuse access to non-responsive information within a responsive record.[17]

[23] PHSA provided sworn evidence that Impark provided revenue reports to FHA pursuant to the 2018 FHA Contract in "three separate PDF documents each month", each corresponding to a separate collection of individual parking lots grouped geographically.[18] PHSA says it identified 36 PDF documents as responsive to the access request, one revenue report per month in 2018 for each of three geographical groupings of parking lots.

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[14] Impark's initial submissions at para. 15; Affidavit #1 of Impark's EVP at paras. 12 and 23.
[15] Impark's initial submissions at para. 15; Affidavit #1 of Impark's EVP at paras. 6 and 10-12.
[16] PHSA's submissions at paras. 11-21.
[17] See, for example, Order F14-27, 2014 BCIPC 30 (CanLII) at paras. 9-13; Order F15-46, 2015 BCIPC 49 (CanLII) at paras. 14-19.
[18] Affidavit #1 of PHSA's ED at para. 5.

[24] In reply, Impark says it is arguing that some entire records are non-responsive, not that PHSA must refuse to disclose non-responsive information within responsive records.

[25] Whether records are responsive to an access request depends on how the request is interpreted. Access requests should be interpreted in a manner "that a fair and rational person would consider appropriate in the circumstances", consistent with FIPPA's purpose of ensuring public accountability through a public right of access to records.[19] Records are responsive to an access request when they "reasonably relate" to the request.[20] Access requests should not be interpreted in an "overly literal or narrow" manner.[21]

[26] In my view, Impark's interpretation of the access request is too narrow and overly literal. The applicant's request for "financial statements" must be interpreted in light of his accompanying statement that he is seeking "financial information for parking revenues" relating to the 2018 FHA Contract. Taken in context, I am not persuaded that the applicant intended to limit his request in the ways Impark suggests. For example, given the applicant's interest in parking revenues, I am not persuaded that he intended to limit his request strictly to records relating to Impark itself and not affiliated parking companies.

[27] I find that PHSA appropriately identified the responsive records. In my view, not every individual document in the package must itself be a "financial statement" to fit within the applicant's request. I accept that the "financial statements" and "financial information" the applicant requested are packages of various kinds of records that together set out and break down the 2018 parking revenues. I accept PHSA's evidence that Impark provided the disputed records to FHA, and that it was required to do so under the 2018 FHA Contract. Based on my review, I find that the records are responsive because they all reasonably relate, albeit in different ways, to parking-related finances under the 2018 FHA Contract.

[28] I conclude that PHSA is not required to refuse access to any of the records on the basis that they are non-responsive. Given my conclusion, I will consider below the application of s. 21 to all of the records and information before me.

SECTION 21 – HARM TO THIRD-PARTY BUSINESS INTERESTS

[29] The parts of s. 21 relevant to this case provide:

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[19] Investigation Report F08-01, 2008 CanLII 1648 (BC IPC) at para. 18; Order PO-4056, 2020 CanLII 53021 (ON IPC) at para. 39.
[20] Order PO-4056, *ibid* at para. 40.
[21] Investigation Report F08-01, *supra* note 19.

> (1) The head of a public body must refuse to disclose to an applicant information
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> (a) that would reveal
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> …
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> (ii) commercial, financial, labour relations, scientific or technical information of or about a third party,
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> (b) that is supplied, implicitly or explicitly, in confidence, and
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> (c) the disclosure of which could reasonably be expected to
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> (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
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> …
>
> (iii) result in undue financial loss or gain to any person or organization ….[22]

[30] Section 21(1) creates a three-part test. Impark must establish all three parts: first, that the disputed information is one or more of the kinds of information described in s. 21(1)(a); second, that the information was supplied, implicitly or explicitly, in confidence, as required by s. 21(1)(b); and third, that disclosure of the information could reasonably be expected to result in one or more of the harms described in s. 21(1)(c).

[31] Impark submits that s. 21 requires PHSA to refuse to disclose the disputed information. PHSA did not make submissions about the s. 21 analysis.[23] Despite having decided that s. 21 does not apply, PHSA says it takes "no position" on disclosure.[24] As noted above, the applicant did not make submissions.

Section 21(1)(a) – Type of information

[32] The first step in the s. 21 analysis is to determine whether the disputed information fits within one of the categories of information listed in s. 21(1)(a).

[33] The information in dispute in the monthly revenue reports is, in general, various kinds of statistics detailing the revenue and operational performance of a particular parking lot. For example, the disputed information in these reports includes the number of violation tickets paid, voided or outstanding, and the number of parking tickets or passes purchased and the amount of revenue generated as a result. The information in dispute in the other records is, in general, descriptions and amounts of certain expenses.

