



OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
FOR BRITISH COLUMBIA

Order F25-72

## CITY OF VANCOUVER

Carol Pakkala  
Adjudicator

September 11, 2025

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**Summary:** An applicant requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to a consultant's report (Report) related to their apartment building. MetCap Living Inc. (MetCap) is the property manager for the building, and it provided the Report to the City of Vancouver (City). MetCap objected to the City's decision to disclose the Report and asserted it should be withheld under s. 21(1) (disclosure harmful to third party business interests) of FIPPA. The adjudicator found that s. 21(1) did not apply and ordered the City to disclose the Report to the applicant.

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

## INTRODUCTION

[1] A tenant of an apartment building (applicant), requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to a consultant's report (Report) about the building. The Report was held by the City of Vancouver (City).

[2] The City provided notice of the access request to both the provider of the Report, MetCap, and its author, Ratio Code Consultants Ltd. (Ratio Code).<sup>1</sup> Only MetCap objected to disclosure of the Report. Despite MetCap's initial objection, the City decided it was not required to withhold the Report under s. 21(1) (disclosure harmful to third party's business interests) of FIPPA.<sup>2</sup>

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<sup>1</sup> Notice is required under s. 23 of FIPPA where a public body intends to give access to a record believed to contain information that might be excepted from disclosure under s. 21.

<sup>2</sup> From this point forward, unless otherwise specified, whenever I refer to section numbers, I am referring to sections of FIPPA.

[3] The City provided MetCap with notice of its decision to give the applicant access to the Report. MetCap requested a review of that decision by the Office of the Information and Privacy Commissioner (OIPC).

[4] OIPC's investigation and mediation process did not resolve the matter, and it proceeded to this inquiry. MetCap, the City, and the applicant all made submissions in this inquiry.

### **Preliminary Matters**

#### *The decision under review*

[5] During the submission phase of this inquiry, the City reversed its decision about whether s. 21(1) applies to the Report. In its response submission, the City says that after reading MetCap's initial submission and evidence, the City "now supports the redaction of the Subject Report in full on the basis of section 21(1) of FIPPA."<sup>3</sup> I will treat this statement as the City's decision to deny the applicant access under s. 21(1).

[6] Although the dispute between the City and MetCap no longer exists, that does not end the matter. The applicant still seeks access to the Report, and the City is now denying him access under s. 21(1). As a result, I will review and adjudicate the City's decision to deny the applicant access to the Report under s. 21(1).

#### *Additional issue in the applicant's submission – s. 25(1)(a)*

[7] The applicant's submission raises a matter not set out in the OIPC investigator's fact report or the notice of inquiry (notice). The applicant asserts that the information at issue is about a risk to personal health and safety and should be disclosed under s. 25.<sup>4</sup>

[8] Section 25(1)(a) requires a public body to disclose information about a risk of significant harm to the environment or to the health and safety of the public or a group of people. This section applies despite any other provision of FIPPA, including s. 21(1).<sup>5</sup>

[9] Section 25(1)(a) was not listed in the notice as an issue in this inquiry. The applicant says there was no alternative opportunity to make a case under any section other than s. 21. I disagree. The applicant received the notice along with

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<sup>3</sup> City's submission at para 10.

<sup>4</sup> Applicant's submission at p. 5.

<sup>5</sup> Section 25(2). I note here that this section contemplates the health and safety of the public or a group of people, not an individual.

OIPC's instructions for written inquiries.<sup>6</sup> Both the notice and the instructions provide direction on how to make a request to add issues to an inquiry. The applicant did not make a request to add s. 25(1)(a).

[10] Adding new issues at the inquiry stage circumvents and undermines OIPC's early resolution procedures. For this reason, even where there is a request to add a new issue at the inquiry stage, the OIPC will only allow it in exceptional circumstances.<sup>7</sup> The applicant does not identify any exceptional circumstances, and there is nothing in the parties' submissions here that persuades me that it is appropriate to add this new issue at this late stage.

[11] For the reasons above, I decline to add s. 25(1)(a) to this inquiry.

*Matters outside the scope of this inquiry*

[12] Both MetCap and the applicant make submissions about the context of the access request. This context is a residential tenancy dispute between MetCap and the applicant. Both parties provide evidence related to this context.

