

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

AIRBNB IRELAND UC

Petitioner

AND:

THE CITY OF VANCOUVER, THE OFFICE OF THE INFORMATION AND  
PRIVACY COMMISSIONER FOR BRITISH COLUMBIA, THE  
ATTORNEY GENERAL OF BRITISH COLUMBIA and  
JOHN DOE REQUESTER

Respondents

**PETITION TO THE COURT**

**ON NOTICE TO:**

**The City of Vancouver**, Vancouver City Hall, 453 12<sup>th</sup> Avenue, Vancouver, BC V5Y 1V4, **The Office of the Information and Privacy Commissioner for British Columbia**, 947 Fort Street, Victoria, BC V8V 3K3, the **Ministry of the Attorney General**, Deputy Attorney General, PO BOX 9280, Stn Prov Govt, Victoria, BC V8W 9J7, and **JOHN DOE REQUESTER**.

**This proceeding is brought for the relief set out in Part 1 below by**

- the person(s) named as petitioner(s) in the style of proceedings above.
- Airbnb Ireland UC (the petitioner)

If you intend to respond to this petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for Response to Petition described below, and
- (b) serve on the petitioner
- (i) 2 copies of the filed Response to Petition, and

- (ii) 2 copies of each filed Affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.**

### **Time for Response to Petition**

A Response to Petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
  - (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
  - (c) if you were served with the petition anywhere else, within 49 days after that service, or
  - (d) if the time for response has been set by order of the court, within that time.
- (1) The address of the registry is:  
Vancouver Registry  
800 Smithe Street  
Vancouver, BC V6Z 2E1
  - (2) The ADDRESS FOR SERVICE of the petitioners is:  
c/o Molly Reynolds  
Torys LLP  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, ON M5K 1N2  
Fax number address for service (if any) of the petitioners:  
416.865.7380  
E-mail address for service (if any) of the petitioners:  
mreynolds@torys.com
  - (3) The name and office address of the petitioners' lawyer is:  
c/o Molly Reynolds  
Torys LLP  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, ON M5K 1N2

# CLAIM OF THE PETITIONER

## Part 1: OVERVIEW & ORDER SOUGHT

1. This is an application for judicial review by Airbnb Ireland (UC) (“**Airbnb**”) of a decision of the Office of the Information and Privacy Commissioner (the “**IPC**”) concerning records relating to short term rental (“**STR**”) accommodation within the City of Vancouver (the “**City**”).
2. The IPC ordered the City to disclose (i) license numbers of individuals listing on the Airbnb platform, (ii) STR addresses held by the City more broadly (i.e. not just those relating to the Airbnb platform), and (iii) the license numbers associated with those addresses (the “**Records**”). The IPC’s order is identified as Order F21-65 and referred to herein as the “**Decision**”.
3. The Decision is unreasonable in the following respects and as described further in this Petition:
  - (a) The IPC erred in holding that the Records are not subject to Sections 15 and 19 of the *Freedom of Information and Protection of Privacy Act* (the “**Act**”),<sup>1</sup> which permit a public body to refuse to disclose information where disclosure could reasonably be expected to threaten an individual’s safety or mental or physical health;
  - (b) The IPC erred in holding that the Records are not subject to Section 22 of the *Act*, which requires the head of a public body to refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party’s personal privacy; and
  - (c) The IPC breached the duty of procedural fairness and the rules of natural justice by failing to provide notice of the request and the Decision to the Airbnb and other hosts associated with the requested addresses and license numbers, whose privacy interests and rights under the *Act* are at issue.
4. Accordingly, the Petitioner seeks the following relief:
  - (a) An interlocutory Order directing the IPC to file the underlying record of proceedings;
  - (b) An interlocutory Order staying the Decision and prohibiting the City from disclosing the Records until this application has been fully and finally decided;

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<sup>1</sup> RSBC 1996, c 165

- (c) An Order quashing the Decision and confirming the decision of the City of Vancouver as described herein;
- (d) In the alternative, an Order quashing the Decision and remitting the matter back to the Commission for reconsideration on proper notice to all parties impacted by the Decision;
- (e) Costs of the proceeding against any party who opposes the Petition; and
- (f) Such further and other relief as to this Honourable Court may seem just.

