Court File No. VLC-S-S-244644

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURES ACT*, RSBC 1996, C. 241 AND IN THE MATTER OF THE DECISION OF THE DELEGATE OF THE INFORMATION AND PRIVACY COMMISSIONER FOR BRITISH COLUMBIA, ORDER F23-32

BETWEEN:

CITY OF VANCOUVER

PETITIONER

AND:

INFORMATION AND PRIVACY COMMISSIONER FOR BRITISH COLUMBIA and JOHN DOE

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO:

Information and Privacy Commissioner for British Columbia
4th Floor, 947 Fort Street
Victoria, BC
V8V 3K3

Attorney General of British Columbia
c/o Deputy Attorney General
Ministry of Attorney General
PO Box 9290 Stn Prov Govt
Victoria, BC V8W 9J7

JOHN DOE

The address of the registry is:

800 Smithe Street
Vancouver, British Columbia

The petitioner estimates that the hearing of the petition will take: two (2) days

[x] This matter is an application for judicial review.

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

[x] the person named as Petitioner in the style of proceedings above

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 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 FOR SERVICE of the petitioner is: City of Vancouver Law Department 453 West 12th Avenue Vancouver, BC V5Y 1V4 Fax number for service (if any): * E-mail address for service (if any): Andrew.aguilar@vancouver.ca

(2)	The name and office address of the petitioner's lawyer is: City of Vancouver Law Department 453 West 12th Avenue Vancouver, BC V5Y 1V4 Attention: Andrew Aguilar

CLAIM OF PETITIONER

Part 1: ORDERS SOUGHT

1. An order in the nature of certiorari quashing and setting aside Order F24-51dated June 14, 2024 (the "Order") of a delegate of the Information and Privacy Commissioner for British Columbia (the "Commissioner"), in which the Commissioner ordered the City of Vancouver (the "City") to disclose information the City withheld pursuant to section 17(1) and 21(1) of the *Freedom of Information and Privacy Protection Act*, RSBC 1996, c. 165 ("*FIPPA*");

2. An order and/or declaration that section 17(1) of *FIPPA* authorizes the City to refuse to disclose the information that the Order requires it to disclose;

3. An order and/or declaration that section 21(1) of *FIPPA* requires the City to refuse to disclose the information that the Order requires it to disclose;

4. In the alternative, an order remitting this matter back to the Commissioner for re-determination de novo by the Commissioner, or a different delegate;

5. An order preserving confidentiality of the records subject to the Order pending the resolution of this proceeding;

6. Costs of the proceeding against any party who opposes the Petition; and

7. Such further and other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

Parties

1. The City is a municipality continued pursuant to the provisions of the *Vancouver Charter*, SBC 1953, c. 55, having a municipal hall at 453 West 12th Avenue in Vancouver, British Columbia.

2. The City is a "public body" as defined in *FIPPA*.

3. The Respondent, the Commissioner, is appointed by the Lieutenant Governor to the position of Information and Privacy Commissioner and is an officer of the Legislature of the Province of British Columbia. The Commissioner, through the Office of the Information and Privacy Commissioner (the "OIPC"), is a tribunal established under the provisions of *FIPPA*.

4. John Doe is the applicant who sought review before the OIPC (the "Applicant").

The Nature of this Petition

5. Rene Kimmett, Adjudicator, a delegate of the OIPC (the "Delegate") issued the Order.

6. The Order was issued following an inquiry held pursuant to provisions of *FIPPA* and in response to an access to information request made by the Applicant to the City.

7. The Order requires the City to provide the Applicant with access to certain information and records by July 29, 2024. The Petitioner says that the records that the Delegate ordered the City to disclose contain information that the City may refuse pursuant to section 17(1) *FIPPA* and must refuse to disclose pursuant to section 21(1) of *FIPPA*.

8. This petition is an application for judicial review of the Order.

Overview

9. The City seeks to set aside the Order of the Delegate to release the information at issue, which the City says was made on a misconstrued and novel interpretations of sections 17(1) and 21(1) of FIPPA and based on the Delegate's own opinions and analysis unsupported by and contrary to the evidence submitted by the City. The legal and factual reasoning and the conclusions reached by the Delegate are unreasonable and ought to be quashed and set aside.