[13] While I appreciate the significance of the residential tenancy dispute to both MetCap and the applicant, this inquiry is not a forum to re-litigate those issues.<sup>8</sup> Much of the information provided is not relevant to the application of FIPPA. While I have reviewed all the information provided, I will only refer to those portions that relate to the issue I must decide in this inquiry.

## **ISSUES AND BURDEN OF PROOF**

[14] The issue I must decide in this inquiry is whether s. 21(1) requires the City to refuse to disclose the information in dispute. Given the City has now decided to refuse the applicant access to the Report under s. 21(1), the burden is on the City to prove that the applicant has no right of access.<sup>9</sup>

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<sup>6</sup> OIPC registrar's email dated March 27, 2025.

<sup>7</sup> See for example, Order F16-30, 2016 BCIPC 33 (CanLII) at paras 12-14; Order F16-34, 2016 BCIPC 38 (CanLII) at paras 8-10; Order F18-07, 2018 BCIPC 9 (CanLII) at para 7; Order F19-47, 2019 BCIPC 53 (CanLII) at paras 7-10; and Order F24-86, 2024 BCIPC 98 (CanLII) at paras 6-9.

<sup>8</sup> I say "re-litigate" because I can see from the decisions of the Residential Tenancy Branch that the issues related to the door have been addressed in that forum. MetCap's submission at para 17 referencing Exhibits B and C to the affidavit of MetCap's Managing Broker (Broker).

<sup>9</sup> Section 57(1). If the City had not changed its decision about releasing the Report to the applicant, MetCap would have the burden under s. 57(3)(b).

## DISCUSSION

### Background<sup>10</sup>

[15] The applicant resides in a penthouse suite in an apartment building now managed by MetCap (rental unit). At the time the applicant entered into a tenancy agreement for the rental unit, the building was under different management.

[16] For most of the applicant's tenancy, the door<sup>11</sup> to access the rental unit (Access Door) was at the bottom of a stairwell leading up to a landing with two other doors. One door led to the applicant's living quarters, the other to a rooftop deck. The applicant had exclusive use of the stairwell and rooftop deck as part of the rental unit for almost eight years.

[17] After MetCap took over the property management of the building, it wished to remove the Access Door. MetCap hired an engineering consulting firm, Ratio Code to review and comment on the Access Door. Ratio Code conducted a site visit to inspect the Access Door. After the site visit, Ratio Code communicated information about the visit by email,<sup>12</sup> and indicated that a detailed report would follow. Ratio Code subsequently provided the written Report to MetCap.

[18] MetCap issued a notice to the applicant to remove the Access Door with a detailed explanation of its reasons (Notice). The applicant objected to the removal of the Access Door and challenged the validity of the alleged fire code violations in the Notice. The applicant contacted the City's Fire and Rescue Services to ask it to investigate those allegations.

[19] During its investigation, the City's investigator (Investigator) requested a copy of the Report. MetCap emailed a copy of the Report to the Investigator. The applicant asked MetCap for a copy of the Report and when refused, submitted a request to the City.<sup>13</sup>

### Records and information at issue

[20] The responsive record is the Report authored by Ratio Code. The Report is four pages long and is being withheld by the City in its entirety under s. 21(1).

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<sup>10</sup> These background facts are not in dispute and come from the submissions of the parties (and attachments) and from the affidavits of the Broker and the City's Assistant Chief Public Education and Fire Protection Engineer, Vancouver Fire Rescue Services (Assistant Chief).

<sup>11</sup> MetCap calls the door the stairwell door. The applicant calls the door the front door.

<sup>12</sup> Email from Ratio Code to MetCap dated May 31, attached as Exhibit B to the Broker's affidavit.

<sup>13</sup> Applicant's access request dated July 14, 2023.

**Harm to third party business interest – s. 21(1)**

[21] The City says it is required to refuse access to the Report under s. 21(1).<sup>14</sup>

[22] 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 portions of s. 21(1) relevant to this inquiry say:

**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

...

(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,

[23] The three part test for whether s. 21(1) applies is well established in previous orders.<sup>15</sup> The City bears the burden of proving each part of the test for s. 21(1) to apply:<sup>16</sup>

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

[24] For the reasons that follow, I find that s. 21(1) does not require the City to refuse to disclose the Report.

<sup>14</sup> City's submission at para 20.

