IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wall Financial Corporation v. British Columbia (Information and Privacy Commissioner),* 2025 BCSC 1482

Date: 20250801
Docket: S234073
Registry: Vancouver

In the Matter of the *Judicial Review and 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:

Wall Financial Corporation

Petitioner

And

Information and Privacy Commissioner for British Columbia, City of Vancouver, Revera Inc., Number Ten Architectural Group and Kathleen Duffield

Respondents

Before: The Honourable Justice J. Hughes

Reasons for Judgment

In Chambers

Counsel for the Petitioner:	R. Berger
Counsel for the Respondent, Information and Privacy Commissioner for BC:	T. Urquhart
Counsel for the Respondent, City of Vancouver:	J. Michaud
Place and Dates of Hearing:	Vancouver, B.C. May 7-9, 2025
Place and Date of Judgment:	Vancouver, B.C. August 1, 2025

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Overview

[1] The petitioner, Wall Financial Corporation ("Wall Financial"), seeks judicial review of the Office of the Information and Privacy Commissioner for British Columbia's ("OPIC") Order F23-32 issued April 25, 2023 (the "Decision"). The Decision arises out of an inquiry under s. 56 of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 [*FIPPA*].

[2] The access request in issue was made by the respondent, Kathleen Duffield, to the respondent City of Vancouver (the "City") and sought disclosure of records pertaining to a proposed rezoning of lands located at 2803 West 41st Avenue in Vancouver (the "Site"). The Site is currently home to Crofton Manor, a senior's care facility (the "Facility"). The Site is owned by Wall Financial. The respondent, Revera Inc. ("Revera"), operates the Facility pursuant to a lease with Wall Financial.

[3] In 2018, Wall Financial began a preliminary re-zoning enquiry consultation with the City to explore potential redevelopment concepts for the Site. The preliminary re-zoning enquiry process is considered confidential by the participants and precedes a formal re-zoning application, which triggers a public process with legislated steps and requirements. As part of this process, Wall Financial hired Perkins and Will ("P&W") to develop design options for the Site, and Revera hired Number Ten Architectural Group ("Number Ten") to develop options for building a new Facility on the Site.

[4] Several preliminary design concepts were explored through this process, which was then followed by a public open house where four options were shown to the community. Discussions with the City continued after the public open house. All of the information in issue in this proceeding was created in the context of the discussions between Wall Financial, Number Ten, and P&W on the one part, and the City on the other part, which occurred after the public open house. To date, Wall Financial has not submitted a formal re-zoning application to the City.

[5] The access applicant, Ms. Duffield, made her access request to the City in the spring of 2020. She sought disclosure of records "relating to the rezoning of Crofton Manor between January 2019 to June 10, 2020" between the City's planning department and the owner/developer and its representatives Wall Financial, Revera, Crofton Manor; and P&W.

[6] The City identified 86 pages of responsive records and withheld information from 43 of those pages on the basis that the records were excepted from disclosure under ss. 21(1) and 22(1) of *FIPPA*. The withheld information consisted of information contained in plans for the Site and related information prepared by P&W (the "Site Plans"), architectural drawings for a new seniors' facility on the Site prepared by Number Ten (the "Facility Drawings"), emails, and meeting minutes of Wall Financial and the three third party respondents: Revera, Number Ten and P&W.

[7] Ms. Duffield was not satisfied with the City's disclosure in response to her access request and sought a review. Mediation was unsuccessful and the matter proceeded to an inquiry before the OIPC. The City, Wall Financial, Number Ten, and Revera participated in the inquiry proceedings. Their positions were all effectively aligned in supporting the City's refusal to disclose the records in full. P&W did not participate in the inquiry and was not named as a respondent in this proceeding.

[8] The Decision was issued on April 25, 2023. It confirmed the City's decision to withhold the information excepted from disclosure under s. 22(1), but required disclosure of some of the records that had been withheld under s. 21(1). Only that aspect of the Decision, which required disclosure under s. 21(1), is in issue on this judicial review.

[9] Ms. Duffield did not participate in the judicial review, nor did any of the other respondents except for the City, who supported the petitioner's position. The petition would have effectively thus proceeded unopposed on the merits. In the circumstances, the OIPC sought an expanded scope of participation. No objection was raised by either Wall Financial or the City. I determined that the Court would

benefit from the OIPC addressing the merits because the petition would have otherwise proceeded unopposed and therefore granted the OIPC expanded participatory rights: *Ontario (Energy Board) v. Ontario Power Generation Inc*., 2015 SCC 44 at paras. 41-62; *18320 Holdings Inc. v. Thibeau*, 2014 BCCA 494 at paras. 51-53.

Statutory Framework

[10] Subject to certain enumerated exceptions, *FIPPA* applies to all records in the custody or under the control of a public body. As set out in s. 2(1), *FIPPA* has dual purposes: to make public bodies more accountable to the public, and to protect personal privacy. These purposes are achieved by, *inter alia*, giving individuals a right of access but also specifying limited exceptions to that right: *FIPPA*, ss. 2(1) and 4(1).

[11] Public body records are to be disclosed unless the public body establishes that the records, or parts thereof, are excepted from disclosure under a specific provision of *FIPPA*. However, if information that is excepted from disclosure can be reasonably severed from a record, then the applicant is entitled to access to the remainder of the record: *FIPPA,* s. 4(2).