10. The City is responsible for developing housing policy and this involves enacting zoning changes that can impact large areas of the City. The information at issue in the Order directly impacts the City's ability to control its own policy processes and the impacts of these processes in engaging in this work. Specifically, the City relies on third party financial modelling, and the information at issue in the Order would allow currently anonymous financial modelling to be associated with specific sites and their owners. The City provided evidence that disclosure of this information could reasonably be expected to harm property owners and frustrate City objectives.

11. Additionally, and importantly, the third party retained by the City to provide this modelling advised that it would be unwilling to continue to disclose this type of information to the City if the City could not protect this information from public disclosure. Without this information the City would have to change its financial modelling practices, either requiring the City to retain a new third party, or limit its ability to participate in and review the modelling performed by the current third party. The Delegate misapprehended or failed to properly consider these facts, among others, in coming to their decision such that this decision cannot stand and ought to be set aside.

Background

12. Since 2009, the City has encouraged the development of purpose-built rental housing through several rental incentive programs.

13. In early 2019, the City launched a review of its rental incentive programs and attempted to identify challenges, limitations and opportunities to improve these programs.

14. On November 26, 2019, City staff provided a report to Council on the results of phase II of its review of rental incentive programs (the "November 2019 Administrative Report").

15. Following the City's review of its rental incentive programs, Council approved the Secured Rental Policy: Incentives for New Rental Housing (the "Secured Rental Policy"). As part of the approval of the Secured Rental Policy, Council directed staff to implement the new policy by advancing amendments to C-2 zoning districts to allow six-story rental buildings and also create a new set of standard rental zoning districts to streamline future rezoning applications in surrounding low density areas (the "Proposed Changes"). The Proposed Changes had a common objective of simplifying and shortening the approvals process for new secured rental housing.

16. To support staff's work in reviewing rental incentive programs, and the implementation of the Proposed Changes, the City retained Coriolis Consulting Corp. ("Coriolis") to perform financial modelling of various development scenarios. Coriolis is a market leader in the area and is the primary consultant used by the City for financial modelling.

17. Coriolis ultimately prepared three memorandums for the City (collectively, the "Memos"):

a) July 9, 2019 – Re: Summary of Preliminary Key Findings for Phase 1 of Financial Analysis for Market Rental Policies (the "July 2019 Memo").
b) November 16, 2019 – Re: Rental Incentives Review Phase 2: Summary of Key Findings of Financial Analysis (the "November 2019 Memo").
c) September 13, 2021 – Re: Summary of Key Findings of Financial Analysis for Secure Rental Policy (the "September 2021 Memo").

18. In addition, Coriolis provided the City with a series of draft exhibits prepared to support the conclusions set out in the Memos (the "Exhibits"). The Exhibits were expressly marked as "DRAFT for discussion purposes only". The Exhibits were relied upon internally, but were not intended for external distribution.

19. The Exhibits contain what is referred to in planning and development as a pro forma, or financial analysis of a development proposal. In this case, the Exhibits contain a simplified pro forma outlining the results of financial modelling of the impact of different existing or proposed zoning scenarios on estimated profit margin or estimated supportable land value for various case study addresses.

20. The Memos were intended for public disclosure. They were included as appendices to administrative reports relied upon by Council that are publicly available on the City's website.

21. The Exhibits, however, were not intended for public distribution and were not appended to any administrative reports. They also were not considered by Council.

Procedural History

22. On July 5, 2021, the Applicant requested the following records (the "Subject Request"):

> Any financial analyses, feasibility testing or studies, financial viability analyses, appraisals, technical studies, financial performance analyses, etc. With respect to the development of new rental apartments, new secured rental housing or new purpose built rentals in the City of Vancouver especially with respect to allowing such developments in area currently zoned C1, RS and RT. The analyses feasibility testing, technical studies etc. should include the analysis of the effect of different incentives, heights, densities (floor space ratios) on financial viability of financial performance. Both in-house and contracted analyses, studies appraisals etc. are requested. Date range: November 1, 2019 to July 15, 2021.

