



F09-02-MS Liquor Distribution Branch Denies Access to Store Lease Details

In response to a request for records showing the terms of a lease between a shopping mall landlord and a government liquor store, the Liquor Distribution Branch (LDB) provided a copy of the lease but refused to disclose three of its terms, including the lease amount, citing sections 17 and 21 of the *Freedom of Information and Protection of Privacy Act*.

Section 17 of FIPPA provides a discretionary exception to the right of access that occurs where it can be shown that there is a reasonable expectation that disclosing the information would cause harm to the financial or economic interests of a public body or to the government of British Columbia. Section 21 is a mandatory exception that creates a three-part test to determine whether commercial or financial information of or about a third party has been supplied to the public body in confidence and disclosure of the information would cause undue financial loss or gain to any person or organization. Generally, the Commissioner has found that negotiated terms contained in contracts or agreements are not information supplied to public bodies in confidence and section 21 does not apply to this type of information.

We reviewed the information severed from the lease agreement and suggested to the LDB that it did not meet the test of section 21 of FIPPA. In order to determine whether section 17 applied, we then asked the LDB to provide us with evidence that might demonstrate a connection between the disclosure of specific information and the financial harm the LDB had said would likely occur as a result of that disclosure.

The LDB responded with a comprehensive history describing how changes in the licensing regime for retail liquor vendors have brought private liquor retail vendors in direct competition with government liquor stores not only for customers but also for new and existing retail space. The LDB provided further evidence that, in our opinion, established a connection between the information being withheld and the financial harm the LDB argued was likely to occur as a result of the information being released.

During mediation the LDB agreed to release one of the lease terms. After reviewing the withheld information and considering the information provided by the LDB, we concluded there was a reasonable expectation of harm resulting from release of the lease terms to the applicant and that section 17 therefore authorized the LDB to withhold this information. The applicant did not agree with this conclusion but chose not to pursue the matter further by requesting an inquiry by the Commissioner.