[12] The exception in issue on this judicial review is contained in s. 21(1), which requires a public body to withhold information if its disclosure could reasonably be expected to harm the business interests of a third party:

> **Disclosure harmful to business interests of a third party**
>
> 21(1) The head of a public body must refuse to disclose to an applicant information
>
> (a) that would reveal
>
> (i) trade secrets of a third party, or
>
> (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

> (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
>
> (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,
>
> (iii) result in undue financial loss or gain to any person or organization, or
>
> (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

[13] A public body resisting disclosure under s. 21(1) must establish that:

a) disclosing the information would reveal one or more of the types of information listed in s. 21(1)(a);

b) the information was supplied in confidence as required by s. 21(1)(b); and

c) disclosing the information could reasonably be expected to cause one or more of the harms set out in s. 21(1)(c).

[14] Before the OIPC adjudicator, the City and Wall Financial asserted that the withheld information constituted commercial or financial information under s. 21(1)(a)(ii), and that its disclosure would cause all three of the harms set out in ss. 21(1)(c).

The Decision

[15] In relation to the issues raised on this judicial review, the key question before the adjudicator was whether the City was required to refuse to disclose the information in dispute under ss. 21(1) of *FIPPA*.

[16] With respect to s. 21(1)(a), the adjudicator determined that the disputed records contained commercial and technical information within the meaning of s. 21(1)(a)(ii), but also found that some of information contained in the records, namely general advice from City officials about rezoning, introductory statements, requests

for information and scheduling matters, was not commercial or technical information: Decision at paras. 19-31.

[17] The adjudicator accepted Wall Financial and the City's evidence that the parties involved in the preliminary enquiry process understood that process to be confidential and that the information supplied to the City through that process was supplied in confidence: Decision at paras. 47, 49-50.

[18] The adjudicator went on to conclude that, with the exception of general advice from City officials about rezoning, the information in the disputed records was "supplied" to the City as required by s. 21(1)(b): Decision at paras. 39, 46-50. This finding was not challenged on judicial review.

[19] The adjudicator ultimately concluded that both the Facility Drawings and the Site Plans were commercial or technical information supplied to the City in confidence: Decision at paras. 40-45. However, in addressing whether disclosure could reasonably be expected to result in one of the harms set out in s. 21(1)(c), the adjudicator came to different conclusions in respect of the Site Plans and the Facility Drawings.

[20] First, she concluded that disclosure of the Facility Drawings would significantly harm Revera's competitive position or interfere with its negotiating position under s. 21(1)(c)(ii): Decision at paras. 69-75. The arbitrator reasoned in material part as follows:

> [73] Turning to the alleged harm, the records support the Wall CEO's statement that disclosure of the architectural drawings of the Facility could allow Revera's competitors to use its unique designs. The drawings contain detailed information about the proposed design for each floor of the Facility. It is clear on the face of the drawings that they provide the kind of information required to replicate Revera's designs. Thus, in light of the Wall CEO's evidence that Revera's designs are unique, I accept that disclosure of the records could allow Revera's competitors to gain access to and use of Revera's unique designs and plans.
>
> [74] The OIPC has recognized that disclosing unique construction designs that could be used by competitors constitutes competitive harm for the purposes of s. 21(1)(c)(i). In my view, the facts of this case support the same

> result. There is no question that developers will continue to design and construct senior's care facilities in the future. If other developers gain access to Revera's unique designs, Revera could very well lose any competitive advantage it may have as a result of its unique designs. In my view, this circumstance could reasonably be expected to harm significantly Revera's competitive position for the purposes of s. 21(1)(c)(i).
>
> [footnotes omitted]

[21] However, she came to the opposite conclusion regarding the Site Plans, finding that it was unclear what harm would arise from disclosure:

> [79] First, the Wall CEO's evidence that disclosure could result in "possible loss" and "possible gain" does not satisfy the evidentiary standard established by the Supreme Court of Canada which requires a risk of harm that is "well beyond the merely possible or speculative."
>
> [80] Moreover, the Third Parties do not explain how disclosure of the withheld information could result in financial loss or gain to any entity. On its own, the fact that a competitor could obtain information paid for by a party is not sufficient to establish harm under s. 21(1)(c)(i). In this case, as Wall Financial owns the Site, it is particularly unclear what use any other entity could make of the information relating to designs for the Site, and therefore what loss could result to Wall Financial from disclosure of the information.
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> [footnotes omitted]

[22] The arbitrator went on to find that Wall Financial and the City and third parties had not met their burden of establishing that disclosure of the remainder of the disputed information, including the Site Plans, would result in any of the harms contemplated in s. 21(1)(c): Decision at paras. 61-68, 78-81 and 88-95.

[23] Dealing specifically with s. 21(1)(c)(ii) and whether disclosure could reasonably be expected to result in similar information no longer being supplied to the public body, the adjudicator found that the evidence before her was insufficient to persuade her that this would be the case, including because of the financial incentives Wall Financial derives from participating in the preliminary rezoning inquiry process: Decision at paras. 94-95.

[24] The adjudicator thus made two orders under s. 58 of *FIPPA* that are relevant to this judicial review. First, she confirmed in part the City's decision to withhold the Facility Drawings under s. 21(1): at para. 124(2). The records that the adjudicator

confirmed the City's decision to withhold are the Facility Drawings found at pages 56-69 of the disputed records. Second, the adjudicator ordered the City to disclose the balance of the disputed records under s. 21(1): at para. 124(3). The information the City was required to disclose is found at pages 3, 4-6, 8-11, 14, 19-20, 33-35, 37, 48-50, 80-83 and 85 of the disputed records, and included the Site Plans.