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[22] Neither party raised s. 21(2) or s. 21(3), and I find it clear that neither section applies.
[23] Apart from stating that s. 21(1) applies to the bank account numbers on the cheques.
[24] PHSA's submissions at para. 7.

[34] Impark submits that the disputed information "consists of Impark's technical, commercial, and financial information."[25]

[35] FIPPA does not define the terms listed in s. 21(1)(a)(ii). However, previous orders have held that "commercial information" relates to commerce, or the buying, selling, exchanging or providing of goods and services.[26] The information does not need to be proprietary in nature or have an actual or potential independent market or monetary value.[27]

[36] Financial information is about money and its use or distribution.[28] Previous orders have held that hourly rates, global contract amounts, breakdowns of these figures, prices, expenses and other fees payable under contract are both "commercial" and "financial" information of or about third parties.[29]

[37] In my view, all of the disputed information is commercial or financial information of or about Impark, and in some cases both. The information relates to Impark providing parking management services to FHA under a commercial contract. It relates to Impark selling, and customers buying, parking. As such, the disputed information clearly relates to commerce. The disputed information also includes expenses and revenues that are clearly financial information.

[38] Given my findings above, it is not necessary to consider whether the disputed information is also "technical" information under s. 21(1)(a).

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

[39] The second step is to determine whether the disputed information was supplied in confidence as required by s. 21(1)(b). The analysis has two parts.[30] The first asks whether the information was supplied. The second asks whether the information was supplied in confidence.

[40] With respect to the first part of the test, Impark submits that it supplied the disputed information to FHA pursuant to the 2018 FHA Contract.[31]

[41] I am satisfied that the disputed information was supplied within the meaning of s. 21(1)(b). As discussed above, I accept PHSA's evidence that Impark supplied the information to FHA as it was required to do under the 2018 FHA Contract.

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[25] Impark's initial submissions at paras. 30 and 35-40.
[26] See, e.g., Order F08-03, 2008 CanLII 13321 (BC IPC) at paras. 62-63.
[27] Order 01-36, 2001 CanLII 21590 (BC IPC) at para. 17.
[28] Order F19-39, 2019 BCIPC 44 (CanLII) at para. 55.
[29] Order F16-17, 2016 BCIPC 19 (CanLII) at para. 22.
[30] See, for example, Order F19-39, 2019 BCIPC 44 (CanLII) at para. 57.
[31] Impark's initial submissions at paras. 42.

[42] The next question is whether Impark supplied the disputed information "in confidence". Impark must show that the disputed information was supplied "under an objectively reasonable expectation of confidentiality".[32] Whether the disputed information was supplied in confidence is a question of fact and the test is objective; evidence of Impark's subjective intentions with respect to confidentiality is not sufficient.[33]

[43] Impark submits that it supplied the disputed information to FHA in confidence.[34] Impark says certain clauses in the 2018 FHA Contract required FHA to treat the disputed information as confidential. It also says the disputed information is sensitive, so it reasonably expected FHA to keep the information confidential.

[44] I am satisfied that the disputed information was supplied in confidence. There is a clause in the 2018 FHA Contract that says "[b]oth Impark and FHA will treat as confidential all Material".[35] The term "Material" is defined in the contract as "all material that has been produced or received by [Impark] or any subcontractor as a result of [the 2018 FHA Contract]", including "reports and documents."[36] I find that this clause applies to the disputed records and information and that it is sufficient to establish an objectively reasonable expectation of confidentiality.

[45] For the reasons provided above, I conclude that the disputed information was supplied in confidence within the meaning of s. 21(1)(b).

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

[46] The final step in the s. 21 analysis is to determine whether disclosure of the disputed information could reasonably be expected to result in one or more of the harms described in s. 21(1)(c).