## **Part 2: FACTUAL BASIS**

### **Parties & Background**

5. Airbnb is a company established under the laws of the Republic of Ireland. Its online platform connects individuals seeking short term accommodation (guests) with those offering it (hosts).
6. The City is a municipality in the Province of British Columbia incorporated in 1886 and a public body for the purposes of the *Act*.
7. The City first began regulating STRs in April 2018 through Bylaw 4450. Under that bylaw, a person who provides temporary accommodation in a dwelling unit other than a bed and breakfast or hotel is deemed an STR operator and required to obtain a licence from the City.
8. Only individuals are permitted to operate STRs in the City and an individual is only allowed to operate an STR in their principal residence (i.e. their own home and not in an investment property or secondary residence). As a result, all STR operators are individuals and licences are issued in the individual's own name and using their home address.
9. Most companies offering online STR platforms are registered outside of British Columbia and cannot be legally compelled by the City to operate within provincial and municipal rules. The City therefore attempts to engage and negotiate with them.
10. On April 10, 2018, the City and Airbnb entered into a Memorandum of Understanding ("**MOU**"), pursuant to which Airbnb agreed that its Vancouver hosts would need a City licence number to list on its online platform. Airbnb also agreed to provide information to the City about each Airbnb host's name, licence number, email address and STR address, which the City can use to regulate STRs via its bylaws.
11. The City publicly discloses information on its Open Data Portal about the licences it issues, including licences to operate STRs. However, given the safety and

privacy concerns, the City does not post STR operators' names, addresses or contact information.

### **The Request & the City's Decision**

12. In March 2019, the Requestor made two separate access requests for information from the City. The first was for the information Airbnb shares with the City pursuant to the MOU, namely Airbnb hosts' names and the associated license numbers and addresses for their STRs during a five-month timeframe. The second was for the location information of all STRs listed on the City's Open Data Portal (i.e. not just Airbnbs') during the same period (collectively, the "**Requests**").
13. In substance, the requested information consists of the following:
  - (a) STR addresses, STR operators' names and the associated licence numbers in provided by Airbnb to the City; and
  - (b) STR addresses and the associated licence numbers otherwise in the City's possession (i.e. not just relating to Airbnb).
14. The City declined to produce these records based on Sections 15(1)(f) and (l), 19(1)(a), 21(1) and 22(1) of the *Act*, which permit or require a public body not to disclose information where the information would:
  - (a) reasonably be expected to endanger a person's life or physical safety (15(1)(f));
  - (b) reasonably be expected to harm the security of any property (15(1)(l));
  - (c) reasonably be expected to threaten a person's safety or mental or physical health (19(1)(a));
  - (d) be harmful to the business interests of a third party (21(1)); or
  - (e) be an unreasonable invasion of a third party's personal privacy (22(1)), respectively.

### **The IPC Appeal & Decision**

15. The Requestor sought a review of the City's decision by the IPC.
16. Airbnb was granted leave to participate in the IPC proceeding, including to make submissions on the application of Sections 21(1) and 22(1) of the *Act*.
17. The City and Airbnb filed extensive submissions, including affidavit evidence, in support of the City's decision.

18. The IPC ordered the City to disclose the Records. More specifically, the IPC ordered as follows:
  - (a) Sections 15(1)(f), 15(1)(l), 19(1)(a), 21(1) or 22(1) do not authorize the City to refuse access to the information in dispute, with the exception of records relating to one Airbnb host who is being stalked, in respect of whom the City is authorized by Sections 15(1)(f) and 19(1)(a) of the *Act* to refuse disclosure;
  - (b) The City is required by section 21(1) of the *Act* to refuse to disclose the Airbnb hosts' names and the STR addresses (contained in Spreadsheet A); and
  - (c) The City is otherwise required to provide the Requestor with access to all other information sought (i.e. the Records).
19. The IPC did not provide notice of the proceeding or the Decision to any STR operators or other third parties impacted by the Decision and no other third parties participated in the IPC proceeding aside from Airbnb.

