Order F25-66

BC PAVILION CORPORATION

Jay Fedorak
Adjudicator

August 19, 2025

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Summary: The applicant requested access to the BC Pavilion Corporation (PavCo) bid to host 2026 FIFA World Cup games at BC Place Stadium in Vancouver. PavCo responded by disclosing some records but withholding other records and parts of records under several exceptions to disclosure in the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found that s. 17(1) (harm to the financial interests of a public body) applied to some of the information in dispute but ss. 15(1)(c),(f),(k) and (l) (harm to law enforcement), 16(1)(a) (harm to intergovernmental relations), 19(1)(b) (harm to public safety) and 21(1) (harm to the business interests of a third party) did not apply. The adjudicator ordered PavCo to disclose the information it was not authorized or required to refuse to withhold.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165, ss. 15(1)(c), 15(1)(f), 15(1)(k), 15(1)(l), 16(1)(a)(i), 17(1)(b), 17(1)(d), 17(1)(f), 19(1)(b), 21(1)(a), 21(b), (c)(i), 21(1)(c)(ii), and 21(1)(c)(iii).

INTRODUCTION

[1] A journalist (applicant) requested access to the bid BC Pavilion Corporation (PavCo) made to the Fédération Internationale de Football Association **(**FIFA) to host 2026 FIFA World Cup games at BC Place Stadium in Vancouver. PavCo responded by disclosing some records but withholding information under s. 13(1) (advice and recommendations), s. 16(1) (harm to intergovernmental relations), s. 17(1) (harm to the financial interests of a public body), and s. 21(1) (harm to the business interests of a third party) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the decision of PavCo.

Mediation did not resolve the matter, and the applicant requested that it proceed to an inquiry.

[3] At the inquiry, PavCo reconsidered its severing of some records and disclosed additional information to the applicant. It also ceased to rely on s. 13(1) and clarified that the part of s. 16 it was relying on is s. 16(1)(a)(i). Finally, it requested and received permission from the OIPC to add the issues of ss. 15(1)(c),(f), (k) and (l) (harm to law enforcement) and s. 19(1)(b) (harm to public safety) to the inquiry.

[4] The OIPC invited FIFA and the Ministry of Tourism, Arts, Culture and Sport (Ministry) to participate in the inquiry as appropriate persons under s. 54, and they provided submissions. In addition, the OIPC granted PavCo and the Ministry permission to provide parts of their submissions and affidavit evidence *in camera*.

ISSUES

[5] The issues to be decided at this inquiry are:

1. Whether s. 15(1) (c), (f), (k) or (l) authorize PavCo to withhold information;
2. Whether s. 16(1)(a)(i) authorizes PavCo to withhold information;
3. Whether s. 17(1) authorizes PavCo to withhold information;
4. Whether s. 19(1)(b) authorizes PavCo to withhold information; and
5. Whether s. 21(1) requires PavCo to withhold information.

[6] Under s. 57(2) of FIPPA, PavCo has the burden of proving that the applicant has no right of access to the records or parts of a record it refused to disclose.

DISCUSSION

[7] **Background –** PavCo is a Provincial Crown Corporation and operates two public facilities in downtown Vancouver, including BC Place Stadium. As part of its mandate, PavCo hosts sporting and other cultural events. PavCo negotiates with third parties to deliver events in its facilities, including events at BC Place Stadium.[1]

[8] According to FIFA, the World Cup is the most prestigious soccer tournament in the world and the most widely viewed and followed single sporting event. It takes place every four years, and Vancouver is one of the cities hosting

[1] PavCo's initial submission, paras. 6-7.

World Cup 26, along with other cities in Canada, the United States and Mexico.[2] The events in Vancouver will take place at BC Place Stadium.

[9] FIFA received the original joint Canada-USA-Mexico bid for World Cup 26 in 2018. This bid did not include Vancouver as a host city.[3] In 2021, the Canadian Soccer Association (Canada Soccer) and FIFA approached the government of BC, the City of Vancouver and others requesting that Vancouver be added as a host city. The involvement of the Province of British Columbia (Province) was necessary, as it owns BC Place Stadium, which was the only facility that met FIFA requirements. The Province and PavCo had originally refused to include BC Place Stadium in the original bid. The request from Canada Soccer and FIFA was outside of the normal bidding process, and at no point did PavCo submit a formal bid. In 2022, the Deputy Ministry of Tourism, Art, Culture and Sport (Ministry) signed a letter to Canada Soccer approving the execution of the Stadium Agreement between Canada Soccer and PavCo.[4]

[10] **Record at issue –** The applicant had requested a copy of the bid that PavCo made to FIFA. As explained above, PavCo, in fact, did not make a bid. Nevertheless, PavCo identified the following records as responsive to the request:

- two letters from the Ministry to Canada Soccer;
- a copy of the Stadium Agreement signed by Canada Soccer and PavCo;
- three annexes appended to the Stadium Agreement titled Annex 1 - Glossary of Terms, Annex 2 - Stadium Information and Annex 3 - Stadium Rental Fee Schedule; and
- nine questions in FIFA questionnaires (titled Stadium Commercial Revenue and Costs Questionnaire and Hospitality Inventory Questionnaire) along with the information PavCo provided in response.

[11] There are a total of 119 pages, of which 15 pages are severed in whole or in part.

Section 15 – Harm to Law Enforcement

[12] The relevant provision of s. 15(1) is as follows:

> **15** (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

[2] FIFA's initial submission, para. 5.
[3] The Ministry's initial submission, para. 12.
[4] The Ministry's initial submission, paras. 13-14. The submission of the Ministry states that the Deputy Minister signed the Stadium Agreement with FIFA. There is no copy of such an agreement in the responsive records. The only Stadium Agreement that PavCo has produced is the one it signed with Canada Soccer.