<sup>15</sup> Order F24-23, 2024 BCIPC 30 at para 20; Order F24-16, 2024 BCIPC 22 (CanLII) at para 11 referencing for example, Order 03-02, 2003 CanLII 49166 (BCIPC), Order 03-15, 2003 CanLII 49185 (BCIPC), and Order 01-39, 2001 CanLII 21593 (BCIPC).

<sup>16</sup> Order F24-16, 2024 BCIPC 22 (CanLII) at para 11.

1. Type of information – s. 21(1)(a)(ii)

[25] Section 21(1)(a)(ii) applies to commercial, financial, labour relations, scientific or technical information of or about a third party. FIPPA does not define “commercial” or “technical” information. However, past orders have found that:

- “technical Information” is information belonging to an organized field of knowledge falling under the general categories of applied science or mechanical arts. Technical information usually involves information prepared by a professional with the relevant expertise, and describes the construction, operation or maintenance of a structure, process, equipment, or entity.<sup>17</sup>
- “commercial information” relates to a commercial enterprise but need not be proprietary in nature or have an independent market or monetary value. The information itself must be associated with the buying, selling or exchange of the entity’s goods or services.<sup>18</sup>

*Parties’ positions - type of information*

[26] Both the City and MetCap say the Report is both commercial and technical information. The applicant does not comment specifically on the type of information.

[27] The City simply adopts MetCap’s reasons for saying the Report contains commercial and technical information.<sup>19</sup>

[28] MetCap describes the information in the Report as follows:

- structural details of a private rental property under MetCap’s management;
- information regarding the property’s compliance with the Fire and Building Codes; and
- professional/expert opinions and advice, in the field of fire and building code compliance, solicited by MetCap.<sup>20</sup>

[29] MetCap says this information is technical information because it belongs to an organized field of knowledge, namely building/fire inspection and code compliance. It says the Report was prepared by an engineering professional with

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<sup>17</sup> Order F23-86, 2023 BCIPC 102 (CanLII) at para 25; and Order F12-13, 2012 BCIPC 18 (CanLII) at para 11.

<sup>18</sup> Order 01-36, 2001 CanLII 21590 (BC IPC) at para 17; and Order F08-03, 2008 CanLII 13321 (BC IPC) at para 63.

<sup>19</sup> City’s submission at para 15.

<sup>20</sup> MetCap’s submission at para 29.

relevant expertise and describes the construction of a structure under MetCap's management.<sup>21</sup>

[30] MetCap says the information is commercial information because it relates to a commercial enterprise and the provision of MetCap's property management services.

*Analysis – type of information*

[31] From my review of the Report and the affidavit evidence, I am satisfied that the Report was prepared by Ratio Code, a professional engineering firm. I am further satisfied that Ratio Code was retained by MetCap.<sup>22</sup> The Report provides a summary of key fire and building code requirements and an assessment of how the building complies with the code.

[32] I find the Report was prepared by a professional with the relevant expertise and describes the construction and operation of a structure. Guided by past orders, I am satisfied that Report is "technical information".

[33] For these reasons, I find s. 21(1)(a)(ii) applies to the Report. Given this finding, it is not necessary for me to consider whether the Report is also "commercial information".

2. Supplied in confidence – s. 21(1)(b)

[34] The next step in the s. 21(1) analysis is to determine if s. 21(1)(b) applies. 21(1)(b) applies to technical information that is supplied, implicitly or explicitly, in confidence.

[35] The information must be both "supplied" and supplied "in confidence".<sup>23</sup>

[36] There is no dispute that MetCap supplied the Report to the City. I find that it was supplied. The dispute is about whether the circumstances support a finding that the Report was supplied in confidence, either explicitly or implicitly.

[37] Past orders have examined how to determine if third party information was supplied, explicitly or implicitly, "in confidence" under s. 21(1)(b). For example, Order 01-36 says the following (first about explicitly and then about implicitly):

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<sup>21</sup> MetCap's submission at para 30.

<sup>22</sup> Broker's affidavit at para 5.

<sup>23</sup> Order F24-23, 2023 BCIPC 30 at para 38 relying upon Order 01-39, 2001 CanLII 21593 (BC IPC) at para 26 upheld and cited by *Canadian Pacific Railway v. British Columbia (Information and Privacy Commissioner)*, 2002 BCSC 603; and Order F14-28, 2014 BCIPC 31 (CanLII) at paras 17-18.