[25] Wall Financial and the City assert that the adjudicator's second order requiring disclosure is unreasonable. However, in the course of submissions on this application, Wall Financial conceded that some of the information contained in the disputed records is not confidential or technical information and thus not captured by s. 21(1)(a). The information Wall Financial concedes is not captured by s. 21(1)(a) is found in the first paragraph and first sentence of the second paragraph of an email dated February 18, 2020, which is found on multiple pages[1] of the disputed records. The information in the bullet points of the email remains in issue on judicial review.

Issue

[26] It is undisputed that the applicable standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*] at para. 100. It is also common ground that if the Decision was not reasonable, then the appropriate remedy is to remit the matter back to the OIPC for reconsideration. The issue on this judicial review is thus whether the Decision was reasonable. Wall Financial also sought a declaration that it was denied procedural fairness, but abandoned that position in the course of its oral submissions.

[27] At times, Wall Financial's submissions strayed into arguments more properly made in the context of an appeal. However, when properly framed within the confines of judicial review, Wall Financial and the City advance two principal grounds of review which they say render the Decision unreasonable, namely that the adjudicator:

[1] Pages 14, 19-20, 33-34, 82-83 of the disputed records.

a) made inconsistent and contradictory findings under s. 21(1)(a) by stating that all of the disputed information was commercial or technical information (at para. 19), but then later finding that this was not the case (at paras. 29-30); and

b) ignored or misapprehended the evidence before her, failed to properly weigh it, and substituted her own opinion for that of the City in her assessment of whether disclosure would result in any of the harms contemplated in s. 21(1)(c) of *FIPPA*.

Analysis

Reasonableness Review

[28] Wall Financial bears the onus of establishing that the Decision was unreasonable. Reasonableness review ensures that the Court intervenes only where necessary to safeguard the legality, rationality, and fairness of the administrative process: *Vavilov* at para. 13. The reviewing court must consider whether the decision—including both the rationale and the outcome—is reasonable: *Vavilov* at paras. 83 and 87. A reasonable decision is one that is based on an internally coherent and rational chain of analysis, and which is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para. 85.

[29] The reasonableness of a decision may be undermined where there is a failure of rationality internal to the reasoning process, or where the decision is untenable in light of the relevant factual and legal constraints: *Vavilov* at para. 101. The decision maker's reasons must be read holistically and contextually; administrative decisions are not to be measured against the standard of perfection: *Vavilov* at paras. 91-92, 97.

[30] A decision will be unreasonable where it fails to reveal a rational chain of analysis: *Vavilov* at para. 103. However, reasonableness review is not a "line-by-line treasure hunt for error": *Vavilov* at para. 102. The shortcomings in an unreasonable

decision must be “sufficiently serious”, “sufficiently central”, or “significant”, and more than merely superficial or peripheral to the merits: *Vavilov* at paras. 100-102.

[31] Accordingly, administrative decision makers are entitled to a margin of appreciation within a range of acceptable and rational outcomes. The Court is not entitled to set aside a decision simply because it disagrees with the result, nor is it to reweigh the evidence: *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 at para. 71; *British Columbia (Ministry of Justice) v. Maddock,* 2015 BCSC 746 at para. 45.

Did the adjudicator make contradictory findings about whether the records contained commercial or technical information under s. 21(1)(a)?

[32] Wall Financial and the City say that the Decision is not rational, and is therefore unreasonable, because the adjudicator made conflicting findings about whether the disputed records contain confidential or technical information under s. 21(1)(a) of *FIPPA*. Wall Financial points to what it says are irreconcilable statements in paras. 19 and 30 of the Decision as illustrative of the alleged contradictory findings.

[33] Paragraph 19 is the first paragraph in the “Findings and Analysis” section of the part of the Decision dealing with s. 21(1)(a). It provides:

> [19] The City withheld information from architectural drawings of the Site and Facility prepared by [Number 10 and P&W], the body of six emails communications from an architect at [P&W] to City officials, and minutes from a meeting between representatives of the City, Wall Financial, and Perkins & Will. For the reasons set out below, I find that all of the withheld information is commercial or technical information within the meaning of s. 21(1)(a)(ii).
>
> [emphasis added]

[34] Paragraph 30 is the second-last paragraph of the adjudicator’s analysis under s. 21(1)(a). In that paragraph, she deals with information contained in the disputed records which she categorizes as “Introductory statements, Requests for Information, and Meeting Arrangements” and finds that that information does not constitute technical or commercial information: Decision at paras. 29-31. In so

concluding, the adjudicator specifically noted at para. 29 of the Decision that, in addition to the information she found was technical or commercial in nature, the records also contained information that was *not* technical or commercial and thus did not fall under s. 21(1)(a):

> [29] In addition to the information that I have found is commercial or technical information, the emails and meeting minutes discussed above also include introductory statements, requests for information from the City, and information about meeting arrangements.
>
> [30] I find that this information is not captured by s. 21(1)(a) as it does not fit the definition of commercial or technical information set out above. The introductory information and questions are too general to be, reveal, or even lead to an accurate inference about any technical or commercial information. Past OPIC decisions confirm that this kind of general information is not captured by s. 21(1)(a). The meeting arrangement information is administrative and does not contain technical or commercial information. Again, past OPIC decisions have held that meeting arrangements are not captured by s. 21(1)(a)(ii).
>
> [emphasis added]

[35] In the intervening paragraphs (paras. 20-28 of the Decision), the adjudicator considered the records in issue by type, and provided her reasoning and findings in respect of each, concluding that:

a) the architectural drawings constituted technical information (at para. 20);

b) those portions of an email (replicated in five distinct records) outlining the architect's specifications and thought processes constituted technical information (at para. 21);

c) the body of a sixth email containing the architect's assumptions about calculating community amenity contributions constituted commercial information (at paras. 22-24); and

d) those portions of meeting minutes that contained technical specifications about the Site Plans and Facility Drawings and advice from the City about those technical specifications constituted technical information (at paras. 25-27).