### **Part 3: LEGAL BASIS**

20. The Decision is unreasonable and should be quashed.

#### **The IPC Misconstrued Sections 15 and 19 of the Act**

21. The IPC erred in holding that the Records are not subject to Sections 15(1)(f),(1) and 19(1)(a) of the *Act*, which exempt information from being disclosed that gives rise to a reasonable expectation of probable harm to personal safety or property, including physical and mental health.
22. First, the IPC misapplied the legal test for determining whether disclosure of the Records engages a reasonable expectation of probable harm to personal safety or property.
23. As the IPC itself acknowledged, while the “reasonable expectation of probable harm” standard requires evidence going beyond a mere possibility of harm, it does not require proof even on a balance of probabilities.
24. In order to demonstrate the risks posed by the disclosure of the Records, Airbnb and the City submitted evidence of an Airbnb host who had previously reported to Airbnb that her stalker could locate her if her address and/or name were disclosed on the City's Open Data Portal.
25. The IPC found, correctly, that this demonstrated a reasonable expectation of probable harm and engaged the exemptions in Sections 15 and 19 of the *Act*.

26. However, the IPC held that these exemptions only applied in respect of the specific individual who had proactively reported her concerns to the City, and not to any other Airbnb host who had not volunteered evidence of specific harm.
27. In so holding, the IPC misapplied the legal test and required, in effect, actual proof of probable harm for each STR operator.
28. The IPC also erred in its application of Sections 15 and 19 by failing to give any consideration or have any regard to the different risks posed to vulnerable hosts including members of equity-seeking groups by its disclosure order.
29. Second, the IPC erred by failing to consider the extent to which online harassment and cyber-bullying could reasonably be expected to threaten individuals' mental health and thereby engage Sections 15 and 19.
30. The IPC correctly found that disclosure of the Records to the Requestor would be disclosure to the world, and that the *Act* places no restriction on what the Requestor can do with the information. The IPC acknowledged that the Requestor had posted numerous times on social media about STRs and that it is reasonable to expect that the Requestor will share the information disclosed in response to the Requests.
31. If the Decision is not quashed, the Requestor can be expected to publish the information broadly, and any number of individuals will be able to use the information to harass, threaten or abuse the STR operators, and locate or attend at their homes. Although the *Act* does not require the Requestor to establish their purpose for making an access request, the IPC erred in discounting the probability of harm to personal safety or property that may arise from broad publication of the Records.
32. Airbnb filed extensive evidence of social media and other online posts by the Requestor and others disparaging Airbnb hosts. Despite acknowledging that the posts reflect "inflammatory language such as "parasite", "bedbugs", "infestation" and the F-word to refer to STRs, Airbnb and Airbnb users generally", the IPC misconstrued the significance of this evidence by failing to consider the extent to which such online harassment and cyberbullying could itself ground a reasonable expectation of probable harm.

### **The IPC Misconstrued Section 22 of the *Act***

33. The IPC erred in holding that the Records are not subject to Section 22 of the *Act*, which requires public bodies not to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy.
34. The IPC found that STR hosts are required to operate STRs from their principle residence (i.e. their home) and must provide this address for their STR license.

Their home addresses would therefore be disclosed to the world if the Decision is not quashed.