[47] The standard that Impark must satisfy is a "reasonable expectation of harm"; this is a "middle ground between that which is probable and that which is merely possible."[37] Impark is not required to prove that the alleged harm will occur, or even that the harm is more likely than not to occur, if the disputed information is disclosed.[38] Impark need only prove that there is a "reasonable

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[32] Order 01-36, 2001 CanLII 21590 (BC IPC) at para. 23.
[33] See, for example, Order F13-20, 2013 BCIPC 27 (CanLII) at para. 22.
[34] Impark's initial submissions at paras. 41-47.
[35] Affidavit #1 of Impark's EVP, Exhibit A at p. 13. It appears that an earlier version of the 2018 FHA Contract only imposed a confidentiality requirement on Impark. The amended clause in Schedule E is the one quoted above, which imposes the confidentiality requirement on FHA too.
[36] Affidavit #1 of Impark's EVP, Exhibit A at p. 13.
[37] *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 201.
[38] *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 at para. 93.

basis for believing that harm will result" from disclosure.[39] The release of the information itself must give rise to a reasonable expectation of harm.[40]

[48] The harms analysis is contextual and the evidence required depends on the nature of the issue and "inherent probabilities and improbabilities or the seriousness of the allegations or consequences".[41]

Impark's position

[49] Impark submits that disclosure of the disputed information could reasonably be expected to harm significantly its competitive position under s. 21(c)(i) and result in undue financial loss to itself and undue financial gain to its competitors under s. 21(c)(iii).[42]

[50] Specifically, Impark submits that the disputed information would "provide a road map for Impark competitors as to how to best under-bid and undermine Impark in a public body RFP [request for proposals] scenario."[43] Impark argues that disclosure would significantly harm its competitive position because it would essentially "give up" Impark's advantage as the incumbent operator under the 2018 FHA Contract and the current contract.[44]

[51] In support of its position, Impark provided sworn evidence from its Executive Vice President (EVP). The EVP deposed that:

- Impark won the 2018 FHA Contract through an RFP process;
- Impark's current contract with the health authorities runs until the end of 2023;
- the contract with FHA is "one of the most desirable within the public institutional sphere";
- the parking lot management industry in British Columbia is "very competitive" and four of Impark's competitors consistently bid against it in major public body RFP processes; and
- the disputed information is not currently available to Impark's competitors.[45]

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[39] *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 170 v. British Columbia (Information and Privacy Commissioner)*, 2018 BCSC 1080 at para. 42.
[40] *British Columbia (Minister of Citizens' Services) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875 at para. 43.
[41] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.
[42] Impark's initial submissions at paras. 48-60; Affidavit #1 of Impark's EVP at paras. 9, 18-20, 24-61 and 65-66.
[43] Affidavit #1 of Impark's EVP at para. 64.
[44] Impark's initial submissions at para. 48.
[45] Affidavit #1 of Impark's EVP at paras. 3, 24-26, 44 and 46.

[52] The EVP explained how Impark's parking contracts work.[46] Impark collects parking revenue and remits it to the public body after deducting the agreed management fee, revenue processing fees, and certain operating expenses. Operating expenses include things like labour and equipment costs. Third-party service providers provide most of the recoverable operating expenses to Impark through arms-length negotiated contracts and Impark passes on those costs to the public body with no mark up. Impark also collects and retains the revenue generated from enforcing parking violations.

[53] The EVP also explained the aspects of a successful response to an RFP for parking management services and why statistical data is commercially valuable. The EVP deposed:

> The more accurately a bidder can identify expected revenue from parkers, revenue processing fees, and enforcement, the better it is equipped to identify the lowest management fee it can charge, and still be able to operate. Accordingly, statistical data from the actual operation of a public body's parkades would be extremely valuable to a bidder in terms of making an effective bid that will still result in a deal that is effective and worthwhile for the bidder.[47]

[54] The EVP said the disputed information is the kind of detailed statistical data that Impark's competitors could use to beat Impark in future RFP processes. He said the competitors could do this by, for example, using their knowledge of the disputed information to manipulate their rates and provide the public body with "a forecast of gross revenue that is higher than the existing records indicate."[48] The EVP provided several detailed examples of calculations a competitor could make to increase its projected revenues, potentially resulting in a higher score on certain aspects of an RFP scoring system.[49]

[55] Ultimately, Impark summarizes its position as follows:

> A competitor could be expected to use the detailed information in these Impark records to, for example, make a case to the public body that parking revenues could be increased if the competitor were granted the contract (instead of Impark). It is reasonable to expect that this could result in Impark losing the contract with that public body, which would result in a financial loss to Impark and a financial gain for Impark's competitor. The gain for Impark's competitor would be "undue" because it would be based on the competitor getting the benefit of Impark's experience managing the parkade in question without all of the expense, time and resources Impark has expended in developing its strategies, which has been substantial.[50]

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[46] Affidavit #1 of Impark's EVP at paras. 31-34.
[47] Affidavit #1 of Impark's EVP at para. 36.
[48] Affidavit #1 of Impark's EVP at para. 41.
[49] Affidavit #1 of Impark's EVP at paras. 41-42, 47, 56 and Exhibit "F".
[50] Affidavit #1 of Impark's EVP at para. 40.

