Order F26-92

CITY OF COQUITLAM

Erika Syrotuck
Adjudicator

October 26, 2026

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Summary: A third party requested a review of the City of Coquitlam's decision to disclose some information in dispute in records relating to a request for proposal. The adjudicator found that neither s. 21(1)(harm to the business interests of a third party) nor s. 22(1) (unreasonable invasion of a third party's personal privacy) of the *Freedom of Information and Protection of Privacy Act* applied. As a result, the adjudicator ordered the public body to disclose the information in dispute.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, ss. 21(1), 22(1).

INTRODUCTION

[1] This is an inquiry resulting from a request for review by Flowlink Environmental Inc (Third Party) under s. 52(2) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).[1]

[2] In 2025, an access applicant made a request to the City of Coquitlam (City) under FIPPA for various records relating to a request for proposal (RFP) about water quality monitoring services. The request identified the Third Party and another named corporation.[2]

[3] The City provided notice to the Third Party under s. 23 of FIPPA. In response, the Third Party asserted that the entirety of the records must be withheld under ss. 21(1) and 22(1).

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[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.
[2] Records pertaining to this other corporation are not at issue in this inquiry.

[4] The City then notified the Third Party under s. 24 that it had decided to disclose some information in the responsive records.

[5] The Third Party requested that the Office of the Information and Privacy Commissioner (OIPC) review the City's decision to release some of the information in the responsive records. Mediation did not resolve the matter, and the file proceeded to this inquiry. The City and the Third Party provided written submissions. In addition, the access applicant was invited to this inquiry and provided a submission.

[6] During the inquiry, I wrote to the City and the Third Party to clarify the information in dispute. The City and the Third Party each provided copies of the records indicating the information that they assert is subject to a FIPPA exception.[3]

ISSUES

[7] At this inquiry I must decide the following issues:

1. Is the City required to withhold the information in dispute under s. 21(1)?

2. Is the City required to withhold the information in dispute under s. 22(1)?

[8] Section 57 sets out the burden of proof in an inquiry. Section 57(3) applies where the third party is requesting the review. This provision says:

> 57(3) At an inquiry into a decision to give an applicant access to all or part of a record containing information that relates to a third party,
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> (a) in the case of personal information, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy, and
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> (b) in any other case, it is up to the third party to prove that the applicant has no right of access to the record or part.

[9] Under s. 57(3)(b), the Third Party has the burden of proving that the applicant has no right of access to the information in dispute under s. 21(1).

[10] Under s. 57(3)(a), the applicant has the burden to show that disclosure of personal information would not be an unreasonable invasion of a third party's

[3] These copies of the records indicated that there is some information in the responsive records that neither the City nor the Third Party believes is subject to a FIPPA exception. So, while it is not in dispute in this inquiry, the information that neither the City nor the Third Party asserts should be withheld should be provided to the applicant in the City's response in accordance with s. 8 of FIPPA.

personal privacy. However, as the party resisting disclosure, in my view, the Third Party has the initial burden of showing that the information in dispute under s. 22(1) is personal information.

DISCUSSION

Background

[11] In August 2024, the City issued an RFP for real-time water quality monitoring services. The purpose of the RFP was to establish a prequalified list of professional, qualified and experienced firms to provide real time water quality monitoring services at construction sites.

[12] The Third Party provided a response to the RFP.

Information at issue

[13] In response to the applicant's request, the City identified 172 pages of records that relate to the Third Party.[4] These pages consist of:

- the Third Party's response to the RFP; and
- emails between the City and the Third Party relating to the RFP.

[14] After consulting with the Third Party, the City decided to withhold some, but not all, of the information in the 172 pages of records at issue under ss. 21(1) and 22(1).

[15] The information at issue is the information that the Third Party believes is exempt from disclosure under FIPPA, but that the City believes is not subject to a FIPPA exception. That information is as follows:

- three sentences in the body of the Third Party's RFP response;[5]
- portions of a table of contents in the Third Party's RFP response;[6] and
- two title pages in the Third Party's RFP response.[7]

[16] For clarity, the information that the City and the Third Party agree should be withheld is not in dispute in this inquiry and I will make no decision about whether any FIPPA exceptions apply to it.

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[4] I assume that there are other records responsive to the access request that relate to parties other than the Third Party, but those records are not at issue in this inquiry.
[5] Page 2 of the records in dispute.
[6] Page 57 of the records in dispute.
[7] Pages 58 and 144 of the records in dispute.

Section 21(1) – harm to a third party's business interests

[17] Section 21(1) requires the head of a public body to refuse to disclose to an applicant information that could reasonably be expected to harm the business interests of a third party.