> **…**
>
> (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,
> …
>
> (f) endanger the life or physical safety of a law enforcement officer or any other person,
> …
>
> (k) facilitate the commission of an offence under an enactment of British Columbia or Canada, or
>
> (l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.
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> **"law enforcement"** means
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> (a) policing, including criminal intelligence operations,
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> (b) investigations that lead or could lead to a penalty or sanction being imposed, or
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> (c) proceedings that lead or could lead to a penalty or sanction being imposed;

[13] In this case, PavCo must establish that disclosure of the information can reasonably be expected to cause the harms in ss. 15(1)(c),(f), (k) and (l). The "reasonable expectation of harm" standard is "a middle ground between that which is probable and that which is merely possible."[5] There is no need to show on a balance of probabilities that the harm will occur if the information is disclosed, but a public body must show that the risk of harm is well beyond the merely possible or speculative.[6]

[14] It is not sufficient for PavCo merely to claim that s. 15(1) applies. It must demonstrate how the exception applies to the specific information at issue. It has to establish a direct connection between the disclosure of that information and the harm it envisages. PavCo must provide sufficient explanation and evidence to demonstrate that the risk of harm does indeed meet the required standard.

Section 15(1)(c)

[15] Former Commissioner Loukidelis observed in Order 00-08, that the term "investigative techniques and procedures" applies to "technologies and technical

[5] *Merck Frosst Canada Ltd. v. Canada (Health),* 2012 SCC 3, para. 201.
[6] *Ibid*, para. 206. See also *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31, paras. 52-54.

processes used in law enforcement".[7] Other orders have found that activities such as covert police surveillance techniques or coroners' investigative methods constitute "investigative techniques" and that disclosure of information about these activities could harm their effectiveness.[8]

[16] PavCo's submission does not address directly the application of s. 15(1)(c). Its argument groups all of the relevant provisions of s. 15(1) together with s. 19(1), on the grounds that they all relate to site plans and other documents that reference aspects of safety. These include references to security system upgrades, emergency planning and physical access to the site. The security issues that PavCo identifies are the health and safety of guests, as well as potential terrorist attacks or other criminal activities.[9]

[17] PavCo fears that disclosure of the information to "bad actors" could lead to attacks on BC Place Stadium or individual attendees. PavCo suggests that these bad actors could use this information to thwart the security plans and law enforcement officials during a terrorist or criminal attack.[10] PavCo's submissions do not directly address the issue of law enforcement techniques or procedures.

[18] The applicant does not make any submissions on the issue as to whether disclosure would harm the effectiveness of investigative techniques. His submissions focus on the issue as to whether disclosure would facilitate a terrorist attack.

Analysis

[19] Section 15(1)(c) concerns the effectiveness of law enforcement techniques and procedures. PavCo does not identify any particular law enforcement techniques or procedures that would be at issue or indicate how the disclosure of the information withheld would harm those techniques or procedures. It is not evident on the face of the records how disclosure would affect the effectiveness of any law enforcement techniques or procedures. PavCo's evidence is vague and speculative and does not meet the harms test identified above.

[20] PavCo has the burden of proof with respect to the application of s. 15(1)(c), and I find it has not met this burden of proof. Therefore, I find that s. 15(1)(c) does not apply.

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[7] Order 00-08, 2000 BCIPC 08 (CanLII), p. 4.
[8] Order F23-07, 2023 BCIPC 08 (CanLII), para. 53, Order F15-12, 2015 BCIPC 12 (CanLII); Order F11-13, 2011 BCIPC 18 (CanLII).
[9] PavCo's initial submission, paras. 14-15.
[10] PavCo's initial submission, para. 16.

Sections 15(1)(f), (k) and (l)

[21] Section 15(1)(f) concerns information whose disclosure could reasonably be expected to endanger the life or safety of law enforcement officers or another person. Section 15(1)(k) concerns information whose disclosure could facilitate the commission of an offence under an enactment of British Columbia or Canada. Section 15(1)(l), concerns the disclosure of information that could reasonably be expected to harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

[22] As the submissions of PavCo treat these provisions together, I will do so here, given that they all relate to the commission of criminal offences.

[23] In common with its submission regarding s. 15(1)(c), PavCo does not make submissions that individually address the application of s. 15(1)(f), (k) and (l). As noted above, its submissions group all of the relevant provisions in s. 15(1) and 19(1) together. These collective arguments focus on the information contained in site plans and other records relating to safety and security. PavCo asserts that bad actors could use this information to facilitate terrorist attacks and damage to property. PavCo notes that some of this information relates directly to planned security measures, including "proposed security perimeter and proposed access and location of proposed services". PavCo cites examples of fan riots in other countries during or after soccer games to demonstrate, in its opinion, that its concerns are not fanciful. PavCo notes further that some of the information at issue concerns confidential security plans not yet implemented [11]

[24] The applicant rejects the submission of PavCo. He asserts that PavCo is "using security as a convenient blanket to prevent reasonable public scrutiny of a costly line item in planning, budgeting and spending for a mega-event."[12] He cites two previous Orders that have found that s. 15(1) did not apply because the claims of the public bodies about risks of terrorist attacks resulting from the disclosure of site plans and systems diagrams were speculative.[13] The applicant also points out that BC Place Stadium is regularly open to the public and many details of the building structure are evident to the naked eye.[14]

Analysis

[25] PavCo has identified information at issue that relates to security measures. Nevertheless, this information is general and lacking in detail. PavCo has cited the examples of violence at soccer events in other countries. It has not

[11] PavCo's initial submission, para. 15; Affidavit of Chief Operating Officer, paras. 12-13.
[12] Applicant's response submission, para. 9
[13] Order F14-37, 2014 BCIPC 40 (CanLII); Order F24-50, 2024 BCIPC 58 (CanLII).
[14] Applicant's response submission, paras. 9-13.

identified whether knowledge of information similar to what is at issue here played any role in these violent episodes.

