Order F22-54

UNIVERSITY OF BRITISH COLUMBIA

D. Hans Hwang
Adjudicator

November 2, 2022

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Summary: An applicant made a request to the University of British Columbia (UBC) under the *Freedom of Information and Protection of Privacy Act* (FIPPA) for records about the 5G partnership between UBC and a third party. The third party requested a review of UBC's decision that s. 21(1) (harm to business intertest of a third party) of the *Freedom of Information and Protection of Privacy Act* does not apply to withhold information in the records. The adjudicator confirmed UBC's decision that it was not required to refuse access to any part of the records under s. 21(1). The adjudicator ordered UBC to disclose them to the access applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 21(1)(a)(ii), 21(1)(b), 21(1)(c)(i) and 21(1)(c)(iii).

INTRODUCTION

[1] A journalist for *the Ubyssey* newspaper (applicant) asked the University of British Columbia (UBC) for access to "all correspondence containing search terms '5G, Smart Campus, and/or Rogers' sent to or received by [a UBC professor]" and agreements between UBC and Rogers Communications (Rogers) about the Rogers 5G partnership.

[2] UBC notified Rogers, who is a third party in this case,[1] and sought its views under s. 23 of FIPPA about the application of s. 21 (harm to third party's business interests) to the records. Rogers argued that UBC must refuse to disclose parts of the records under s. 21(1) (harm to third party's business interests). After considering Rogers' representations, UBC informed Rogers that it had decided not to withhold any information under 21(1).

[1] In relation to an access request under FIPPA, a "third party" is any person, group of persons or organization other than the person who made the request or a public body. See Schedule 1 of FIPPA for definitions.

[3] Rogers disagreed with UBC's decision on s. 21(1) and requested the Office of the Information and Privacy Commissioner (OIPC) conduct a review.

[4] OIPC mediation did not resolve the dispute between UBC and Rogers, and Rogers requested the matter proceed to inquiry under s. 56 of FIPPA. The OIPC notified the applicant of Rogers' request for review and invited him to provide submissions in the inquiry. Rogers, UBC, and the applicant provided submissions in the inquiry.

The Records and the Information at Issue

[5] There are 282 pages of records that contain the information in dispute. The records are contracts, emails, invoices, and presentation slides.

[6] Rogers provided me with a copy of the records, marked to show which information it believes UBC must refuse to disclose to the applicant under s. 21(1). UBC's position is that section 21(1) does not apply to any of the information in the records. Rogers and UBC agree that the only information in dispute between them under s. 21 is on pages 5-7, 133, 139, 149-150, 236-237 and 268-269. [2]

Issues outside the scope of this inquiry

[7] When UBC informed Rogers of its decision regarding s. 21(1), it said that it had decided to refuse the applicant access to some information under ss. 3 (scope)[3] and s. 22(1) (unreasonable invasion of third party's personal privacy). Although ss. 3 and 22(1) are not included in the OIPC fact report or notice of inquiry as issues to be decided in this inquiry, Rogers made brief submissions about why it agrees with UBC's decision to apply them to refuse the applicant access.[4]

[8] The OIPC's notice of inquiry and its *Instructions for Written Inquiries*, both of which were provided to Rogers, UBC and the applicant at the outset of the inquiry, clearly explain that parties may not add new issues into the inquiry without the OIPC's prior consent. Past orders and decisions of the OIPC have consistently said the same thing.[5] Here, Rogers did not apply to the OIPC for permission to add ss. 3 or 22(1) into the inquiry, and it does not explain why it is

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[2] During the course of the inquiry I wrote to the parties and they clarified the information in dispute between them under s. 21(1). See UBC's October 12, 2022 letter and Rogers' October 13, 2022 email. Also, I am using the page numbering that Rogers used in the package of records it provided for my review.

[3] UBC applied s. 3(1)(e), which subsequent FIPPA amendments renumbered as s. 3(3)(i)(iii).

[4] Roger's initial submission at paras. 9 and 12.

[5] For example, see Order F12-07, 2012 BCIPC 10 at para. 6; Order F10-27, 2010 BCIPC 55 at para. 10; Decision F07-03, 2007 CanLII 30393 (BC IPC) at paras. 6-11; and Decision F08-02, 2008 CanLII 1647 (BC IPC).

only raising them at this late juncture in the process. Also, I can see no exceptional circumstances that warrant adding these issues at this late point in the inquiry. Therefore, I will not add those issues or consider Rogers' submissions about them any further.