23. The date range of November 1, 2019 to July 15, 2021 encompasses Council's review of phase II of the rental incentives review and the period immediately before Council's review of the Proposed Changes

24. On August 27, 2021, the City provided records to the Applicant in response to the Subject Request (the "Responsive Records") withheld some information pursuant to sections 13(1) and 17(1) of *FIPPA*.

25. On September 15, 2021, the applicant asked the OIPC to review the City's decision to withhold information.

26. The matter proceeded to mediation, wherein the City agreed to release additional records and withdrew its reliance on section 13(1) of *FIPPA*.

27. Mediation did not resolve the issues and the Applicant requested that the matter proceed to inquiry (the "Inquiry").

28. On June 2, 2023, the City submitted its Initial Submissions in the Inquiry. In support of its Initial Submissions, the City relied on affidavits sworn by Edna Cho, Senior Housing Planner at the City, and Blair Erb, Principal of Coriolis.

29. In it is Initial Submissions, the City additionally sought permission to rely on section 21(1) of *FIPPA*.

30. On June 19, 2023, the Registrar adjourned the Inquiry and directed the City to provide an explanation for seeking permission to add a new issue in its Initial Submission.

31. On July 11, 2023, a delegate of the Commissioner (different from the Delegate) decided to add section 21(1) of *FIPPA* to the Inquiry and to invite Coriolis to participate in the Inquiry.

32. Coriolis did not participate in the Inquiry but did supply an Affidavit # 1 of Blair Erb, which formed part of the City's submissions.

33. On August 11, 2023, the City amended its Initial Submission to remove its request for permission and to reflect that section 21(1) of *FIPPA* has been added as an issue at Inquiry but otherwise relied on the same submissions and evidence as initially submitted on June 2, 2023 (the "Amended Initial Submission"). In its Amended Initial Submission, the City continued to rely on sections 17(1) and 21(1) of *FIPPA* to withhold information from the Responsive Records.

34. On September 1, 2023, the Applicant submitted its response submission (the "Response Submission"). The Applicant did not provide any sworn evidence, but instead appended a series of exhibits to its Response Submissions.

35. On September 18, 2023, the City submitted its reply submission (the "Reply Submission").

36. On March 26, 2024, the Delegate wrote to the City (the "Clarification Request Letter") to provide the City with an opportunity to "clarify which 'person, group of persons or organization' it [was] referring to in paragraph 72 of its Initial Submission. This request was alternatively phrased as inviting the City make additional submissions "clarifying who the third party is under s. 21(1)(a)(ii)."

37. On April 3, 2024, the City submitted a letter containing additional reply in response to the Clarification Request Letter (the "Additional Reply").

The Responsive Records

38. The Responsive Records consist of two of the Memos, the July 2019 Memo and the November 2019 Memo, and 11 of the Exhibits dated from June 13, 2019 to May 11, 2021.

39. The City has publicly disclosed the entirety of the Memos as part of administrative reports submitted to Council, and has now, in response to the Subject Request and the mediation process,

disclosed all information in the Exhibits except for specific case study addresses (the "Case Study Addresses").

40. The Case Study Addresses are actual sites that are currently used for a range of uses from single family dwellings to low density commercial. The financial modelling based on these actual sites is then generalized and used as representative examples of properties within location or zoning districts. The sites were selected as typical examples of sites with development potential in each area, but they are not currently undergoing development. The financial modelling is based on publicly available information and the owners are unaware that the analysis was done.

41. At Inquiry, the City submitted that disclosing the Case Study Addresses would allow a reader to associate specific financial modelling with those addresses and convert generalized and representative information to individualized pro formas for these specific addresses.

42. In preparing for the Inquiry, Coriolis advised the City that it would no longer supply case study property addresses to the City if the City is unable to keep this information confidential.