[26] Nor has PavCo explained how disclosure of the particular information in this case would increase the risk of a successful terrorist or other criminal attack. It is not clear from the face of the record how criminals or terrorists could use this information in a way that would increase the danger to law enforcement officers or other individuals.

[27] PavCo has made blanket statements without providing convincing supporting explanation or evidence. For example, it states that the site plan indicates the security perimeter and points of entry that would be of interest to bad actors, but it has not explained how their knowledge of this information would assist an attack. As a result, I find its arguments vague and speculative. The adjudicator in Order F19-10 found that s. 15(1)(l) applied where the public body provided descriptions of the risks of harm to a property or system supported by affidavit evidence.[15] The evidence of PavCo in this case is not as detailed or convincing.

[28] PavCo has the burden of proof with respect to the application of ss. 15(1)(f), (k) and (l), and I find it has not met this burden of proof. Therefore, I find that ss. 15(1)(f), (k) and (l) do not apply.

[29] In summary, I find that ss. 15(1)(c), (f), (k) and (l) do not apply and PavCo is not authorized to withhold the information in dispute under those exceptions.

Section 16 – Harm to Intergovernmental Relations

[30] Section 16 permits a public body to withhold information that could reasonably be expected to harm the conduct of relations between the government of British Columbia and another government.

[31] PavCo's submission indicates that it is relying on s. 16(1)(a)(i) to refuse access. The relevant provision reads as follows:

> **16** (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to:
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> (a) harm the conduct by the government of British Columbia of relations between that government and any of the following or their agencies:
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> (i) the government of Canada or a province of Canada;

[15] Order F19-10, 2019 BCIPC 12 (CanLII).

[32] Section 16(1)(a) is a harms-based exception, and the question is whether disclosure of the information in dispute could reasonably be expected to result in the identified harms. The standard of proof is a reasonable expectation of harm, which is the same standard I described above in relation to s. 15(1)

[33] PavCo submits that disclosure of some of the information at issue would harm intergovernmental relations. It provides no explanation but rather relies on the submissions of the Ministry.

[34] The Ministry submits that maintaining strong cooperative relations between the City of Vancouver, the Province and the Government of Canada is essential to the success of the event at issue. It also submits that disclosure of the information withheld could reasonably be expected to harm the conduct of relations between the Province and the Government of Canada. In support of this argument, it relies on the affidavit of the Assistant Deputy Minister, Strategic Initiatives, Ministry of Finance (ADM). It asserts that the arguments in support of the application of s. 16(1) are the same as those in support of s. 17(1) (that I deal with below).[16]

[35] The Ministry says that, as the Province is the owner of PavCo, it has a financial stake in the financing of the event at issue. The ADM states that the Government of Canada has announced a funding commitment for the event, but further challenging negotiations are required between the Province and the Government of Canada.[17] I cannot say more as the remainder of the information in the affidavit relevant to the application of s. 16(1)(a)(i) was received *in camera*.

[36] The applicant cites Order F20-36, where the adjudicator found that the BC Lottery Commission had failed to establish that disclosure of the information at issue in that case could be reasonably expected to harm its relations with a municipality or board of a regional district.[18]

Analysis

[37] As PavCo is relying on the submissions of the Ministry to support its application of s. 16(1)(a)(i), I must analyse the submissions of the Ministry. I note that most of the information in these submissions relating to the application of s. 16(1)(a)(i) has been received *in camera*. This constrains my ability to explain the reasons for my decision.

[38] The Ministry has established that there remain further negotiations between the Province and the Government of Canada on financial matters relating to the event at issue. I accept that these negotiations will be challenging

[16] Ministry's initial submission, paras. 49-52.
[17] Ministry's initial submission, para. 32, Affidavit of ADM, para. 33.
[18] Applicant's response submission, para. 17; Order F20-36, 2020 BCIPC 42 (CanLII), para. 29.

and will have financial implications for the Province. I also accept that some of the information at issue relates to the negotiating position of the Province.

[39] Nevertheless, the Ministry has not explained how disclosure of the particular information at issue could harm the conduct of its relations with the Government of Canada. It has not identified how the conduct of its relations with the Government of Canada or what aspect of those relations would be affected, and it has not established a direct connection between the disclosure of the information at issue and the harm it envisions. The affidavit of the ADM says little about potential harm to intergovernmental relations beyond making a bald statement that this might occur. It is not evident on the face of the record why disclosure of this information could reasonably be expected to harm the conduct of relations.

[40] It is clear that the Province has particular goals for these negotiations, and it is possible that premature disclosure of these goals may negatively impact its ability to achieve them. However, regardless of how this might affect the outcome of these particular negotiations, it is not evident that disclosure would also go so far as to damage the conduct of relations between the two levels of government.

[41] PavCo has the burden of proof with respect to the application of ss. 16(1)(a)(i), and I find it has not met this burden of proof. Therefore, I find that s. 16(1)(a)(i) does not apply to the information at issue and PavCo may not withhold it under this section.

Section 17(1) – harm to the financial interests of a public body

[42] The relevant provision of s. 17(1) is as follows:

> **17** (1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:
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> …
>
> (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;
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> …
>
> (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
>
> …

> (f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.