ISSUE

[9] The issue to be decided in this inquiry is whether the information in dispute must be withheld under s. 21(1). Under s. 57(3)(b), Rogers has the burden of proving that s. 21(1) applies to that information.

DISCUSSION

Background

[10] In 2018, Rogers and UBC entered into an agreement to establish a 5G infrastructure at the UBC campus, known as the 5G partnership (Partnership Agreement). In accordance with the Partnership Agreement, in 2019, Rogers entered into several collaborative research project agreements with UBC.

Harm to Third Party Business Interests, s. 21(1)

[11] 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 party. The following parts of s. 21(1) are engaged in this case:

> 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, …

[12] The principles for applying s. 21(1) are well established. All three of the following criteria must be met 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 under s. 21(1)(b); and
- Disclosure of the information could reasonably be expected to cause one or more of the harms in s. 21(1)(c).

[13] Rogers submits the information that would be disclosed is commercial and technical information, the information was supplied in confidence, and disclosure could reasonably be expected to harm Rogers' competitive position or result in undue financial loss.[6]

[14] UBC submits "the Records constitutes commercial, financial, scientific or technical information about [Rogers]",[7] but "the Records must be disclosed under s. 21(1).[8]

[15] The applicant submits he is "not convinced by Rogers' argument that the release of these additional pages would cause 'undue financial harm' or starkly decrease Rogers' commercial prospects or competitive advantage..."[9]

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

[16] FIPPA does not define the terms "commercial" and "technical" information. However, past orders have said the following:

- "Commercial information" relates to commerce, or the buying, selling, exchanging or providing of goods and services. The information does not need to be proprietary in nature or have an actual or potential independent market or monetary value.[10]
- "Commercial" and "financial" information of or about third parties includes hourly rates, global contract amounts, breakdowns of these figures, prices, expenses and other fees payable under contract.[11]
- "Technical information" under s. 21(1)(a)(ii) is information belonging to an organized field of knowledge falling under the general categories of applied science or mechanical arts. It usually involves information

[6] Rogers' initial submission at para. 3.
[7] UBC's response submission at para. 14.
[8] UBC's response submission at para. 12.
[9] Applicant's response submission at para. 6.
[10] See Order 01-36, 2001 CanLII 21590 (BC IPC) at para. 17, and Order F08-03, 2008 CanLII 13321 (BC IPC) at para. 62.
[11] See, for example, Order F19-11, 2019 BCIPC 13 (CanLII) at para. 14, Order 03-15, 2003 CanLII 49185 (BC IPC) at para. 41, Order 00-22, 2000 CanLII 14389 (BC IPC) at p. 4, Order F05-05, 2005 CanLII 14303 (BC IPC) at para. 46, Order F13-06, 2013 BCIPC 6 (CanLII) at para. 16, Order F13-07, 2013 BCIPC 8 (CanLII) at para. 36, Order F15-53, 2015 BCIPC 56 (CanLII), at para. 11, and Order F16-17, 2016 BCIPC 19 (CanLII), at para. 24.

> prepared by a professional with the relevant expertise, and describes the construction, operation or maintenance of a structure, process, equipment or entity.[12]

[17] The information that Rogers believes must be severed under s. 21(1) ranges from small portions to entire pages of the following records:[13]

- Article 6 – Network Development (Article 6) (pages 5-7);
- Presentation slides – Infrastructure Plan (pages 133 and 139);
- Presentation slides – Project Updates (pages 149-150);
- Presentation slides – Status Summary (pages 236-237); and
- Progress report UBC prepared for Rogers (pages 268-269).

[18] In my view, the information in Article 6 is commercial information within the meaning of s. 21(1)(a)(ii) because it is about providing of services under the Partnership Agreement. Also, I find the balance of the information in dispute is technical information under s. 21(1)(a)(ii) because that information contains the 5G infrastructure plans, status updates and the network details including maps, and locations and names of sites. I am persuaded that information was prepared by professionals with relevant expertise about 5G infrastructure.

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

[19] The next step is to determine whether the information that I have found "commercial" and "technical" was supplied, implicitly or explicitly, in confidence in order for s. 21(1)(b) to apply. The first thing to consider is whether the information was "supplied" between Rogers and UBC. Only if it qualifies as information that was supplied, is it necessary to decide if it was supplied "in confidence".