43. In her affidavit, Ms. Cho describes the specific harm if Coriolis were unwilling to provide this information and the importance of the harms to the economic and financial interests of the City and to its ability to manage the economy as follows:

> In preparing for this Inquiry, I have been advised by Blair Erb that he is concerned about the impact of disclosing case study addresses on individual property owners and that Coriolis will no longer supply this information to the City if the City is unable to keep this information confidential. There are few alternatives to Coriolis, and none with the same history with the City, and I believe withholding the case study addresses would significantly harm the City's ability to perform this type of financial modelling which is used to make broad based zoning changes often impacting large areas of the City. Without knowing the case study addresses used, the City would be materially less confident in relying on the financial modelling contained in the Exhibits and on which the Memos are based.
>
> Financial modelling is essential in setting housing policy, and specifically, the correct financial incentives for purpose built rental housing. As set out in the above referenced administrative reports and the Memos, purpose built rental development is generally less profitable than strata development and will not be competitive with strata development without financial incentives from the City. Setting the correct level of financial incentives is important, as setting the level

too low will not have the intended effect and delay or prevent development, and setting the level too high will allow for profits above the 15% level typically allowed by the City. The City has an ability to regulate developers from making excess profits through negotiating the payment of CACs, but this would delay the development of secure market rentals, require additional staff time, and defeat the purpose of the Proposed Changes which are designed to simply and shorten the approval process for these developments. I believe that this would harm the financial interests of the City and the City's ability to manage the economy by setting effective housing policy.

Affidavit #1 of E. Cho at paras 27 and 28

The Delegate's Decision

44. On June 14, 2024, the Delegate issued the Order, which contained the reasons for their decision following the completion of the Inquiry.

45. The issues at Inquiry were whether the City was authorized to withhold the Case Study Addresses under s.17(1) of *FIPPA* and whether the City was required to withhold the Case Study Addresses under s.21(1) of *FIPPA*.

46. Despite arguments made by the Applicant that the Case Study Addresses are merely civic addresses and as such are public information, the Delegate appears to have accepted that the information at issue in the Inquiry is the cumulative information disclosed in the release, which included re-identifying what is currently anonymous financial modelling.

Response Submission at para 24; Order at para 69

47. The relevant parts of section 17(1) of *FIPPA* state as follows:

> 17 (1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:
>
> ...
>
> (b)financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;
>
> ...

(d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;

48. The Delegate summarized the general principles that apply to section 17(1) including that:

15 Subsections 17(1)(a) to (f) are examples of information that, if disclosed, could reasonably be expected to result in harm under s. 17(1). The subsections listed under s. 17(1) do not represent an exhaustive list, meaning there may be other types of information that fall under the opening words of s. 17(1) despite not being listed in subsections 17(1)(a) to (f).

16 Subsections 17(1)(a) to (f) are not stand-alone provisions and even if information fits within those subsections, a public body must also prove disclosure of the information in dispute could reasonably be expected to result in one or more of the harm described in the opening words of s. 17. Therefore, regardless of the type of information, the overriding question is always whether disclosure of the information could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy.

Order at paras 15 and 16. See also Order paras 17-20.

49. The relevant parts of section 21(1) of *FIPPA* state as follows:

21(1) The head of a public body must refuse to disclose to an applicant information

(a)that would reveal

[...]

(ii)commercial, financial, labour relations, scientific or technical information of or about a third party,

(b)that is supplied, implicitly or explicitly, in confidence, and

(c)the disclosure of which could reasonably be expected to

[...]

(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,

50. The Delegate summarized the three-part test for the application of section 21(1) as follows:

> 65 Past orders have established a three-part framework to determine the applicability of s. 21(1). The City must satisfy all three of the following criteria in order for the information to be properly withheld under s. 21(1):
>
> 1.Disclosing the information at issue would reveal the type of information listed in s. 21(1)(a);
>
> 2.The information at issue was supplied, implicitly or explicitly, in confidence under s. 21(1)(b); and
>
> 3.Disclosing the information at issue could reasonably be expected to cause one or more of the harms set out in s. 21(1)(c).
>
> Order at para 65

51. In their reasons, the Delegate went on to adopt novel interpretations of both the opening clause of section 17(1) and subsection 21(1)(a)(ii) based on what was purported to be an application of the modern approach to statutory interpretation. The Delegate's reasoning was based entirely on their own analysis of *FIPPA* and did not cite any supporting case precedent, previous decisions of the OIPC, or secondary sources.