[43] As set out in past orders, ss. 17(1)(a) through (f) provide examples of the kinds of information that, if disclosed, could reasonably be expected to harm the financial or economic interests of a public body. Past orders have also established that it is not enough for a public body to show that one of the circumstances in (a) through (f) apply; a public body must also demonstrate that disclosure could reasonably be expected to result in financial or economic harm in accordance with the opening words of s. 17(1).[19]

[44] The standard of proof is the same standard I described above in relation to ss. 15(1) and 16(1)(a)(i).

[45] PavCo submits that ss. 17(1)(b), (d) and (f) apply. Nevertheless, of these three provisions, its submissions actually address only the application of s. 17(1)(f). The Chief Operating Officer of PavCo (COO) attests in an affidavit that there are continuing negotiations with the Government of Canada and third parties about financial issues. Some of the information at issue, the COO says, relates to these negotiations or to positions to be taken in negotiations with the third parties or the Government of Canada. The COO submits that disclosure of the information could lead to the third parties demanding higher prices during the negotiations.[20]

[46] The COO also attests that some of the information is used as the basis for calculating rental costs that it uses for its initial position during negotiations. She asserts that this information does not reflect the final agreement reached. She submits that disclosure would compromise PavCo's ability to negotiate "a fair deal". PavCo is also concerned that disclosure would provide an advantage to its competitors. These competitors could use it to make other stadiums more attractive than BC Place Stadium by underbidding in competitive rental situations.[21] The COO states:

> Because the competition to BC Place Stadium comes from other cities in North America and around the world, I have a heightened concern that release of the Severed Portions that reflect positions and compromises taken for a specific event and could be used against PavCo in other negotiations or used by competitors to undercut the attractiveness of renting BC Place Stadium for other events. Having such information would give these other parties an advantage over PavCo in such negotiations and would significantly interfere with PavCo's negotiating position.[22]

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[19] Order F21-56, 2021 BCIPC 65, paras 21 and 23.
[20] PavCo's initial submission, Affidavit of COO, para. 19.
[21] PavCo's initial submission, Affidavit of COO, paras. 19 and 21.
[22] PavCo's initial submission, Affidavit of COO, para. 20.

[47] The Ministry supports the position of PavCo on the application of s. 17(1)(f). The Ministry notes that as the owner of PavCo, the Province is affected by the financial interests of PavCo. The financial results of PavCo are recorded in "the Province's government reporting entity for the purposes of budgeting, reporting and management control", and as PavCo is generally unable to cover all of its operating and capital costs, it requires "an ongoing annual financial subsidy contribution from the Province". [23]

[48] The ADM attests that it is a key element of these negotiations to avoid disclosure of any information that would reveal the strategic importance of certain acquisitions. In addition, he indicates that it may be strategically important to convey that alternatives are available. With particular reference to one of the letters from the Ministry to Canada Soccer, which forms part of the responsive records, the ADM says disclosure would telegraph certain information that would harm the ability of PavCo to obtain commercially reasonable rates, which would harm its financial interests.[24]

[49] The affidavit of the ADM cites his experience in similar negotiations relating to the 2010 Olympics in Vancouver. The ADM attests to challenges that the Province faced during these negotiations. In that case, a third party, having obtained knowledge similar to that which is at issue in this case, took actions that harmed the financial interests of the province. PavCo has strategies in place to mitigate against something similar happening. The ADM believes that, if these strategies are kept confidential, it will render negotiations more competitive and avoid the challenges faced during the 2010 Olympic negotiations.[25]

[50] The ADM expresses similar concerns regarding the Province's negotiations with the Government of Canada. The Ministry submits that these concerns are not speculative. It submits that the ADM has established a direct link between the disclosure of particular information at issue and the harms he envisions. They are also grounded, the Ministry says, in the ADM's direct experience with the negotiations at issue, and similar negotiations in the past, including the 2010 Olympics.[26]

[51] The applicant responds by citing a number of previous orders that found that s. 17 did not apply to the information at issue in those cases.[27]

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[23] Ministry's initial submission, para. 24.
[24] Ministry's initial submission, paras. 27-29.
[25] Ministry's initial submission, paras. 30-31
[26] Ministry's initial submission, paras. 32-40.
[27] Applicant's response submission, paras. 18-25; Order 02-50, 2002 BCIPC 51 (CanLII); Order F14-37; Order F20-36, 2020 BCIPC 42 (CanLII); Order F14-49, 2014 BCIPC 53 (CanLII); Order F10-24, 2010 BCIPC 35 (CanLII).

Analysis

[52] The submissions of PavCo and the Ministry persuade me that disclosure of information relevant to negotiations with third parties and the Government of Canada could reasonably be expected to harm their negotiating position in a way that would also harm the financial interests of PavCo and the Province. The affidavit evidence of the ADM establishes a direct connection between the information at issue and the harms envisioned. The ADM supports his arguments with reference to similar circumstances involving the Province and the 2010 Winter Olympics, where the Province suffered financial harm. These examples are relevant to the present case.

[53] I am unable to provide further detail without revealing information that is at issue. I can confirm that PavCo has met the requirements of the harms test for the application of s. 17(1). It has persuaded me that the risks of harm go beyond the speculative or merely possible. I conclude that it is reasonable to expect that premature disclosure of this information would harm the negotiating position of PavCo with the third parties and the federal government and lead to PavCo and the Ministry suffering financial harm.