[20] Rogers submits that all of the information in the records was supplied in confidence.[14]

Article 6

[21] I find that Article 6 on pages 5-7 is part of the Partnership Agreement which is a contract. Previous orders have consistently said that information in an agreement or contract between two parties is ordinarily negotiated and does not qualify as information that has been supplied to the public body.[15] Information

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[12] See, for example, Order F13-19, 2013 BCIPC 26 (CanLII), at paras. 11-12, Order F12-13, 2012 BCIPC 18 (CanLII), at para. 11.
[13] Rogers' initial submission at paras. 4, 7, 8, and 9.
[14] Rogers' initial submission at para. 3.
[15] Order 01-39, 2001 CanLII 21593 (BC IPC) at paras. 43-50, upheld on judicial review in *Canadian Pacific Railway v British Columbia (Information and Privacy Commissioner)*, 2002 BCSC 603. See also, Order 04-06, 2004 CanLII 34260 (BC IPC) at paras. 45-46; Order 01-20,

may be delivered by a single party or the contractual terms may be initially drafted by only one party, but that information or those terms are negotiated and not "supplied" if the other party must agree to them in order for the agreement to proceed.[16] The intention of s. 21(1)(b) is to protect a third party's information that is not susceptible to change during the give and take of negotiation. It does not protect information and terms in an agreement that could have been altered during negotiation but, fortuitously, were not because the other party agreed to them.[17]

[22] Past orders have recognized two exceptions to this general rule. Information in an agreement or contract may qualify as supplied information if:

1. the information is relatively immutable or not susceptible to alteration during negotiation and it was incorporated into the agreement unchanged; or

2. the information would allow an accurate inference about underlying confidential information the third party "supplied" that is not expressly contained in the contract.[18]

[23] Rogers says "The material that is to be released contains commercial and technical information that was supplied in confidence and could reasonably be expected to harm significantly with competitive position and or result in undue financial loss to Rogers if disclosed".[19] Rogers further submits as follows:[20]

> The details found in Article 6 of the agreement are confidential. If released and acquired by our competitors, they could harm our competitive position, resulting in undue financial loss. Furthermore, these details were negotiated with UBC and if released could significantly interfere with Rogers' future negotiation position with other similar agreements, an interference that would result in undue financial loss.[21]

[24] The submissions of UBC and the applicant made no mention of whether the information was supplied in confidence.

[25] Having considered parties' submissions, I am not persuaded Article 6 was "supplied". I cannot see that Rogers explains or provides evidence about whether the information in Article 6 is relatively immutable or not susceptible to alteration

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2001 CanLII 21574 (BC IPC) at paras. 81-84; Order F19-03, 2019 BCIPC 04 at para. 48; Order F15-53, 2015 BCIPC 56 at para. 13; Order F15-10, 2015 BCIPC 10, at paras. 22-24.
[16] Order 01-39, 2001 CanLII 21593 (BC IPC) at para. 44.
[17] Order 01-39, *ibid* at para. 52.
[18] Order 01-39, *ibid* at paras. 45 and 50.
[19] Rogers' initial submission at para. 3.
[20] Rogers provides its initial submission and response submission but no affidavit evidence.
[21] Rogers' initial submission at para. 6.

during negotiation of the Partnership Agreement and it was incorporated into the agreement unchanged; or whether the information would allow an accurate inference about underlying confidential information Rogers "supplied" that is not expressly contained in the contract. Instead, in its submission, Rogers says "Furthermore, these details [found in Article 6] were negotiated with UBC… (emphasis added)"[22] and referred to the disputed information as "contractually negotiated terms".[23]

[26] Therefore, I conclude that the disputed information in Article 6 was not "supplied" between Rogers and UBC. For that reason, s. 21(1)(b) does not apply to Article 6 and there is no need to decide if that information was supplied "in confidence".

Presentation slides and progress report information

[27] **Supplied:** I find that the information in dispute under this category is not part of a contract. It is information in slides from what I conclude were presentations Rogers made to UBC. It is also information in a progress report UBC prepared for Rogers. Considering the issue of "supply" in relation to records other than contracts, past orders said that the concept of supplied entails "furnishing" or "providing" and "it is possible for a third party to supply a public body with information which was not created by the third party".[24]

[28] Rogers did not explicitly address the issue of "supply", aside from broadly saying that the commercial and technical information was supplied in confidence.[25] UBC and the applicant made no submissions about this.