52. In interpreting the opening clause of section 17(1), the Delegate held that the phrase "the ability of that government to manage the economy" applied only to the government of the British Columbia and did not apply to a public body. While the Delegate began their analysis by summarizing the modern approach to statutory interpretation, the actual analysis performed was limited to single paragraph and relied entirely on a grammatical analysis that focused on the use of the singular demonstrative pronoun "that" versus the plural demonstrative pronoun "those":

> **26** After reading "that government" in its grammatical and ordinary sense within the context of s. 17(1) and *FIPPA*, I conclude that it refers only to the government of British Columbia. The word "that", in this context, is a demonstrative pronoun used to refer to a single thing. In this case, the single thing referred to is the government of British Columbia because it is the closest noun preceding the word "that". If the Legislature intended to refer to both the government of British Columbia and local government bodies, it could have said so directly or used the word "those", which is the demonstrative pronoun used to refer to more than one thing. The word "those" is used in several instances in *FIPPA* as a demonstrative pronoun referring to more than one thing.
>
> Order at paras 24-27

53. In interpreting section 21(1)(a)(ii), the Delegate appears to have adopted strict interpretations of the words "of" and "about" from the phrase "of or about a third party", but provided little explanation for the basis on which they adopted these interpretations.

54. In their analysis of the word "about", the Delegate did not define or analyze the meaning of the word "about", but rather simply concluded, based on what the City submits is an incorrect set of factual assumptions, that financial modelling performed on the Case Study Addresses was not "about" the current owners of the Case Study Address:

> 73 After reviewing the Exhibits, I conclude that the financial information they contain is dependent on each of the sites being purchased, developed, and sold by a hypothetical developer and reflects the City's expectations about the profits this developer may receive after developing the site. I understand the City to view prospective developers as separate and distinct from the current Owners of the properties at the Site Addresses. As a result, I am not persuaded that the information in the Exhibits is about the current Owners of the properties at the Site Addresses as the financial information is dependent on them no longer owning these properties.
>
> Order at paras 72 and 73

55. In their analysis of the word "of", the Delegate dismissed the City's position that the word "of" has a broad meaning and in this context "would include information created by or originating from a third party" on the basis that the Legislature could have, but did not use the words "created by" and that the previous decision relied upon by the City could be distinguished based on the facts. The Delegate went on to adopt an interpretation of the word "of" as requiring an ownership interest or a similar legal claim but provided no further explanation of the basis for that interpretation:

> **77** For the reasons that follow, I find the City has not established that disclosing the Site Addresses would reveal financial information of Coriolis.
>
> **78** I accept that Coriolis created the financial modelling based on the Site Addresses. However, the City has not persuaded me that Coriolis' creation of the financial information means that the financial information is "of" Coriolis.
>
> **79** Clearly, if the Legislature intended s. 21(1)(a)(ii) to apply to information "created by" a third party it could have said so explicitly, as it did when it used the phrase "created by" in ss. 3(3)(f), 3(3)(g), 3(4) and 3(4.1) of *FIPPA*. Further, the statutory interpretation presumption of "consistent expression" dictates that where the Legislature uses different words within the same piece of legislation, it intends the words to have different

meanings. Relying on this presumption, the phrase "of [...] a third party" in s. 21(1)(a)(ii) should not be interpreted, as the City submits, to include information simply because it was "created by" a third party.

80 In Order F14-40, on which the City relies, the adjudicator found that the information in dispute was technical and commercial information of third parties. However, this information was prepared by third-party construction and engineering specialists for another third-party and not a public body. In my view, the findings in this order do not support the City's position that financial information, created by a third party and provided to a public body under contract, is financial information "of" that third party.

81 In my view, information is "of" a third party, for the purpose of s. 21(1)(a)(ii), where that third party owns the information in question. There may be other situations in which a third party does not own the information but has some other legal claim to or interest in the information that can support a finding that the information is "of" that third party for the purpose of s. 21(1)(a)(ii). In this inquiry, the City has not established that Coriolis owns or otherwise has a legal claim to or interest in the information in dispute.

82 I accept the City's submission that it owns the information in the Exhibits and that it retained and paid Coriolis for this information. The City has not provided evidence to sufficiently rebut the applicant's submission that Coriolis does not have ownership of or a legal claim to the information in the Exhibits. Further, there is nothing in the Exhibits that appears, on its face, to be Coriolis' proprietary information. Without more information, I am not persuaded that the financial information at issue is "of" Coriolis and find that it is not.