[54] Nevertheless, I find that the submissions regarding rental costs do not meet the harms test. Its arguments about how the disclosure of fees that it has agreed to with FIFA could harm its negotiations for fees with other tenants, or provide advantages to its competitors for such tenants, are similar to those that previous orders have rejected. These include recent orders regarding stadium agreements between PavCo and other third parties to host other international soccer competitions.[28]

[55] My finding is consistent with the finding in Order F14-49, which involved a request for a stadium agreement between PavCo and FIFA, Canada Soccer and the Confederation of North, Central America and Caribbean Association Football for a women's Olympic qualifying event. PavCo had argued that disclosure would compromise its freedom to negotiate the most favourable terms in future negotiations. The adjudicator noted that PavCo leases BC Place Stadium to different clients for different events. The key terms for these agreements includes differing or unique facility fees relating to rent, ticket sales, suit allocations and insurance requirements. The adjudicator found that disclosing terms for one event would not compromise negotiations for another.[29]

[56] My finding is also similar to that in Order F10-24 where the adjudicator held:

[28] Order F14-49; Order F10-24.
[29] Order F14-49, para. 15.

> The reality is that each set of contract negotiations takes place in its own environment and has unique factors that influence the terms of the contract and what the parties will agree to. Contract negotiations inevitably involve give and take on the part of the parties. … In negotiating contracts, each party naturally attempts to negotiate the best terms for itself at the best price. A public body may agree to less favourable terms in one area in order to achieve more advantageous terms in another, just as a contractor will do. [30]

[57] Therefore, I find that s. 17(1) applies to the information relating to negotiations with third parties and the government of Canada. I find it does not apply to the information relating to rental costs. To clarify, s. 17(1) applies to the information on all of pages to which PavCo applied s. 17(1), except for the information on pages 98, 99 and 113.

Section 19(1) – Interfere with public safety

[58] PavCo is refusing access to some information under s. 19(1)(b) which states:

> **19** (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to
>
> (b) interfere with public safety.

[59] Section 19(1)(b) allows a public body to refuse to disclose information whose disclosure could reasonably be expected to interfere with public safety. In Order 00-18, former Commissioner Loukidelis held that "the use of the word 'interfere' in the section indicates that the Legislature intended a different threshold to apply than would be the case if the word 'harm' had been used".[31] He went on to say that "the section requires a more direct connection [than the public body was able to establish] between the disclosure of information and interference with public safety itself".[32]

[60] PavCo submits that s. 19(1)(b) applies to information that, if disclosed to bad actors, could lead to attacks on BC Place Stadium or individual attendees. As stated above, the submissions of PavCo do not address the application of s. 19(1)(b) separately from s. 15(1). It makes arguments that address both provisions together, which I detailed above in paras. 16-17. These collective arguments focus on the information contained in site plans and other records relating to safety and security in the Stadium Agreement and its annexes.

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[30] Order F10-24, para. 52.
[31] Order 00-18, 2000 BCIPC 19 (CanLII), p. 9.
[32] Order 00-18, p. 10.

[61] The applicant does not address the application of s. 19(1) directly, other than refer to a previous order where the public body had failed to establish a direct connection between the disclosure of the information and the threat of harm.[33]

Analysis

[62] As I found above with respect to the application of s. 15(1), PavCo has not explained how disclosure of the particular information in this case would increase the risk of a successful terrorist or other criminal attack that would interfere with public safety. It is not clear from the face of the record how criminals or terrorists could use this information in a way that would give them a greater chance of successfully executing their objectives, whatever they may be.

[63] PavCo has made blanket statements without providing convincing supporting explanation or evidence. It has not met the standard harms test.

[64] PavCo has the burden of proof with respect to the application of s. 19(1)(b) and I find it has not met this burden of proof. Therefore, I find that s. 19(1)(b) does not apply and PavCo is not authorized to withhold the information in dispute under this section.

Section 21 – Harm to Third Party Business Interests

[65] 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
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> (a) that would reveal
>
> (i) trade secrets of a third party, or
>
> (ii) commercial, financial, labour relations, scientific or technical information of or about a third party,
>
> (b) that is supplied, implicitly or explicitly, in confidence, and
>
> (c) the disclosure of which could reasonably be expected to
>
> (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

[33] Applicant's response submission, para. 26; Order F14-37, 2014 BCIPC 40 (CanLII).

> (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
>
> (iii) result in undue financial loss or gain to any person or organization,

[66] The principles for applying s. 21(1) are well established.[34] 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).

[67] PavCo relies entirely on the submissions of FIFA to demonstrate the application of s. 21(1).

[68] FIFA submits that disclosing the information PavCo withheld under s. 21(1) would reveal FIFA's commercial and financial information as well as its trade secrets. I will first consider if it reveals FIFA's financial or commercial information.

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

[69] FIPPA does not define the terms "financial" and "commercial" information. Past orders have found that "commercial" information relates to the exchanging or providing of goods and services.[35] Orders have also found that "financial" information includes prices, expenses, hourly rates, contract amounts and budgets.[36]

[70] FIFA submits that the information at issue is its commercial and financial information. It asserts:

> The rental fee amounts relate to FIFA's business dealings with hosting stadiums and are contract amounts, fees payable under contracts, or breakdowns of such figures that have been continuously held as commercial information by the OIPC. The Hospitality Inventory Questionnaire also relates to the services FIFA expects to receive from

[34] Order F22-33, 2022 BCIPC 37 (CanLII), para. 25.
[35] Order 01-36, 2001 BCIPC 21590 (CanLII), para. 17; Order F20-23, 2020 BCIPC 27 (CanLII), para. 10; Order F19-03, 2019 BCIPC 4 (CanLII) , para. 43.
[36] For example: Order F20-41, 2020 BCIPC 49 (CanLII), paras. 21-22; Order F20-47, 2020 BCIPC 56 (CanLII), paras. 100-101; Order F18-39, 2018 BCIPC 42 (CanLII), para. 19.