[18] Section 21(1) reads as follows:

> 21 (1) The head of a public body must refuse to disclose to an applicant information
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> (a) that would reveal
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> (i) trade secrets of a third party, or
>
> (ii) commercial, financial, labour relations, scientific or technical information of or about a third party,
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> (b) that is supplied, implicitly or explicitly, in confidence, and
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> (c) the disclosure of which could reasonably be expected to
>
> (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
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> (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,
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> (iii) result in undue financial loss or gain to any person or organization, or
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> (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

[19] The burden is on the Third Party to show that all three of (a), (b) and (c) apply to the information in dispute. In this case, I will start with s. 21(1)(c).

Section 21(1)(c) – harm

[20] The s. 21(1)(c) test is about whether disclosure could reasonably be expected to cause one or more of the harms listed in (i) through (iv), as set out above.

[21] It is well-established that, when the language "could reasonably be expected to" appears in access to information statutes, the standard of proof is a "reasonable expectation of probable harm". This means that a public body must show that the likelihood of the harm occurring is "well beyond" or "considerably above" a mere possibility.[8] The amount and quality of the evidence required to meet this standard depends on the nature of the issue and the "inherent probabilities or improbabilities or the seriousness of the allegations or consequences."[9]

[22] In addition, there must be a clear and direct connection between disclosure of the information at issue and the harms alleged.[10]

[23] The Third Party says that the applicant is a direct competitor because it also provides real time water quality monitoring services. It asserts that, by making the access request, the applicant was attempting to gain a competitive advantage by acquiring information about the Third Party. As such, it says that disclosure of any information in dispute would harm its competitive position in future bidding processes. I gather from the Third Party's submissions that it is asserting that s. 21(1)(c)(i) applies.

[24] The applicant did not specifically address whether harm could reasonably be expected to result from disclosure. The City said that it did not withhold, among other things, general information on the Third Party's business practices.

[25] In my view, the Third Party's submissions do not persuade me that there is a reasonable expectation of probable harm resulting from disclosure of the specific information in dispute. It's submissions on harm are essentially that the applicant is a competitor and may be using the request to gain commercial information. In my view, the fact that the applicant is a competitor does not on its own suffice to establish that disclosure of the specific information in dispute could reasonably be expected to significantly harm the Third Party's competitive position.

[26] In particular, it is hard for me to see how the title pages and the parts of the table of contents, if disclosed, could reasonably be expected to significantly harm or interfere with the Third Party's competitive position. The Third Party did not adequately explain how this could be the case. I acknowledge that, by its very nature, disclosure of the information on the table of contents will reveal the contents of the submission; however, this information is very high level and

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[8] *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)* 2014 SCC 31 at para 54 citing *Merck Frosst v Canada (Health)* 2012 SCC 3 at paras 197 and 199.
[9] *Ibid* citing *FH v McDougall,* 2008 SCC 53 at para 40.
[10] Order F07-15, 2007 CanLII 35476 (BCIPC) at para 17.

nothing about it indicates to me that disclosure could be reasonably expected to cause the harms alleged.

[27] Further, the Third Party did not adequately explain how disclosing the three sentences in the body of its response to the RFP could reasonably be expected to cause the harms alleged. I cannot see what information a competitor could glean from those sentences that could significantly interfere with the Third Party's negotiating position or significantly harm its competitive position.

[28] For the reasons above, I am not persuaded that disclosure of the information in dispute could reasonably be expected to result in any of the harms listed under s. 21(1)(c). As a result, I find that the Third Party has not met its burden to prove that s. 21(1) applies to the information in dispute.

Section 22(1) – unreasonable invasion of a third party's personal privacy

[29] Section 22(1) requires that a public body refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[30] While the Third Party's submissions do not expressly address s. 22(1) in relation to the specific information in dispute, I can easily dispose of this issue and so I will briefly address it.

[31] Section 22 only applies to "personal information" which FIPPA defines as recorded information about an identifiable individual other than contact information.[11] Some of the information in dispute is clearly not personal information because it is not about an identifiable individual and so s. 22(1) does not apply to it for this reason.

[32] Some of the information in the table of contents and one of the title pages is personal information because it is about an identifiable individual. However, it is clear to me that disclosure would not unreasonably invade this person's privacy. The information clearly refers to the individual in their professional capacity only. I can also tell that it reflects information that was prepared for distribution to a professional audience. I do not see how it would be an unreasonable invasion of that individual's personal privacy to disclose this personal information. I find that s. 22(1) does not apply to the personal information in dispute.

CONCLUSION

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

[11] Schedule 1 of FIPPA.

1. As I have found that neither s. 21(1) nor s. 22(1) apply to the information in dispute, I require the City to give the applicant access to the information on pages 2, 57, 58, and 144 that I have highlighted in green on a copy of the records in dispute provided to the City along with this order.

2. The City must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the pages described at item 1 above.

3. As a term of the order under s. 58(4), the City must not comply with items 1 and 2 until at least 10 days from the date of this order, which is **November 9, 2026.**

[34] Pursuant to s. 59(1) of FIPPA, the City is required to comply with this order by **December 8, 2026.**

October 26, 2026

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

OIPC File No.: F25-00987