[36] The adjudicator also recognized that general advice from City officials about rezoning contained in the meeting minutes did not "fit easily" into any of the categories of information protected by s. 21(1)(a): Decision at para. 28. However, she found that she did not need to determine the issue because that information originated from the City and thus was not supplied by third parties as required under s. 21(1)(b).

[37] Considering the arbitrator's analysis and reasoning regarding s. 21(1)(a) as a whole, I find that it demonstrates an internally coherent and rational chain of analysis supporting her conclusion—understood from the entirety of the relevant section of the Decision—that while all of the disputed records contained confidential or technical information (at para. 19), there were portions of some of the disputed records that did not fall under s. 21(1)(a)(ii) (at paras. 29-30), and those portions could reasonably be severed in accordance with s. 4(2) of *FIPPA*, such that the access applicant was entitled to them (at para. 31).

[38] In my view, when read in its proper context, the adjudicator's reasoning in this section, her statement in para. 19 that "all of the withheld information *is* commercial or technical information" (emphasis added) can be understood to mean that while all of the disputed records *contain* confidential and technical information, some of those records also contain information that was not commercial or technical and thus not protected by s. 21(1)(a). Wall Financial's narrow focus on the last sentence of paragraph 19, considered in isolation from the balance of the adjudicator's reasoning regarding s. 21(1)(a) as set out in paras. 20-31, is the type of "line by line" treasure hunt for error that the jurisprudence cautions against on judicial review: *Vavilov* at para. 102. I do not find that the adjudicator's use of the word "is" rather than "contains" in para. 19 renders the Decision unreasonable.

[39] The adjudicator's reasoning under s. 21(1)(a) demonstrates a rational and coherent analysis supporting her conclusion that while all of the withheld records *contained* technical or commercial information, there were portions of some of the records that were not technical or commercial information. When the Decision is

read and understood in this manner, paragraphs 19 and 30 are not inconsistent. Moreover, her reasoning is consistent with Wall Financial's position in its oral submissions—where it accepted that portions of the records did not constitute technical or commercial information—and with the contents of the records themselves.

[40] Consequently, I find that the arbitrator's conclusions under s. 21(1)(a) are not inconsistent or contradictory and thus the Decision is not unreasonable on that basis.

Is the decision unreasonable because the adjudicator misapprehended the evidence of harm under s. 21(1)(c)?

[41] The third and final step in the analysis under s. 21 of *FIPPA* required the adjudicator to determine whether disclosure of the disputed information could reasonably be expected to result in one or more of the harms described in s. 21(1)(c).

[42] Wall Financial and the City say that the adjudicator misapprehended the evidence and applied "an unreasonably high" standard of proof by requiring evidence from non-parties to establish reasonable expectation of probable harm. Wall Financial and the City submit that contrary to the adjudicator's conclusion, the evidence before her did establish a reasonable expectation of probable harm.

[43] The standard of proof for harms-based exceptions is found in *FIPPA* and for s. 21(1)(c), is a reasonable expectation of probable harm. It is common ground that the adjudicator correctly articulated the reasonable apprehension of harm test as prescribed by the Supreme Court of Canada in *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 [*Merck Frosst*]. This is reflected in para. 52 of the Decision:

> [52] The Supreme Court of Canada describes the standard as "a reasonable expectation of probable harm." According to the Supreme Court, this standard is "a middle ground between that which is probable and that which is merely possible." It "refers to an expectation for which real and substantial grounds exist when looked at objectively," and requires a risk of harm that is "well beyond the merely possible or speculative," but it "need not be proved on the balance of probabilities". The determination of whether the standard of

> proof has been met is contextual, and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and "inherent probabilities or improbabilities or the seriousness of the allegations or consequences".
>
> [footnotes omitted]

[44] As the adjudicator noted, the reasonable expectation of probable harm standard constitutes a middle ground between that which is probable and that which his merely possible: *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 170 v. British Columbia (Information and Privacy Commissioner)*, 2018 BCSC 1080 at para. 52, citing *Merck Frosst*, *supra*, and *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31; see also Order F20-55 *British Columbia Institute of Technology (Re)*, 2020 BCIPC 64 at para. 41.

[45] The harm feared must be more than merely speculative, but certainty of harm is not required. The applicable standard was discussed by Adjudicator Loukidelis in Order 01-20, *University of British Columbia (Re)*, 2001 CanLII 21574 (B.C.I.P.C.) [*Re UBC*], as follows:

> [57] As I observed in Order 00-10, [2000] B.C.I.P.C.D. No. 11, Order 00-24, [2000] B.C.I.P.C.D. No. 27, and other orders, the standard of proof for harms-based exceptions is to be found in the wording of the Act. The standard in s. 17(1) and s. 21(1) is a reasonable expectation of harm. The harm feared must not be fanciful, imaginary or contrived. Evidence of speculative harm will not satisfy the test, but it is not necessary to establish a certainty of harm. The quality and cogency of the evidence presented must be commensurate with a reasonable person's expectation that disclosure of the disputed information could cause the harm specified in the exception.
>
> [58] As I said in Order 00-24, in the context of s. 17(1), I can be informed by evidence of a public body's or third party's perceptions of expected harm from disclosure. There may well be cases where such evidence takes on a self-serving quality which makes its value suspect. At the same time, the perspective or experience of a public body or third party may constitute a compelling, legitimate - even indispensable - consideration in the assessment of risk of harm from disclosure. These are matters which are assessed when I determine the weight to be given to opinion evidence from a source internal to, or identified with, a party for whose benefit an exception is claimed. Order 00-10 is an example of a case where I found affidavit evidence from

