



F09-09-MS Rationale for Withholding Information Fails with Third Party Consent to Disclosure

The “mandatory” exceptions to disclosure in some sections of the *Freedom of Information and Protection of Privacy Act*, such as sections 21 and 22, do not apply if an affected third party consents to the disclosure. Too often, in our experience, public bodies fail to consider requesting consent for release of a third party’s personal information before applying the exception they understand to be mandatory.

Upset that his application for a building permit appeared to stall after a city received communications from companies with an interest in the building, a man asked city staff for copies of emails between the city and the companies. The city replied that section 21 of FIPPA obliged it to reject the request because disclosing the emails might harm the companies’ business interests. Believing that the emails might have defamed him, the man asked us to review the city’s decision.

For section 21 to apply, three requirements must be met:

1. Disclosing the information would reveal trade secrets or commercial, financial, labour relations, scientific or technical information of or about a third party;
2. The information was supplied, implicitly or explicitly, in confidence; and
3. The disclosure could reasonably be expected to harm significantly the competitive position of the third party or result in undue financial loss or gain to any person or organization.

City officials were unable to articulate to us how the third part of the test applied to the requested information. We reminded them that, in any event, the prohibition against disclosure does not apply, under section 21(3), if the affected third party consents to the disclosure. As the city had not contacted the companies to explore the possibility of obtaining their consent, we suggested that it do so. The city then obtained the third parties’ written consent to disclose the information and the matter was resolved.