An easy example of a confidential supply of information is where a business supplies sensitive confidential financial data to a public body on the public body's express agreement or promise that the information is received in confidence and will be kept confidential. A contrasting example is where a public body tells a business that information supplied to the public body will not be received or treated as confidential. The business cannot supply the information and later claim that it was supplied in confidence within the meaning of s. 21(1)(b). The supplier cannot purport to override the public body's express rejection of confidentiality.

[...]

The cases in which confidentiality of supply is alleged to be implicit are more difficult. This is because there is, in such instances, no express promise of, or agreement to, confidentiality or any explicit rejection of confidentiality. All of the circumstances must be considered in such cases in determining if there was a reasonable expectation of confidentiality. The circumstances to be considered include whether the information was:

1. communicated to the public body on the basis that it was confidential and that it was to be kept confidential;
2. treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the public body;
3. not otherwise disclosed or available from sources to which the public has access;
4. prepared for a purpose which would not entail disclosure.<sup>24</sup>

#### *Parties' positions – supplied in confidence*

[38] The City and MetCap do not say there was an express agreement or promise that the Report would be held in confidence by the City.<sup>25</sup> Rather, they say the circumstances in which MetCap supplied the Report to the City support an inference that it was supplied implicitly in confidence.

[39] The City's Assistant Chief says MetCap shared the Report with the City in the context of the City's Fire and Rescue Services investigation of a potential fire code violation. He says it was his "understanding that the Report would only be used for that purpose, subject to a court order or other legal requirement."<sup>26</sup> He does not further clarify the basis of his information and belief.

<sup>24</sup> Order 01-36, 2001 CanLII 21590 at paras 24 and 26.

<sup>25</sup> MetCap's submission at para 36 and City's submission at para 16.

<sup>26</sup> Assistant Chief's affidavit at para 9.



[40] MetCap says the reports it produces and obtains about private properties under its management are *always* treated as confidential business documents. MetCap further says such reports are never shared with tenants, or anyone besides the property owner.<sup>27</sup> MetCap also says this Report has consistently been treated as a confidential document and was provided to no one other than the City.<sup>28</sup>

[41] MetCap devotes much of its submission about the supply of the Report to factors related to the supply to MetCap from Ratio Code.<sup>29</sup> These circumstances are only relevant to the supply of the Report to MetCap. This inquiry is about the supply of the Report to the City.

[42] For MetCap's supply of the Report to the City, MetCap relies on the affidavit of its Managing Broker (Broker) who attests that a colleague supplied the Report to the City, in confidence, by email.<sup>30</sup> MetCap provided that email in this inquiry. The email is from MetCap's Regional Director and is addressed to the Investigator. The email contains one line that says, "Please find attached the report regarding the door being in violation of code."<sup>31</sup>

[43] The applicant also comments on the purpose of the supply of the Report to MetCap.<sup>32</sup> For MetCap's supply of the Report to the City, the applicant says that MetCap voluntarily supplied the Report to the City without any request for confidentiality.<sup>33</sup> The applicant further says that if MetCap does not want to disclose reports, then they should not enter them into the public domain as they did in this case by openly sharing it with the City. The applicant says MetCap shared selected excerpts from the Report with them.<sup>34</sup>

*Analysis – supplied in confidence*

[44] I considered all of the circumstances surrounding MetCap's supply of the Report to the City. For the reasons that follow, I find that s. 21(1)(b) does not apply.

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<sup>27</sup> MetCap's submission at para 37.

<sup>28</sup> MetCap's submission at para 38.

<sup>29</sup> For example, MetCap says the Report was not prepared for a purpose which would necessarily entail disclosure. It says the Report was addressed to MetCap, for its own use, in determining what it needed to do to comply with building and fire codes. MetCap says this purpose is not one that normally entails disclosure beyond the recipient of the report. MetCap further says the Report (and others like it) are not otherwise disclosed or available from sources to which the public has access. MetCap's submission at paras 39-40.

<sup>30</sup> Broker's affidavit at para 8.

<sup>31</sup> Broker's affidavit, Exhibit B.

<sup>32</sup> The applicant says MetCap commissioned the Report for the purpose of removing the applicant's exclusive use of the stairwell and roof as part of their rental unit. Applicant's submission at p. 11.