Order at paras 74-82

56. The Delegate found that they were not required to consider the second and third part of the test for the application of section 21(1) as the City had not established that the information was "of or about a third party".

Order at para 84

57. In addition to the above statutory interpretation, the Delegate's conclusion that the City was not authorized under section 17(1) of *FIPPA* to withhold the Case Study Addresses was based on two key factual findings.

58. The first finding was that the harm to the City's financial or economic interests was dependent on disclosure of the Case Study Addresses resulting in altered behaviour in the real estate market, and the City had failed to provide "persuasive" evidence on this point. The Delegate's reasoning in relation to the first finding demonstrates both a lack of understanding of

the City's evidence, and of the import of that evidence. Further, the implication of the finding is that the delegate misapplied the standard by requiring proof of harm, rather than a reasonable expectation of probable harm. In light of the first finding, the Delegate found that they did not need to consider whether the Case Study Addresses fell within the categories of information set out in sections 17(1)(b) or (d).

Order at paras 34, 35 and 45-47

59. The second finding was that the City had not provided sufficient evidence to establish that if Coriolis no longer disclosed case study property addresses to the City in the future this would harm the City's financial or economic interests under section 17(1). In making this finding, the Delegate did not dispute Coriolis' evidence that it would no longer disclose similar information in the future if the Case Study Addresses were disclosed. The Delegate also acknowledged that if the City continued to retain Coriolis it would need to transition to a new process for financial modelling from the current process where site addresses are selected collaboratively, or by City staff, to a new process where Coriolis would select case study addresses based solely on its own expertise without input from the City. However, the Delegate found that the City had not met its burden of showing how these changes could reasonably be expected to result in the requisite harm to the City's financial or economic interests under section 17(1). There is no reasonable basis on which the Delegate could have made this finding in light of the evidence submitted by the City of the detrimental changes that would be required to its processes and its inability to provide input in the process for developing the model or to verify inputs for the modelling.

Order at paras 55-60

60. Most notably, the Delegate made the inexplicable and unsupported finding that the City being forced to adopt a new process where the City would have no input in selecting the sites used for financial modelling, and no ability to verify the accuracy of the financial modelling, could not be reasonably expected to result in financial modelling that is less reliable to the City. This finding was made in light of and contrary to the City's evidence that this modelling is used to make broad based zoning changes often impacting large areas of the City and in direct conflict with the evidence of Ms. Cho, a Senior Housing Planner, who provided sworn evidence that "[w]ithout knowing the case study address used, the City would be materially less confident in relying on the

financial modelling". There was no evidence on which the Delegate could have made this finding and appears to be based solely on the Delegate's own opinion and analysis.

Order at para 57; Affidavit #1 of E. Cho at para 27

61. The Delegate ultimately concluded that the City was not authorized under section 17(1) of *FIPPA*, or required under section 21(1) of *FIPPA*, to withhold the Case Study Addresses and ordered the City to disclose this information.

62. The Delegate issued the Order on June 14, 2024, but stated that the City was required to comply with the Order by July 29, 2024, extending the 30 day time period for compliance with Order set out under section 59(1) of *FIPPA* without explanation.

Effect of the Within Petition for Judicial Review

63. Pursuant to section 59(2) of *FIPPA*, the Order is stayed for 120 days (as defined in Schedule 1 of *FIPPA*, as excluding holidays and Saturdays), beginning on the date that the Petitioner filed the within Petition for judicial review.

64. Pursuant to section 59(3) of *FIPPA*, if a date for the hearing of the within Petition for judicial review is set before the expiration of the stay of the Order referred to in section 59(2), the stay of the Order is extended until the within judicial review is completed or the court makes an order shortening the stay.

Part 3: LEGAL BASIS

Legislative Provisions

65. This Petition is brought pursuant to the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

66. The Petitioner relies on Rules 2-1(2)(6), 14-1 and 16-1 of the *Supreme Court Civil Rules*.

67. The Petitioner relies on the provisions of *FIPPA*, and in particular sections 17(1), 21(1), 56(3), 59 and Schedule 1.

The Standard of Review

68. The standard of review with respect to the Delegate's interpretation and application of sections 17(1) and 21(1) of *FIPPA* is reasonableness.