> employees of two third parties to be persuasive on the harm element under s. 21 of the Act.
>
> [59] Affidavits which merely assert that disclosure would cause the harm described in s. 17(1) or s. 21(1) of the Act do not constitute evidence that establishes a reasonable risk of harm. This point has been made in numerous access to information cases, including *SNC-Lavalin Inc. v. Canada (Minister of Public Works)* (1994), 79 F.T.R. 113 (F.C.T.D.), at p. 127, *Canada Broadcasting Corp. v. National Capital Commission*, [1998] F.C.J. No. 676 (F.C.T.D.), at paras. 25-29, and *Merck Frosst Canada Inc. v. Canada (Minister of National Health)*, [2000] F.C.J. No. 1281 (F.C.T.D.), at paras. 15-16.
>
> [emphasis added]

[46] I will address the adjudicator's reasoning under ss. 21(1)(c)(i), (ii) and (iii) in further detail below. However, I note that at base, Wall Financial and City are effectively asking the Court to reweigh the evidence of harm that was before the adjudicator and come to a different conclusion than she did regarding whether the evidence established a reasonable expectation of probable harm. I decline to do so. The Court is not entitled to reweigh the evidence, nor would doing so be a proper exercise of the Court's supervisory jurisdiction on judicial review: see e.g. *Maddock* at para. 45.

(a) Section 21(1)(c)(i) and (iii) – Disclosure of Site Plans and Facility Drawings

[47] Wall Financial submits that the Decision lacks rationality and internal consistency because the adjudicator came to different conclusions regarding the architectural drawings when she confirmed the City's decision to withhold the Facility Drawings, but ordered disclosure of the Site Plans.

[48] The pertinent issue in respect of this ground of review is whether the adjudicator's decision ordering disclosure of the Site Plans (and those portions of the email records in issue that included descriptions of those drawings and related information) and not the Facility Drawings, was reasonable in light of the record and arguments made before her. I find that it was.

[49] The terms “Facility” and “Site” were separately defined in the materials before the adjudicator and the adjudicator treated them as such in the Decision. Wall Financial now asserts that the distinction between the Site and Facility Drawings is only material in respect of the adjudicator’s analysis under s. 21(1)(a) and not when considering harms under s. 21(1)(c). I do not find this submission compelling.

[50] In submitting that the distinction between the Site and Facility Drawings only applies to the analysis under s. 21(1)(a), Wall Financial ignores those portions of the Decision in which the adjudicator dealt directly with its submissions regarding harm arising from disclosure of the Site Plans. With respect to s. 21(1)(c)(i), the adjudicator accepted Wall Financial’s CEO, Bruno Wall’s, fears that business partners would refuse to work with it in the future if the Site Drawings, among other information, was disclosed, but found that on the record before here, those fears were speculative:

> [66] Based on the evidence before me, I accept that the information at issue was prepared by the Architectural Firms for a confidential process, and that the Wall CEO fears that his company’s business partners would refuse to work with it in the future if, as a result of disclosure of the information at issue, they believed their confidential technical information could be publicly disclosed. However, I have no evidence to substantiate the Wall CEO’s fears.
>
> [67] The Wall CEO’s fears are inherently speculative. It is difficult to square the Wall CEO’s fear that the information is so sensitive that its disclosure would harm Wall Financial’s relationships with its business partners and clients with the fact that the very business partners whose information is at issue in this inquiry (the Architectural Firms) declined to provide evidence to protect that information. In any event, the Third Parties provided no evidence that a single business partner or client might hesitate to work with Wall Financial in the future should the Architectural Firm’s information be disclosed, and no background information that would allow me to assess the probability that the CEO’s fears might be realized. What I am left with is the fact that the information was prepared for a confidential process and the Wall CEO’s fear.
>
> [68] While harm under s. 21(1)(c)(i) need not be proved on a balance of probabilities, to succeed a party must establish “an expectation of harm for which real and substantial grounds exist when looked at objectively.” In the circumstances, I am not satisfied that the evidence before me is sufficient to establish a reasonable expectation of probable harm.
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> [footnotes omitted, emphasis added]

[51] In contrast, the adjudicator found that the evidence established that the Facility Drawings contained "detailed information about the proposed design of each floor of the Facility", which could allow competitors to replicate Revera's unique designs such that disclosure of the Facility Drawings could harm Revera's competitive position: Decision at para. 73.