Analysis re s. 21(1)(c)(i)

[56] Section 21(1)(c)(i) states that a public body must refuse to disclose to an applicant information the disclosure of which could reasonably be expected to "harm significantly the competitive position or interfere significantly with the negotiating position of the third party".

[57] Impark's s. 21(1)(c)(i) argument is that disclosure of the disputed information could reasonably be expected to harm significantly its competitive position.[51] Specifically, Impark argues that its competitors could use the disputed information to make more competitive bids in the RFP process for the next contract with the health authorities, which could reasonably be expected to result in Impark losing that contract. Impark says that losing the next contract would harm significantly its competitive position.

[58] I accept that if Impark were to lose the next contract, that would harm significantly its competitive position. I accept the EVP's evidence that the parking lot management industry in British Columbia is "very competitive" and the current contract is "one of the most desirable within the public institutional sphere". I can see from the records that the current contract generates significant revenues and I find it reasonable to assume that the extension of the contract will involve similarly significant sums. I am satisfied that, if Impark were to lose the next contract, it would lose significant revenues and operational experience and this would harm significantly its competitive position.

[59] Accordingly, the only question left to consider is whether disclosure of the disputed information "could reasonably be expected to" cause Impark to lose the next contract. Impark does not have to show that it *will* lose the next contract if the disputed information is disclosed. It need only show that such an outcome is more than merely possible.

[60] In Order F15-04, the adjudicator found that s. 21(1)(c)(i) applied to a third-party company's expenses and operations assumptions relating to a contract for tolling operations services for a bridge. The adjudicator accepted that disclosing the information in dispute would provide the third party's competitors "with a more accurate assessment of potential risks or expenses, and may change the financial terms a proponent would be willing to bid on in providing the specified goods and services."[52] The adjudicator concluded that the disputed information

[51] I do not understand Impark to be arguing that disclosing the disputed information could reasonably be expected to interfere significantly with its negotiation position. Impark argues that if its competitors knew its "deals" with suppliers, the competitors could negotiate better deals and then use those lower prices to make more competitive bids in a procurement scenario. Accordingly, I understand Impark's mention of negotiated contracts to be part of its argument about harm to competitive position, not a separate argument about harm to negotiating position.
[52] Order F15-03, 2015 BCIPC 3 (CanLII) at para. 53.

was competitively valuable and that the third party's competitors could use it to their advantage to bid against the third party for future contracts.

[61] I make a similar finding here with respect to some of the disputed information. In my view, the EVP's comprehensive and unchallenged evidence establishes that it is more than merely possible that disclosure of some of the disputed information could result in Impark losing the next contract bid. The disputed information that I find s. 21(1)(c)(i) applies to is the detailed graphic and numerical statistics in the monthly revenue reports.

[62] As in Order F15-04, I accept that disclosing this information would allow Impark's competitors to make more accurate assessments of potential revenues and that this would result in Impark's competitors making significantly stronger bid proposals. The EVP's evidence satisfies me that this could reasonably be expected to result in Impark losing the next contract.

[63] Specifically, I accept the EVP's uncontested evidence that the historical data is "extremely valuable" for a competitor and a key source of information for developing the core aspects of a successful bid. This is because Impark's competitors currently do not have access to this information, so their financial and operational projections are based on conjecture. The EVP provided detailed explanations and hypothetical calculations showing that Impark's competitors could use the historical data to significantly improve the accuracy and believability of their projections and pricing, resulting in more competitive bid proposals. In short, disclosing the disputed information to Impark's competitors would allow them to go beyond guesswork and submit more realistic and competitive bid proposals. I can see how this would be a significant competitive gain for Impark's competitors and I am satisfied it could reasonably be expected to result in Impark losing the next contract.

[64] I conclude that disclosing the detailed graphic and numerical statistics in the monthly revenue reports could reasonably be expected to harm significantly Impark's competitive position under s. 21(1)(c)(i).[53]

[65] The balance of the disputed information is various headings in the monthly revenue reports and information relating to operating expenses and Impark's service providers. The headings relate to data in the monthly revenue reports.

[53] There appears to be unexplained errors or omissions in Impark's severing on pp. 170, 177, 207, 239, 260 and 291. I understand that Impark intended to sever the graphics and statistics on these pages and I accept that information must be withheld, as in all the other records of the same type. There is also some other inconsistency in the severing. Some records include red-lined ticket rates that are disclosed elsewhere on the same page (e.g., Records at pp. 128 and 152-153). The rates are public and they would not cause harm, so s. 21(1)(c)(i) clearly does not apply. I intend this finding to apply to all instances where the rates are both severed and unsevered on the same page.