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 [Vavilov] at paras. 10, 17, and 69

69. The Supreme Court of Canada's decision in *Vavilov* dealt with the review of the merits of an administrative tribunal's decision, and as such, the standard of review with respect to procedural fairness remains unchanged.

The Reasonableness Standard

70. In *Vavilov*, in addition to clarifying the applicable standard of review, the Supreme Court of Canada provided further guidance with respect to the application of the reasonableness standard to administrative decisions. The majority stated that a "reasonableness review must entail a sensitive and respectful, but robust, evaluation of administrative decisions."

Vavilov at para. 12

71. The focus of a reasonableness review must be on the decision actually made by the decision maker, which includes both the decision maker's reasoning process and the outcome. Therefore, the reviewing court must consider whether the decision made - including both the rationale for the decision and the outcome to which it led - was unreasonable.

Vavilov at para. 83

72. In reviewing an administrative decision maker's decision and written reasons, the reviewing court must ask whether the decision bears the hallmarks of reasonableness, namely justification, transparency and intelligibility, and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision.

Vavilov at para. 99, citing *Dunsmuir v. New Brunswick*, 2008 SCC 9, at 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, at para. 13.

73. An administrative decision maker's decision should be set aside where there are sufficiently serious shortcomings or flaws that are sufficiently central or significant to render the decision unreasonable.

Vavilov at para. 100

74. Such sufficiently serious shortcomings or flaws include, but are not necessarily limited to (a) a failure of rationality internal to the reasoning process, and (b) when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it.

Vavilov at para. 101

75. For a decision to be reasonable, it must be based on reasoning that is both rational and logical. The reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived" [citations omitted].

Vavilov at para. 102

76. The internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. The reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".

Vavilov at para. 104

77. An administrative decision maker must take the evidentiary record into account and the general factual matrix that bears on its decision into account, the decision must be reasonable in light of them. A decision may be unreasonable where a decision maker has shown than their conclusions and/or decision was not based on the evidence that was actually before them.

Vavilov at paras. 125 - 126

Grounds for Review

78. The Petitioner says that the Order must be set aside because the Delegate's decision was unreasonable with respect to the interpretation and application of sections 17(1) and 21(1) of *FIPPA* to the Case Study Addresses for the following reasons:

a) The Delegate failed to undertake a proper analysis of sections 17(1) and 21(l)(c)(ii) of *FIPPA*; relied on their own opinions, assumptions, speculation and conjecture, rather than considering and interpreting the evidence that was on the record in the Inquiry; and interpreted and applied this section in a manner that frustrates and undermines the purpose of *FIPPA* and sections 17(1) and 21(1)(c)(ii);
b) The Delegate failed to reasonably apply the principles of statutory interpretation;
c) The Delegate applied an unreasonable and unjustified interpretation of the words "that government" in section 17(1) of *FIPPA*;
d) The Delegate applied an unreasonable and unjustified interpretation of the words "of or about a third party" in section 21(1)(c)(ii) of FIPPA;
e) The Delegate ignored and/or misunderstood the City's evidence and argument and the import of that evidence and argument;
f) The Delegate failed to apply existent and relevant case law and previous decisions of the OIPC, including British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner), 2019 BCSC 2019, Order F17-19, City of Vancouver, 2017 BCIPC 20;
g) The Delegate applied the incorrect evidentiary standard, in effect requiring proof on a standard of probabilities, rather than applying the appropriate reasonable expectation of probable harm standard; and
h) The reasons for the Delegate's decision are internally inconsistent, lack intelligibility and do not "add up".

Part 4: MATERIAL TO BE RELIED ON

1. The complete record of the proceedings before the OIPC in the Inquiry (Records to be provided by the OIPC); and

2. Such further and other material as counsel may advise and this Honourable Court may accept.

Dated at the City of Vancouver, in the Province of British Columbia, this 12th day of July 2024.

Andrew Aguilar
City of Vancouver
Signature of lawyer for petitioner

This Petition to the Court is filed by Andrew Aguilar, Law Department, City of Vancouver, whose place of business and address for delivery is 453 West 12th Avenue, Vancouver, BC V5Y 1V4.