<sup>33</sup> Applicant's submission at p.10.

<sup>34</sup> Applicant's submission at p. 6.

[45] First, I am not satisfied the Report was communicated to the City on the basis that it was confidential and that it was to be kept confidential. The affidavit evidence about MetCap's supply of the Report to the City is based on information and belief from individuals not directly involved in its exchange. For these reasons, I give little weight to their opinions about whether the Report was supplied in confidence.

[46] In my view, the better evidence is the Regional Director's email provided by MetCap, and the Report itself. I see no indicators in the Regional Director's email to suggest that MetCap was sharing the Report confidentially with the Investigator. Further, the Report itself is not marked as confidential.

[47] Second, I am not convinced that the Report was treated consistently in a manner that indicates a concern for its protection from disclosure. I can see that before the Report was shared with the City, MetCap disclosed a significant amount of the Report's contents in the Notice to the applicant. This sharing means it was otherwise disclosed. These factors do not support MetCap's claim that it treated the Report's contents as confidential and protected them from disclosure.

[48] MetCap says it never shares such reports with tenants. The applicant says MetCap gave him details from the Report. Specifically, the applicant says:

Four bullet points from MetCap's correspondence with Ratio Code were included in MetCap's June 23, 2023 letter to us [Notice] and the whole memo/report was shared with VFRS. Therefore, the notion that these reports are "never shared with tenants, or anyone besides the property owner" is antithetical.<sup>35</sup>

[49] The City and MetCap had the opportunity to respond to the applicant's submission and chose not to do so.

[50] I reviewed the Notice issued to the applicant and can see it confirms the applicant's assertion. The Notice contains significant details from the Report, some verbatim.

[51] For all of the above reasons, I find there is insufficient evidence to show that the Report was explicitly or implicitly supplied in confidence to the City. I find that s. 21(1)(b) does not apply to the Report.

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<sup>35</sup> Applicant's submission at para 37.

3. Similar information no longer supplied – s. 21(1)(c)(ii)

[52] As the City has failed to meet its burden at the s. 21(1)(b) stage of the analysis, I need not decide whether s. 21(1)(c)(ii) also applies. While unnecessary, for the sake of completeness, I will do so.

[53] Section 21(1)(c)(ii) applies where disclosure of the information at issue could reasonably be expected to 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. For the reasons that follow, I am not persuaded that s. 21(1)(c)(ii) applies.

[54] The evidence before me on future supply is from the Broker. She attests that:

In the future, MetCap will withhold reports concerning private properties from the VFRS, and other public bodies, if supplying those private reports will result in their disclosure to the public....<sup>36</sup>

[55] The City's Assistant Chief understandably expresses concern about the Broker's evidence.<sup>37</sup>

[56] Despite the Broker's evidence to the contrary, in my view, it is simply not a reasonable expectation that a property management company would refuse to supply reports about potential fire code violations to the fire department, particularly when asked to do so. In my view, it is more reasonable to expect that property management companies would be willing to share such information to ensure compliance. Property management companies have a vested interest in protecting property investments on behalf of owners by avoiding potential risks.

[57] Section 21(1)(c)(ii) specifies the future supply as "when it is in the public interest that similar information continue to be supplied". The prevention of structural fires in a tenanted building within a major metropolitan centre is clearly a matter of public interest.

[58] For the reasons above, I find that s. 21(1)(c)(ii) does not apply.

*Conclusion - s. 21(1)*

[59] I found above that while s. 21(1)(a)(ii) applies to the Report, ss. 21(1)(b) and (c)(ii) do not. I find, therefore, that the City has not proven that it must refuse to disclose the Report under s. 21(1).

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<sup>36</sup> Broker's affidavit at para 15.

<sup>37</sup> Assistant Chief's affidavit at para 14.

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**CONCLUSION**

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

1. The City is not required under s. 21(1) to refuse the applicant access to the Report and it must give the applicant access to the Report.
2. The City must provide the OIPC registrar of inquiries with a copy of its cover letter and the records it sends to the applicant in compliance with item 1 above.

Pursuant to s. 59(1) of FIPPA, the City is required to comply with this order by **October 27, 2025**.

September 11, 2025

**ORIGINAL SIGNED BY**

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Carol Pakkala, Adjudicator

OIPC File No.: F23-94531