> PavCo under the Stadium Agreement. Such information is clearly an example of exchange of services under contracts that was previously held as commercial information by the OIPC.[37]

[71] In response, the applicant cites Order F21-29 where the adjudicator ordered disclosure of information that PavCo had withheld under s. 21(1) in a similar stadium agreement between FIFA and Canada Soccer for the Women's World Cup in 2015.[38] He cites references to the application of s. 21(1)(b) and (c). The applicant does not contest, however, whether the information at issue is commercial or financial information.

Analysis

[72] I have reviewed the information at issue. It is clearly commercial and financial information, as other orders, including Order F21-29, have defined these terms. It includes dollar amounts for rent, fees and profit, and details about equipment, facilities and services that will be exchanged for money. It is also clearly information of FIFA, who is a third party for the purposes of s. 21(1). The fact that some of the information is also about PavCo does not alter the fact that it is information of FIFA.

[73] Therefore, I find the information is the commercial and financial information of FIFA and s. 21(1)(a) applies. Given this, it is not necessary to also decide if the information reveals FIFA's trade secrets.

Supplied in confidence – s. 21(1)(b)

[74] For s. 21(1)(b) to apply, the information that I have found is commercial and financial information of FIFA must have been supplied, implicitly or explicitly, in confidence to PavCo. The first consideration is whether the information was "supplied" to PavCo. It is only in the event that I find that the information was supplied, that I will need to determine whether it was supplied "in confidence".

Was the information supplied?

[75] The information that PavCo has withheld under s. 21(1) is found in the three annexes to the Stadium Agreement. Previous BC orders have consistently found that information contained in an agreement or contract between two parties is information that has been subject to negotiation by and agreement of both parties. Therefore, generally, information in a contract does not constitute information that one of the parties has supplied to the other.[39]

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[37] FIFA's initial submission, para. 38.
[38] Applicant's response submission, para. 27-31; Order F21-29, 2021 BCIPC 37 (CanLII).
[39] Order 01-39, 2001 BCIPC 40 (CanLII), 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 BCIPC 06 (CanLII), paras. 45-46; Order 01-20, 2001 BCIPC 21

[76] Past orders have recognized two exceptions to this general rule. Information in an agreement or contract may qualify as supplied 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.[40]

[77] FIFA submits that it developed, created and then supplied the following forms to PavCo for it to fill-in: the Stadium Rental Fee Schedule, the Stadium Commercial Revenue and Costs Questionnaire, and the Hospitality Inventory Questionnaire. FIFA submits that PavCo used FIFA's guidelines and principles when it responded to the questionnaires. FIFA says:

> Those guidelines and principles are FIFA's confidential and financial information supplied to PavCo in strict confidence. These responses are of the nature that, if revealed, the public can accurately infer underlying information FIFA supplied to PavCo in confidence, such as stadium assessment criteria and financial and hospitality requirements for hosting the Tournament matches.[41]

[78] As noted above, the applicant cites Order F21-29 where the adjudicator found that, as stadium use agreements are tailored to the unique characteristics of the host city, this indicates that not all the information in dispute was immutable and non-negotiable FIFA requirements.

Analysis

[79] I find that the information at issue under s. 21(1) consists of the terms of an agreement between PavCo and FIFA. As noted above, previous orders have consistently found that information contained in an agreement or contract between two parties is information that has been subject to negotiation by, and agreement of, both parties. Therefore, information in an agreement does not generally constitute information that one of the parties has supplied to the other.

[80] One of the parties may propose certain terms, conditions or costs of services. However, as long as the other party had the discretion to accept, reject

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(CanLII), paras. 81-84; Order F19-03, 2019 BCIPC 4 (CanLII), para. 48; Order F15-53, 2015 BCIPC 56 (CanLII), para. 13; Order F15-10, 2015 BCIPC 10 (CanLII), paras. 22-24: Order F10-28, upheld on judicial review in *K-Bro Linen Systems Inc. v. British Columbia (Information and Privacy Commissioner.*

[40] Order 01-39, paras. 45-50.

[41] FIFA's initial submission, paras. 44-45.

or negotiate modifications to those terms, conditions or costs, the information does not qualify as supplied for the purposes of s. 21(1)(b).[42] It is not enough to state that the information was not subject to negotiation. The information must be "non-negotiable" in the sense that it is inherently immutable. It is not a matter of whether the third party does or does not want to negotiate about the information. It must be the case that the third party could not change the information, even if it wanted to.

[81] Immutable information could include reference to fixed costs that the third party must pay to its own suppliers, or factual information, such as details of its audited accounts. It could include the educational and employment history of one of its employees. Nevertheless, s. 21(1)(b) does not apply to terms, conditions or costs that the third party proposed, and the public body fortuitously accepted without change.[43] Nor does it include proposed terms that the third party chooses to refuse to negotiate, as long as the public body has the ability to reject those terms or terminate the negotiations. As long as PavCo had the option of rejecting the terms, this information was negotiated and, therefore, not "supplied".

[82] As to whether any of the information at issue here was immutable, I will deal with the three records that FIFA identified. The first was the Annex 3 - Stadium Rental Fee Schedule. All FIFA says about this document is that PavCo knew in advance what fees would be agreeable to FIFA.[44] This does not establish that these fees were immutable. As noted above, even if FIFA refused to negotiate these fees, as long as PavCo had the ability to reject those terms or terminate the negotiations, those fees were not "supplied" for the purpose of s. 21(1)(b). There is no evidence to suggest that PavCo did not have the ability to reject the terms or terminate the negotiation. Therefore, I find the information redacted in Annex 3 - Stadium Rental Fee Schedule was not supplied for the purposes of s. 21(1)(b).