[52] With respect to s. 21(1)(c)(iii), the adjudicator again determined that the evidence was insufficient to establish a reasonable expectation of harm to Wall Financial arising from disclosure of the Site Plans, among other information. The adjudicator concluded that Wall Financial failed to meet its onus, reasoning that since Wall Financial owns the Site, it was unclear what use anyone else could make of Site-specific information, or what loss could follow:

> [78] I do not accept the Third Parties' argument that disclosure of the disputed information of Wall Financial could reasonably be expected to result in undue financial loss or gain to any entity.
>
> [79] First, the Wall CEO's evidence that disclosure could result in "possible loss" and "possible gain" does not satisfy the evidentiary standard established by the Supreme Court of Canada which requires a risk of harm that is "well beyond the merely possible or speculative."
>
> [80] Moreover, the Third Parties do not explain how disclosure of the withheld information could result in financial loss or gain to any entity. On its own, the fact that a competitor could obtain information paid for by a party is not sufficient to establish harm under s. 21(1)(c)(i). In this case, as Wall Financial owns the Site, it is particularly unclear what use any other entity could make of the information relating to designs for the Site, and therefore what loss could result to Wall Financial from disclosure of the information.
>
> [footnotes omitted]

[53] Given the adjudicator's evidentiary findings, namely that the record established a reasonable expectation of harm to Revera from disclosure of the Facility Drawings but not to Wall Financial from disclosure of the Site Plans, there is nothing irrational or inconsistent about the adjudicator coming to different conclusions about disclosure of the two different types of drawings. The record before, and submissions made to, the adjudicator show that the focus of the evidence was potential harm to Revera from disclosure of the Facility Drawings, not potential harm to Wall Financial from disclosure of the Site Plans. Indeed, Wall

Financial accepted in oral submissions that the evidence of potential harm to Revera from disclosure of the Facility Drawings was "amplified" in comparison to that of potential harm to Wall Financial from disclosure of the Site Plans, and that no explanation was provided to the adjudicator for how the Site Plans and the Facility Drawings may "work together" to cause harm.

[54] Wall Financial submits the adjudicator made "an egregious error" in determining that "it is not clear that any other records contain information related to the design of the Facility": Decision at footnote 36. In support of this position, Wall Financial identifies a number of emails that include information such as revisions to the floor space ratio, location and height of buildings, set back, and building positions. The adjudicator reasoned that the Facility Drawings "provide the kind of information required to replicate Revera's unique designs", and that releasing that information could reasonably be expected to harm significantly Revera's competitive position: Decision at paras. 73-74. None of the emails identified by Wall Financial contain the sort of information that would allow replication; they are focussed largely on the Site, with little specific beyond general characteristics of the Facility. In my view, it was open to the adjudicator to draw a distinction between such general Facility characteristics about the Facility and the detailed and specific information contained in the Facility Drawings.

[55] Wall Financial cannot avoid the consequences of having failed to adduce sufficient evidence to satisfy the reasonable prospect of harm test in regards to the Site Plans by now arguing that the distinction between the Site Plans and the Facility Drawings is immaterial to the analysis under s. 21(1)(c), or by asking the Court to reweigh the evidence and come to a different conclusion than the adjudicator. Accordingly, I find that the Decision is not unreasonable because the adjudicator came to different conclusions regarding disclosure of the Site Plans and the Facility Drawings.

(b) Section 21(1)(c)(ii) – Similar information no longer supplied if disclosure ordered

[56] Wall Financial and the City submit that the adjudicator's conclusion under s. 21(1)(c)(ii) that disclosure would not result in similar information not being provided in the future was unreasonable because she did not properly consider the evidence before her, imposed too high an evidentiary standard, and substituted her own opinion in place of the actual evidence.

[57] Wall Financial and the City say that the adjudicator's misapprehension of the evidence is demonstrated in paras. 91-95 of the Decision. They raise multiple grounds upon which they say her conclusions are unreasonable, most of which are variations on the same theme, namely challenges to how the adjudicator considered and weighed the evidence.

[58] First, Wall Financial and the City say that the adjudicator imposed too high an onus by requiring that they lead evidence of how unrelated third parties would react to disclosure of the disputed information: see e.g. Decision at para. 90. I do not find this to be an accurate characterization of the Decision, or the burden imposed by the adjudicator.

[59] The adjudicator considered whether it was in the public interest that similar information continue to be supplied to the City, and accepted that to be the case. Her reasoning in paragraphs 88 through 95 provides a rational and cogent explanation for why she found that the applicable standard was not met on the record before her. She also specifically noted the types of evidence lacking in the record that would have been responsive to this issue: Decision at para. 94.

[60] In this respect, the adjudicator recognized that s. 21(1)(c)(ii) generally considers the impact of disclosure on the supply of information by the community at large, not a single entity, and that neither Wall Financial nor the City directed her to any OIPC decisions to the contrary: Decision at para. 93. The adjudicator turned her mind to whether evidence about a single actor could ever engage s. 21(1)(c)(ii), but

declined to determine that issue because she found it unnecessary given the state of the evidence before her regarding Wall Financial's refusal:

> [94] Without making any determination as to whether evidence about a single actor could ever engage s. 21(1)(c)(ii), the evidence before me in this case is not sufficient to persuade me that Wall Financial's refusal to supply similar information, alone, engages s. 21(1)(c)(ii). The rezoning enquiry process is open to any proponent considering a rezoning application in the future. Neither the City nor the Third Parties provided any evidence (or even argument) that would allow me to assess what proportion of the City's rezoning enquiries Wall Financial was responsible for in the past, or likely will be responsible for in the future. The parties simply did not address this issue. In all of the circumstances, I am not persuaded that Wall Financial's refusal to supply similar information in response to the disclosure of the information at issue is sufficient to engage s. 21(1)(c)(ii).
>
> [emphasis added]

[61] This passage does not impose a higher standard by requiring evidence from third parties and rather, adopts an approach consistent with other OIPC decisions on point. For example, in Order F24-23, *City of Port Alberni (Re)*, 2024 BCIPC 30 [*Port Alberni*], Adjudicator Lonergan recognize that one entity's unwillingness to supply information without assurances of confidentiality is typically not enough to establish that similar information will not be supplied to a public body under s. 21(1)(c)(ii):

