



**F07-21-MS Release of Economic Model Could Harm Public Body's
Negotiating Position**

An applicant asked a public body for a copy of an “electronic model” that was used, during the development of a public sector infrastructure project, to make comparisons between the costs of a project utilizing the traditional “design/build” contracts and the costs of the same project utilizing “design/build/finance/operate” contracts, which are characteristic of a public private partnership (P3). The public body refused to disclose the electronic model, saying it fell under FIPPA’s section 17 exception to the right of access to information.

After initially reviewing the file, we suggested to the applicant that the electronic model might fit the definition of a “computer program”. A computer program is not a record, according to Schedule 1 of FIPPA, and would not be subject to FIPPA. The electronic model, while it could be accessed using a common software application, also contained additional proprietary applications created by a third party. Rather than simply being an electronic file that could be opened and viewed on a computer, the electronic model was described by the public body as an application that could receive input in the form of data and perform calculations to enable users to make financial comparisons.

Under section 17, a public body may refuse to release information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body. The public body argued that electronic models like the one requested by the applicant also create benchmarks against which private sector P3 proposals are evaluated. The public body claimed that it was reasonable to expect that the disclosure of the electronic model could provide private sector P3 proponents with the ability to estimate more accurately the value of future projects and this could compromise a public body’s evaluation process and cause harm by undermining the public body’s negotiation position.

We concluded that the electronic model was likely not subject to FIPPA but if it was, the public body’s reliance on section 17 to withhold the model was reasonable. In an effort to resolve the dispute, the public body provided the applicant with a paper printout of the model. The applicant did not consider the printout satisfactory but did not pursue the review any further.