[83] It is clear that FIFA provided the Stadium Commercial Revenue and Costs Questionnaire to PavCo. FIFA created this questionnaire. It appears reasonable to conclude that there was no negotiation over the wording of the questions. Therefore, I accept that the wording of the questions was immutable, and exception #1 to the general rule about information in a contract noted above applies. The same applies to the questions in the Hospitality Inventory Questionnaire. Therefore, s. 21(b) applies to these questions. I also find PavCo's answers to those two questions, which are on pages 104 and 109-111, are supplied information under s. 21(1)(b).[45] That is because it is evident from the

[42] Order 01-39, para. 44.
[43] Order 01-39, para. 44.
[44] FIFA's initial submission, para. 46.
[45] PavCo has disclosed the answers to the other seven questions. Therefore, they are not at issue in this inquiry.

face of the records that disclosing the answers would facilitate accurate inferences about the underlying questions.

[84] In summary, the only information in dispute that I find was supplied under s. 21(1)(b) is the questions and answers on pages 104 and 109-11. The rest of the information PavCo withheld under s. 21(1) does not meet the criteria of having been supplied under s. 21(1)(b). Therefore, PavCo cannot withhold that information under this section.

Was the information supplied in confidence?

[85] PavCo makes no direct submissions as to whether the information was supplied in confidence and continues to rely on the submissions of FIFA. FIFA submits that it supplied the information at issue to PavCo during the course of a confidential bidding process and that there was an understanding that information that FIFA supplied to PavCo would remain confidential, in accordance with s. 16.10.1 of the Stadium Agreement. This provision reads as follows:

> **16.10.1 Confidentiality**
>
> The parties acknowledge that the contents, in particular the financial details, of, and any information disclosed pursuant to, this Stadium Agreement are confidential and agree to do all things necessary to preserve their confidentiality, except to the extent that:
>
> (i) disclosure is required by relevant laws or court orders;
>
> (ii) the contents are, or the information is, in the public domain (other than by reason of a breach of this Clause 16.10);
>
> (iii) disclosure is necessary with the Stadium Authority, FIFA or the Member Association (as applicable) as part of such groups' ordinary reporting or review procedure; or
>
> (iv) disclosure is made to the Stadium Authority's, FIFA's or the Member Association's (as applicable) professional advisers or auditors who have a legitimate need to know such contents or information and who agree to be bound by the provisions of this Clause 16.10.

[86] The Chief Tournament Officer (CTO) testifies in his affidavit that he was a party to the negotiations and he and his team were under the expectation that PavCo had received the information in confidence.[46]

[46] FIFA's initial submission, Affidavit of CTO, para. 23.

[87] The applicant's submission does not address the issue as to whether FIFA supplied pages 104 and 109-11 in confidence.

Analysis

[88] FIFA refers to Clause 16.10.1 of the Stadium Agreement as an explicit expression that the information that it provided during the bidding process was received by PavCo in confidence. I disagree. The wording of Clause 16.10.1 refers only to information disclosed pursuant to the Stadium Agreement. As the Stadium Agreement postdates the bidding process, it was not in effect at the time. I do accept, however, that this provision in the Stadium Agreement supports the conclusion that the type of information at issue in this case is information that both parties would agree should remain confidential.

[89] The CTO testifies that he and his team believed that there was an implicit understanding with PavCo to treat all information as confidential. In applying s. 21(1)(b), it is necessary to establish that there was indeed a mutuality of understanding about this confidentiality. In this case, PavCo has not made any submissions to this effect. I do note, however, that PavCo has indicated that it is relying on FIFA's submissions to prove PavCo's case that s. 21(1) applies and it takes the position that s. 21(1) does apply. Consequently, I accept that there was a mutually of understanding with respect to the confidentiality of the information.

[90] Therefore, I find that the questions and answers on pages 104 and 109-11 were supplied by FIFA in confidence for the purposes of s. 21(1)(b).

Harm – s. 21(1)(c)(i), (ii, and (iii))

[91] Section 21(1) is a harms-based exception, and the question is whether disclosure of the information in dispute could reasonably be expected to result in the identified harm. The standard of proof is the same standard I described above in relation to ss. 15(1) and 16(1)(a)(i), and 17(1).

[92] FIFA submits that disclosure of the information in dispute would result in the type of harm described in s. 21(1)(c)(i) in two ways. First, it submits disclosure could harm its competitive position by enabling its competitors to use information related to FIFA's selection process and financial and hospitality requirements for the Tournament "for the purpose of defeating FIFA's efforts to secure stadiums for the future World Cups".[47] It identifies its competitors as sports leagues and other sport entities putting on large scale tournaments, such as the International Olympic Committee, the Association of National Olympic Committees, and international federations of other sports.[48] Disclosure of the

[47] FIFA's initial submission, para. 58.
[48] FIFA's initial submission, Affidavit of CTO, para. 28.

questions and answers at issue would provide these competitors with access to "years of work that FIFA put into developing such questions".