[29] Having considered the context and content of the records, I find that the disputed information in the presentation slides on pages 133, 139, 149, 150, 236, and 237 was provided by Rogers to UBC. I also find that the disputed information on pages 268-269 of the progress report is information supplied by Rogers to UBC. The information on page 268 is the same as the information on pages 133, 139, 149, 150, 236, and 237 that I find was supplied information. The information on page 269 is photographs with descriptions of Rogers' equipment, a site map, site names and Rogers ID code numbers. The fact that this information was supplied by Rogers is evident to me based on the specific nature of that information and its context. I am satisfied that the technical information of or about Rogers was "supplied" for the purposes of s. 21(1)(b).

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[22] *Ibid.*
[23] Rogers' reply submission at para. 3.
[24] Order 01-20, [2001] B.C.I.P.C.D. No. 21 at para. 93; Order F08-10, [2008] B.C.I.P.C.D. No. 17 at para. 56.
[25] Rogers' initial submission at para. 3.

[30] **In confidence:** For s. 21(1)(b) to apply, the supplied information must also have been supplied "implicitly or explicitly, in confidence." To establish the element of confidentiality, it must be shown that information was supplied "under an objectively reasonable expectation of confidentiality, by the supplier of the information, at the time the information was provided."[26] Whether the disputed information was supplied in confidence is a question of fact and the test is objective; evidence of only the third party's subjective intentions with respect to confidentiality is not sufficient.[27]

[31] Rogers submits that "The infrastructure plans found on pages 133 and 139 were disclosed to UBC in confidence and is even marked as confidential."[28] Rogers also says about the disputed information on pages 149, 150, 236, 237, 268 and 269 that "This type of information is very competitive and not shared publicly for the very fact that the disclosure of which could reasonably be expected to harm significantly Rogers' competitive position, resulting in undue financial loss."[29]

[32] While Rogers does not explain whether the information was under its objectively reasonable expectation of confidentiality at the time the information was provided, I can see that there are markers of confidentiality on the information on pages 133, 139, 149 and 150. I accept that, at the time, Rogers would have wanted to keep that information confidential. Therefore, I conclude that the information in dispute on those pages was supplied "in confidence" for the purpose of s. 21(1)(b).

[33] However, for the following reasons, I am not satisfied that the supplied information on pages 236, 237, 268 and 269 was supplied in confidence. I find that the supplied information on pages 236 and 237 is about 5G build status summary and the supplied information on pages 268 and 269 is about 5G infrastructure installed at the UBC campus. Rogers provides no evidence specific to this actual information to explain why it asserts that information was supplied in confidence, and there are no statements or markers about confidentiality on those pages. I also reviewed the context and content of the entire 282 pages of records provided by Rogers, which contain emails, plans, invoices, and presentation slides. However, they do not explain, even in broad terms, about the confidentiality of the above noted records and information. I find that Rogers' assertion, without any explanation or supporting evidence, fails to establish that the information on pages 236, 237, 268 and 269 was supplied "in confidence" within the meaning of s. 21(1)(b).

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[26] Order 01-36, 2001 CanLII 21590 (BC IPC) at para. 23.
[27] Order F13-20, 2013 BCIPC 27 (Can LII) at para. 22.
[28] Rogers' initial submission at para. 7.
[29] Rogers' initial submission at para. 8.

Reasonable expectation of harm, s. 21(1)(c)

[34] As explained above, all three elements of s. 21(1) must be met in order to refuse access under s. 21(1). I found that ss. 21(1)(a) and (b) apply only to the disputed information on pages 133, 139, 149 and 150. Rogers has not established that s. 21(1)(b) applies to the balance of the information, so technically, it is the end of the matter for that information. Nonetheless, for the sake of completeness, I will consider Rogers' arguments about s. 21(1)(c) for all of the information that it wants UBC to sever under s. 21(1), even the information that I found was not supplied in confidence.