The other information is descriptions and amounts of operating expenses and details about third-party companies.

[66] In my view, disclosing this information could not reasonably be expected to cause harm under s. 21(1)(c)(i).

[67] Impark did not adequately explain how disclosing headings and descriptions would result in harm under s. 21(1)(c)(i). For example, Impark did not adequately explain how disclosing the mere fact that it incurs a particular kind of expense could reasonably be expected to give its competitors a significant competitive advantage. I find that the descriptions are of predictable or obvious expenses. I find it reasonable to assume that Impark's competitors, given their involvement in the parking industry, would already know that Impark incurs these kinds of expenses, so I do not see how disclosure of this information would cause harm under s. 21(1)(c)(i).

[68] Impark says disclosing the information about operating expenses and its service providers would allow its competitors to negotiate better deals with those service providers and undercut Impark in future bids.[54] However, in my view, Impark's evidence does not support that its service providers would give Impark's competitors better deals, that the competitors could not make such deals without knowing Impark's current deal, or that the competitors do not already have a sense of the expense amounts involved in operating a parking facility.

[69] Also, I find much of the expense information too innocuous and predictable to create a reasonable expectation of harm under s. 21(1)(c)(i). To provide an example, Impark submits that s. 21(1)(c)(i) applies to the description and price of signs on a document called a "Sign Order", including the size and colour of the signs, and even whether the signs have round corners or not.[55] I do not accept that Impark could reasonably be expected to lose the next contract if its competitors knew such innocuous information.

[70] Further, I find that Impark's evidence does not establish that, in the grand scheme of a multi-dimensional contract bid, any reduced expenses Impark's competitors may be able to obtain could reasonably be expected to result in Impark losing the next contract. The amounts involved here are relatively minor and I understand from the evidence that operating expenses are only one aspect among many in a parking services contract proposal. At any rate, some of the expense information can be calculated from information that Impark does not argue must be withheld.[56]

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[54] Affidavit #1 of Impark's EVP at para. 58.
[55] Records at p. 37.
[56] For example, Records at pp. 959 and 1013 and most other records of this type.

[71] I conclude that s. 21(1)(c)(i) applies to most, but not all, of the disputed information.

Analysis re s. 21(1)(c)(iii)

[72] Given my conclusion above, it is only necessary to consider under s. 21(1)(c)(iii) the information I found s. 21(1)(c)(i) does not apply to. That information is the data headings and information relating to operating expenses and service providers.

[73] Section 21(1)(c)(iii) states that a public body must refuse to disclose to an applicant information the disclosure of which could reasonably be expected to "result in undue financial loss or gain to any person or organization".

[74] As I understand Impark's submissions, it argues that the undue financial loss that could reasonably be expected to result from disclosure of the headings and expense information is Impark losing the next contract.

[75] Since Impark alleges the same harm under ss. 21(1)(c)(i) and 21(1)(c)(iii), my reasoning above applies here as well. For the reasons provided above in relation to s. 21(1)(c)(i), I am not persuaded that s. 21(1)(c)(iii) applies to the headings and information about operating expenses and services providers because I do not accept that disclosing this specific information could reasonably be expected to result in Impark losing the next contract.

Summary – s. 21(1)

[76] I found above that all of the disputed information is commercial and/or financial information of or about Impark, so it satisfies s. 21(1)(a). I also found that the disputed information was supplied in confidence as required under s. 21(1)(b). I concluded that disclosing some, but not all, of the disputed information could reasonably be expected to cause harm as described under s. 21(1)(c)(i). For some of the disputed information, I found that neither s. 21(1)(c)(i) nor s. 21(1)(c)(iii) apply. As a result, PHSA is required to refuse to disclose some, but not all, of the disputed information under s. 21(1).

CONCLUSION

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

1. I confirm, in part, PHSA's decision that it is not required to refuse to disclose to the applicant the information in dispute under s. 21(1).

2. PHSA is required to refuse to disclose under s. 21(1) the information in dispute in this inquiry that I have highlighted in a copy of the records that will be provided to PHSA with this order.

3. PHSA is required to give the applicant access to the records in accordance with items 1 and 2 above. PHSA must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records.

Pursuant to s. 59(1) of FIPPA, PHSA is required to comply with this order by October 25, 2021.

September 9, 2021

ORIGINAL SIGNED BY

Ian C. Davis, Adjudicator

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