> [81] One entity's unwillingness to supply information without assurances of confidentiality is typically not enough to establish that similar information will not be supplied to a public body under s. 21(1)(c)(ii). This is particularly the case if there are other incentives for supplying the disputed information or multiple entities who can supply similar information. The fact that one third party insists on confidentiality does not mean that similar information will not be supplied by other third parties in the future. Therefore, to establish that s. 21(1)(c)(ii) applies in this matter, the City must show that disclosing the information at issue could reasonably be expected to result in other entities, and not just WFP, becoming unwilling to supply similar information.
>
> [citations omitted]

[62] Wall Financial also says that the adjudicator failed to undertake the analysis reflected in *Port Alberni* as to what future proponents would do: *Port Alberni* at para. 83. In *Port Alberni*, an applicant requested access to reports that the City of Port Alberni received from a consultant about land that the City sought to purchase from Western Forest Products ("WFP"). WFP and its consultant objected to the reports

being disclosed. The in-camera evidence before the adjudicator in *Port Alberni* explained why commercial real estate sales typically require purchasers to undertake their own investigations as opposed to the seller supplying scientific and technical information. Based on that evidence, the adjudicator was satisfied that:

> [82] …there are universal business concerns among commercial sellers of real estate that strongly weigh against supplying similar information if those sellers cannot be certain that the information will be kept confidential. This evidence helps me understand that those concerns are not unique to WFP and why WFP would be unwilling to supply similar information in the future.

[63] Wall Financial says that a similar analysis ought to have been undertaken by the adjudicator here and the adjudicator should have considered whether Wall Financial's CEO's evidence could be taken as establishing universal business concerns on the part of developers. This submission is difficult to accept for two reasons. First, Wall Financial concedes that it did not make this argument before the adjudicator. It is a well-established principle that new issues should not be raised first time on judicial review, though it is not a hard and fast rule and the court may exercise its discretion to allow a party to raise a new issue: *Athwal v. Johnson*, 2023 BCCA 460 at para 64.

[64] Regardless, even if this submission had been made to the adjudicator, the record does not support the finding Wall Financial now seeks. Even generously construed, the evidence on this point was limited. Affidavits which merely assert that disclosure will cause the harm described in s. 21(1) do not constitute evidence that establishes a reasonable risk of harm: *Re UBC* at para. 59.

[65] The adjudicator accepted Wall Financial's evidence, but noted that there was no evidence—or even argument—based on which she could assess the likelihood that future proponents would make the same decision as Wall Financial said it would, namely, not to participate in the rezoning enquiry process:

> [90] I also accept the Wall CEO's evidence that Wall Financial would not participate in the rezoning enquiry process in the future should information it supplied to the City be disclosed. <u>However, the Third Parties did not address how other developers might respond – that is, they provided neither evidence, nor</u>

> argument to suggest that other developers might also refuse to participate in the enquiry process or supply similar information to the City as a result of the disclosure of the information at issue. In addition, the Wall CEO provided clear evidence that the enquiry process provides financial benefits to proponents.
>
> [emphasis added]

[66] Wall Financial also points to the City's evidence, but that evidence speaks only to the City's concerns that future proponents may be less forthcoming, it does not speak to how other developers might respond. The record in this case is not akin to that in *Port Alberni,* where the evidence satisfied the adjudicator that there were "universal business concerns" among commercial real estate sellers that assisted the adjudicator in understanding that those concerns were not unique to WFP: *Port Alberni* at para. 83. The record here simply did not provide the necessary basis for the adjudicator to undertake the same analysis as in *Port Alberni*, particularly in the absence of any submissions to that effect being made before her. The Decision is not, therefore, unreasonable because the adjudicator failed to do so.

[67] Second, Wall Financial and the City say that the Decision is unreasonable because the adjudicator ignored the evidence before her and substituted her own opinion in place of that evidence, relying on *College of Physicians and Surgeons of British Columbia v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 354 at para. 99 [*College of Physicians*]. In their submission, this error is evident in para. 91 of the Decision where the adjudicator found that that while future proponents may weigh their interests in confidentiality against the benefits of participating in the rezoning enquiry process, she was not prepared to speculate that future proponents would make the same calculation as Wall Financial and refuse to participate in the enquiry process:

> [91] In my view, as there are clear incentives to participating in the rezoning enquiry process, the effect of disclosure of the disputed information is that future proponents may weigh their interest in confidentiality against their interest in benefitting from the process before deciding whether or how much to participate in the rezoning enquiry process. In these circumstances, absent some evidentiary basis for (or at least argument in support of) doing so, it is not reasonable to speculate that future proponents would make the same calculation as Wall Financial and refuse to participate. Equally, it is not reasonable to assume that they would, as the City fears, participate less fully.

> The onus is on the City and Third Parties, and I am not satisfied that any entity other than Wall Financial could reasonably be expected to refuse to supply similar information as a result of disclosure of the information at issue.

[68] A decision can be rendered unreasonable if an adjudicator fails to acknowledge evidence of harm that will flow from a decision to release confidential information: *College of Physicians* at para. 99, citing *University of British Columbia v. Lister*, 2018 BCCA 139 [*Lister*]. In *Lister*, an adjudicator's decision that UBC's admissions rubric ought to be disclosed was held to be unreasonable because "there was simply no basis on the evidence before her on which she could substitute her opinion or belief for that of UBC": *Lister* at para. 47. The Court in *College of Physicians* came to the same conclusion, finding that the adjudicator ignored the College's uncontradicted evidence about the importance of assessor anonymity and substituted her own opinion for that of the College without an appropriate evidentiary basis upon which to do so: *College of Physicians* at para. 99.