[35] Deciding if s. 21(1)(c) applies requires deciding if disclosure of the information in dispute "could reasonably be expected to" cause the type of harm listed in s. 21(1)(c). While Rogers does not need to prove on a balance of probabilities that the harm will occur, it must establish that disclosure will result in a risk of harm that is well beyond the merely possible or speculative.[30]

[36] Previous orders have said that the ordinary meaning of "undue" financial loss or gain under s. 21(1)(c)(iii) includes excessive, disproportionate, unwarranted, inappropriate, unfair or improper, having regard for the circumstances of each case. For example, if disclosure would give a competitor an advantage – usually by acquiring competitively valuable information – effectively for nothing, the gain to a competitor will be "undue."[31]

[37] While Rogers does not specifically address ss. 21(1)(c)(i), (ii), (iii) or (iv) in its submissions, it says as follows:

> [On pages 5-7 (Article 6)] of the document in question there is confidential commercial and technical information that if disclosed could reasonably be expected to harm Rogers' competitive position and significantly interfere with Rogers' future negotiating position resulting in undue financial loss.[32] Allowing our competitors to gain access to sensitive industry plans like those found in the document in question would allow an unfair advantage by leveraging the information to match or better our plans in a future competitive process. The infrastructure plans found on pages 133 and 139 were disclosed to UBC in confidence and is even marked as confidential. Rogers notes that this type of information is not shared publicly, if it were to be released it would give our competitors an unfair advantage as Rogers doesn't have access to the same types of information about our competitors.[33]

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[30] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.
[31] See, for example, Order 00-10, 2000 CanLII 11042 (BC IPC) at pp. 17-19. See also Order F14-04, 2014 BCIPC 31 (CanLII) at paras. 60-63.
[32] Rogers' initial submission at para. 4.
[33] Rogers' initial submission at para. 7.

> [Pages 149, 150, 236, 237, 268 and 269], contain confidential commercial and technical information about Rogers' network, including maps, locations and names of tower sites, a list of fiber and physical infrastructure Rogers requires access to, and images showing how we architect our sites/manage our towers. This type of information is very competitive and not shared publicly for the very fact that the disclosure of which could reasonably be expected to harm significantly Rogers' competitive position, resulting in undue financial loss. As mentioned above, our business starts with the building of networks. Our competitive edge depends on speed of deployment and other strategic details like tower placement, network equipment used/needed, and the specific architectural details of our sites.[34]

[38] In addition, Rogers provides three news articles: "Rogers and UBC announce agreement to build massive new 5G hub in Vancouver",[35] "Western partners with Bell on 5G research initiative",[36] and "University of Alberta and TELUS partner on a 5G 'living lab'".[37] It submits:

> The Canadian wireless industry is an extremely competitive environment, where having a slight edge on your competitor counts for a lot. Allowing our competitors to have access to the confidential details of our agreements would allow them to know what they need to put into their future contracts, possibly ones they are bidding on against us, to negotiate better than us, diminishing our competitive edge. It would allow them to structure their agreements to build out faster than us. [38]

[39] The applicant submits:

> [*The Ubyssey*] cannot comment specifically on whether the commercial and technical information gathered by Rogers met the three-part harm test as identified by Section 21(1) of the Freedom of Information and Protection of Privacy Act, as [*The Ubyssey*] has not seen the contents of these pages. However, [*The Ubyssey*] was not convinced by Rogers' argument that the release of these additional pages would cause "undue financial harm" or starkly decrease Rogers' commercial prospects or competitive advantage, given its strong position in the telecommunications industry in Canada and its existing partnerships with UBC and the University of Waterloo.[39]

[40] In its reply submission, Rogers states:

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[34] Rogers' initial submission at para. 8.
[35] Daily Hive, dated September 20, 2018, available online: https://dailyhive.com/vancouver/rogers-ubc-partnership-5g-hub.
[36] Western News, dated June 11, 2020, available online: https://news.westernu.ca/2020/06/western-partners-with-bell-on-5g-research-initiative/.
[37] Folio, dated March 23, 2021, available online: https://www.ualberta.ca/folio/2021/03/university-of-alberta-and-telus-partner-on-a-5g-living-lab.html.
[38] Rogers' initial submission at para. 5.
[39] Applicant's response submission at para. 6.

> Release of these documents will create a harm that will only be proven after the fact. Specifically, once our commercial, technical, and or financial information, consisting of pricing, solutions, contractually negotiated terms, infrastructure planning, network details including maps, locations and names of tower sites, lists of fiber and physical infrastructure Rogers requires access to, and images showing how we architect our sites/manage our towers, are released as part of this request they are effectively in the public domain.[40]
>
> There is simply no way that harm could not come from our direct competitors having access to confidential documents they would not ordinarily have access to through any other means. Such access would allow them to take away any competitive edge that we have managed to achieve though contract negotiations, partnership deals, and other sensitive network details. The information in question is both commercially sensitive and highly proprietary to Rogers. It is never shared publicly for the very reason that if it lands in the hands of our direct competitors it would cause harm by eroding any competitive advantages we have achieved.[41]

[41] For the reasons that follow, I am not persuaded that disclosure of the information in dispute could reasonably be expected to harm Rogers' competitive position significantly within the meaning of s. 21(1)(c)(i).