35. An individual's home address is personal information that should not be subject to compelled public disclosure. An individual's license number can be associated with other personal information (such as full names, contact information, family member information or demographic information) available from other sources (including public Airbnb listings, other City records, databases, social media and search engines) to facilitate tracking and harassment of the STR operator. This concern is buttressed by the extensive evidence filed with the IPC by Airbnb reflecting the extent to which Airbnb hosts and their STR operators have been harassed by those who object to STRs like the Requestor.
36. The IPC held that because STR operators' home addresses could also be construed as business information that they do not constitute personal information subject to Section 22 of the *Act*.
37. The IPC erred in applying a binary distinction between personal information and business information. Even if the classification of STR operators' home addresses as business contact information was a reasonable finding, this does not render the information non-personal. The IPC erred in ignoring or discounting the relevant factors of the Section 22 analysis in considering the personal privacy impacts of disclosure of this information. This approach was unreasonable in light of the evidence establishing probable harm to STR operators if their personal information was disclosed.
38. The IPC erred in failing to consider the privacy impacts of the cumulative information between the Records that will be released if the Decision is not quashed, as well as the probable harm arising from the ability to associate this information with other publicly available information about STR operators.
39. In addition, the application of the Decision to future requests under the *Act* could cause even more significant harm to STR operators because of the IPC's error in determining that personal information when included in a record of a business license is no longer subject to Section 22 privacy protections. The effect of the Decision is that any personal information, such as names, phone numbers and email addresses, about individuals who hold STR licenses will be releasable to the world without consideration of whether it constitutes an invasion of privacy under the *Act*.
40. The IPC erred in failing to appropriately weigh the dual purposes of the *Act*: to provide access to information held by public bodies *and* to protect individuals' privacy. The consideration of the impact of disclosure on personal privacy must also take into account whether a request seeks information about individuals or about government decision-making, and the probability that personal information will be disseminated or published following disclosure.



## **The IPC Breached the Duty of Procedural Fairness and the Rules of Natural Justice**

41. The IPC breached the duty of procedural fairness and the rules of natural justice by failing to provide notice of the Requests and the Decision to the STR operators whose privacy interests and rights under the *Act* are at issue.
42. The failure to provide notice of the proceeding or Decision to the very third parties whose privacy and safety is at issue constitutes a breach of the duty of procedural fairness and natural justice, and is a standalone basis on which to quash the decision.
43. Additionally, the breach compounds the errors described above and renders the Decision unreasonable on that basis as well. To the extent that the IPC was not prepared to rely on the evidence adduced by the City and Airbnb to demonstrate the applicability of Sections 15, 19 and 22 of the *Act*, it was incumbent on the City to provide the third parties whose privacy is at issue, who were best placed to demonstrate the impact of the proposed disclosure on them, and who will otherwise be directly impacted by the Decision, an opportunity to participate in the IPC proceeding.
44. The IPC's reliance on evidence of harm to the one individual who was a victim of stalking and had proactively reported her concerns, and holding that her information should not be disclosed, demonstrates that the IPC was required to give third party notice to all individuals whose information may be disclosed pursuant to the Decision. The STR operators had no positive duty to report such concerns to the City or Airbnb absent receiving notice of the potential disclosure in response to the specific requests of the Requester. It was unreasonable to deny them notice and rights of participation in a proceeding that impacted their personal information, privacy interests and security.

### **Additional Grounds**

45. In addition, the Petitioner relies on the following legislative provisions and Supreme Court Civil Rules:
  - (a) the provisions of the *Judicial Review Procedure Act*,<sup>2</sup> and
  - (b) Rules 2-1(2)(b), 14-1, and 16-1 of the Supreme Court Civil Rules.

### **Part 4: MATERIAL TO BE RELIED ON**

46. The Record of Proceedings before the IPC;
47. The Affidavit of Nathan Rotman sworn January 27, 2022; and

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<sup>2</sup>, R.S.B.C. 1996, c. 241

48. Such further and other materials as counsel may advise and this Honourable court permit

The Petitioner estimates that the hearing of the Petition will take 1 day.

Date: January 27, 2022



Signature of  Petitioner  
 Lawyer for Petitioner

Molly Reynolds

***To be completed by the court only:***

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this petition

with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Signature of  Judge  Master