[93] Second, FIFA argues that disclosure of this information to organizations that own stadiums would harm its position in negotiations to secure these venues for future events. It submits that disclosure of the information at issue would provide these owners of stadiums and other third parties with insight as to what FIFA considers commercially valuable in its business dealings.[49]

[94] With respect to the application of s. 21(1)(c)(ii), FIFA submits that disclosure could have a "chilling effect" on the willingness of entities like FIFA to provide information to PavCo, in accordance with s. 21(1)(c)(ii). It states categorically that "Disclosure of confidential information of a third party by PavCo will result in similar information no longer being supplied to PavCo when it is in the public interest that similar information continue to be supplied".[50]

[95] With respect to the application of s. 21(1)(c)(iii), FIFA submits that disclosure of the information at issue would give FIFA's competitors an unfair financial advantage "by learning about the commercial values determining the selection of FIFA's host stadiums", while FIFA would not have access to similar information about these competitors. FIFA suggests that these competitors will use this information in future negotiations to their own advantage or the disadvantage of FIFA, and this will result in them obtaining undue financial gain and FIFA suffering undue financial loss.[51]

[96] As noted above, instead of making submissions to demonstrate the harm that would result from disclosure, PavCo relies on the submissions of FIFA.

[97] The applicant makes no submissions regarding the harm that may result from the disclosure of pages 104 and 109-11.

Analysis

[98] For the reasons that follow, I find that the submissions of FIFA regarding the harm that it would suffer from disclosure of the information in pages 104 and 109-11 are assertion and speculation unsupported by cogent evidence. Specifically, it does not explain or illustrate what it claims by linking it back to the actual information in dispute or providing corroboration.

[99] FIFA's submission refers to its competitors taking advantage of the information contained in the two questions and answers that PavCo has withheld from the applicant. It argues that disclosure of those questions and answers

[49] FIFA's initial submission, para. 59.
[50] FIFA's initial submission, para. 60.
[51] FIFA's initial submission, para. 61; Affidavit of CTO, para. 29.

would provide its competitors with the years of work that it put into developing those questions. Nevertheless, it does not explain what inferences can be drawn from these questions and answers. They are straightforward questions about very limited aspects of what is involved in hosting an event. FIFA has not indicated the significance of this information, and it is not evident on the face of the records. Moreover, FIFA has not explained how competitors could use this information to the detriment of FIFA. It is important to note that PavCo has already disclosed seven of the nine questions and answers. It has not explained why the two that remain at issue are more significant the those that PavCo has disclosed.

[100] I accept that FIFA anticipates future negotiations with other venues in other jurisdictions and that it strives to secure those venues on financial terms that are favourable to it. What FIFA has failed to establish is how disclosure of the two questions with answers that are at issue here would compromise its negotiating position. The information at issue is two categories of factual information about BC Place Stadium that FIFA has asked for and PavCo has supplied. The questions that FIFA has asked are general in nature and do not appear to reveal anything proprietary or otherwise commercially or financially sensitive about FIFA. It is difficult to see how this information, which is particular to PavCo and BC Place Stadium, would be relevant to FIFA's negotiations with other venue owners. FIFA has failed to explain how this could be the case.

[101] On the question of the possible "chilling effect", it is difficult to see how the disclosure of the information at issue would discourage other prospective tenants from providing similar information to PavCo. The information at issue consists of two generic questions that FIFA asked of PavCo. This was not information that PavCo, itself, was seeking.

[102] Even were I to accept FIFA's "chilling effect" argument here, which I do not, it is difficult to see how it would be sufficiently important as to be considered to be "in the public interest" that future prospective tenants ask such questions of PavCo. Moreover, I note that PavCo has provided no indication that it derives any benefit from being asked such questions.

[103] On the question of competitors obtaining undue financial gain, I do not see how they would derive any financial advantage from seeing the two questions FIFA asked PavCo that remain undisclosed. FIFA submits that disclosure would enable its competitors to understand how it evaluates potential venues. It has not explained how this would lead to a competitor enjoying possible financial gain, or why such gain might be "undue". It has not provided any examples of situations that might occur and the role that the information at issue would play.

[104] In addition, I note, that FIFA has not objected to PavCo disclosing seven other questions and answers that relate as much to the evaluation of venues as

the two questions at issue. FIFA has not explained how a competitor could obtain financial gain from access to the two questions at issue, when it apparently would obtain no financial gain from access to the other seven similar questions. Nor has FIFA explained how disclosure would lead to it suffering financial loss. Moreover, it has not explained how any gain or loss would be undue.

[105] Therefore, I find that FIFA has not submitted sufficiently cogent explanation and evidence to establish that the risk of harm under s. 21(1)(c) is well beyond speculative or merely possible. PavCo relied on FIFA's argument and evidence in this inquiry, so I find that PavCo has not met its burden of proving that disclosing the information in dispute could reasonably be expected to cause harm under s. 21(1)(c).

[106] In conclusion, while PavCo has shown that s. 21(1)(a) applies to all of the information and (b) also applies to the information on pages 104 and 109-11, it has not established that s. 21(1)(c) applies to the information on pages 104 and 109-11. Therefore, I find that PavCo is not authorized or required to refuse to disclose the information in dispute under s.21(1).

CONCLUSION

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

1. I confirm, in part, subject to item 2 below, the decision of PavCo to withhold information under s. 17(1).

2. PavCo is not authorized to withhold under s. 17(1) the information on pages 98, 99 and 113.

3. PavCo is required to give the applicant access to all of the information it withheld from disclosure on pages 98, 99 and 113.

4. PavCo is not authorized to withhold information under s. 15(1)(c), (f), (k) or (l).

5. PavCo is not authorized to withhold information under s. 16(1)(a)(i).

6. PavCo is not authorized to withhold information under. s. 19(1)(b).

7. PavCo is not required to withhold information under s. 21(1).

8. PavCo is required to give the applicant access to all of the information it withheld from disclosure under ss. 15(1)(c), (f), (k), (l), 16(1)(a)(i), 19(1)(b) and 21(1).

9. PavCo must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records/pages described at items 3 and 8 above.

[109] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by October 2, 2025.

August 19, 2025

ORIGINAL SIGNED BY

Jay Fedorak, Adjudicator

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