[42] I can see that access to Article 6 would shed light on what Roger and UBC were prepared to accept in order to reach mutually agreeable terms about the network development in the Partnership Agreement back in 2018. While, if disclosed, it may be viewed by Rogers' competitors, I do not find that to be harm under s. 21(1)(c)(i). I agree with previous BC orders that have said the disclosure of existing contract pricing and related terms that results in mere heightening of competition for future contracts is not significant harm or significant interference with competitive or negotiating positions under s. 21(1)(c)(i).[42]

[43] I recognize that most of the information in dispute is technical information "about or of" Rogers. Rogers says that this information would give its competitors an unfair advantage.[43] While disclosure of that information would provide details about Rogers' 5G infrastructure at the UBC campus, I do not find it could be harm within the meaning of s. 21(1)(c)(i). For instance, given Roger's lack of explanation and supporting evidence, I am not satisfied that the information in dispute could be used advantageously by Rogers' competitors. I cannot see which of the information in dispute could be used by Rogers' competitors and how. There was also no explanation about whether there are any competitions

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[40] Rogers' reply submission at para. 3.
[41] Rogers' reply submission at para. 4.
[42] For example: Order F06-20, 2006 CanLII 37940 (BC IPC) at para. 20; Order F07-15, 2007 CanLII 35476 (BC IPC) at para 43; Order F15-53, 2015 BCIPC 56 at para. 28; Order F17-41, 2017 BCIPC 45 at para. 74; Order F22-33, 2022 BCIPC 37 at paras. 49-50.
[43] Rogers' initial submission at para. 6.

that are taking place or expected to take place in the future. Also, it is not clear which competitors that Rogers means. I have considered if the competitors could be TELUS and Bell because Rogers provides news articles about them. Even if that is who Rogers means, it still has not explained why TELUS and Bell would be interested in the details of the past agreement between Rogers and UBC and how the details of Rogers' 5G infrastructure at the UBC campus would be relevant in any future competitions.

[44] Furthermore, I am not persuaded that the disclosure of the information in dispute could reasonably be expected to result in undue financial loss under s. 21(1)(c)(iii) for the following reasons.

[45] Rogers states "[It] does not share this type of information publicly, for the very fact that the disclosure of which could reasonably be expected to harm significantly Rogers' competitive position, causing undue financial loss". However, Rogers did not provide sufficient evidence to show how this dated information is competitively valuable or how its competitors (who are unspecified) could use the information to their own advantage and to Rogers' detriment. This is also not clear from the records. In addition, I find that Rogers does not provide context or evidence to exemplify how the loss would amount to "undue" financial loss within the meaning of s. 21(1)(c)(iii). Therefore, I conclude there is no objective evidentiary basis for concluding that harm under s. 21(1)(c) could reasonably be expected to result from disclosure.

Summary, s. 21 findings

[46] In conclusion, I find that the information in dispute would reveal commercial information and technical information of or about Rogers and s. 21(1)(a) applies. However, Rogers has not established that the information in the Partnership Agreement was supplied within the meaning of s. 21(1)(b). While Rogers has shown s. 21(1)(b) applies to the balance of the information in dispute, it has not provided evidence that is well beyond or considerably above a mere possibility of harm, which is necessary to establish a reasonable expectation of harm under s. 21(1)(c). Therefore, I find that Rogers has not met its burden of proof under 21(1) and UBC is not required to refuse the applicant access to the information on pages 5, 6, 7, 133, 139, 149, 150, 236, 237, 268 and 269 of the records.

CONCLUSION

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

1. I confirm UBC's decision that it is not required to refuse the applicant access to the information in dispute under s. 21(1).

2. UBC is required to give the applicant access to that information.

3. When UBC complies with item 2 above, it is must concurrently provide the OIPC registrar of inquiries with a copy of the records and any accompanying cover letter sent to the applicant.

Pursuant to s. 59(1) of FIPPA, the UBC is required to comply with this order by December 15, 2022.

November 2, 2022

ORIGINAL SIGNED BY

D. Hans Hwang, Adjudicator

OIPC File No.: F20-83855