[69] In contrast to *College of Physicians* and *Lister*, I find that the conclusions reached by the arbitrator in this case were available to her on, and grounded in, the evidence. The adjudicator is presumed to have considered all of the evidence—or lack thereof—before her: *Northwest Plastics Ltd. v Bellin*, 2025 BCSC 1215 at para 24, citing *CS v. British Columbia (Human Rights Tribunal)*, 2017 BCSC 1268 at para. 219. There was no evidence before the adjudicator akin to that in *Lister*, where the UBC provided "cogent reasons for why its economic interests may be harmed by disclosure": at para. 46.

[70] *Lister* is in any event distinguishable because it involved s.17(1) of *FIPAA*, not s. 21(1)(c)(ii). This is material because, while the standard remains the same, the focus of the relevant harm is different. Section 17(1) provides that, "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" (emphasis added). The harm targeted by s. 17 is harm to the public body's interests. Accordingly, the analysis in *Lister* focussed on harm to

UBC's interests as the public body. The issue was whether UBC would be harmed and there was no basis in that case for the adjudicator to reject UBC's uncontradicted evidence that it would be.

[71] In contrast, s. 21(1)(c)(ii) mandates a broader inquiry by requiring consideration of harm to the public interest on account of similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied. The focus is on harm to the public interest, not the public body. In this respect, the policy considerations that underlie s. 21(1)(c) come into play. These considerations also include the public's quasi-constitutional right to access information held by public bodies in accordance with *FIPPA*: see e.g. *British Columbia (Attorney General) v. British Columbia (Information and Privacy Commissioner*, 2025 BCSC 1365 at para. 15.

[72] I am not persuaded that the adjudicator substituted her own opinion in place of the evidence. She considered the whole of the record, weighed the evidence, and made findings of fact where available on the evidence. Where no or insufficient evidence was available, the adjudicator found that Wall Financial and the City had not met their onus. In doing so, she remained cognizant that Wall Financial and the City bore the burden of establishing a reasonable expectation of probable harm under s. 21(1)(c)(ii), and ultimately concluded that they had failed to meet that burden: Decision at para. 96.

[73] In this respect, the adjudicator's conclusion is consistent with that reached on a similar record in Order F20-41, *British Columbia Housing Management Commission (Re)*, 2020 BCIPC 49 [*BCHMC*]. In that decision, the applicants requested information about the contract of purchase and sale for a social housing site sold to Holborn Properties Limited ("Holburn") in 2008. Holburn resisted the request and advanced many of the same arguments as Wall Financial, including that it would be unlikely to negotiate with public bodies in the same manner in the future, and that disclosure would have a "chilling effect" on other developers' negotiations. The adjudicator in *BCHMC* rejected Holburn's position, reasoning that:

> [57] Holborn did not explain how the results it suggested could reasonably be expected to come about if the information in dispute were disclosed. Other than itself, Holborn did not name any other developers who would be reluctant to participate in future agreements with public bodies for this reason. Contracts and agreements with third parties have been disclosed, both proactively and under FIPPA, for many years. There is no evidence that third parties have been or will be reluctant to participate in future agreements because of the potential for disclosure.
>
> [footnotes omitted, emphasis added]

[74] Given the state of the record before the adjudicator, I am not persuaded that she misapprehended or ignored Wall Financial's evidence in reaching the conclusions she did under s. 21(1)(c)(ii). Wall Financial simply did not meet its evidentiary burden. This is illustrated by footnote 49 in the Decision where the adjudicator noted as follows regarding the evidence before her:

> At its highest, the evidence before me is that Wall Financial has participated in the process at least once; is a real estate developer based in BC; and that Wall Financial and its partners will routinely engage in similar confidential discussions with local government bodies (though it is not clear that these bodies include the City) as a preliminary step prior to submission of a formal rezoning application.

[75] The evidence before the adjudicator in the present case consisted of speculative assertions of harm on the one hand, and detailed articulation of the significant benefits to both the City and Wall Financial on the other. In the circumstance, I find that the adjudicator's conclusions were reasonable in light of, and available to her on, the record. I therefore conclude that the Decision is not unreasonable on the basis that the adjudicator misapprehended or ignored the evidence, or that she substituted her own opinion in place thereof.

[76] Finally, Wall Financial and the City say that the adjudicator "applied the general rule about financial incentives in a strict manner, contrary to the OIPC's jurisprudence". Wall Financial also submits that the decisions relied on by adjudicator in doing so are distinguishable on account of the different nature of the records in issue.

[77] Section 21(1)(c)(ii) generally does not apply where there is a financial incentive for providing the information in issue: Order F20-55, *British Columbia Institute of Technology (Re)*, 2020 BCIPC 64 [*BCIT*] at para. 47; Order F15-53, *British Columbia (Justice) (Re),* 2015 BCIPC 56 at para. 23; Order 03-05, *City of Vancouver (Re),* 2003 CanLII 49169 (B.C.I.P.C.) [*City of Vancouver*] at para. 15. In *BCIT*, the adjudicator considered and rejected essentially the same argument as Wall Financial advances. In that decision, Manulife asserted that if it knew the information would be disclosed it would not have provided the same level of detail in its proposal to provide health and welfare benefits to BCIT, and that proponents would no longer supply similar information to BCIT. The adjudicator was not persuaded that other proponents would no longer supply detailed information given the financial incentives of doing so:

> [47] I am not satisfied that disclosure of the disputed information would result in similar information no longer being supplied to BCIT and the Consortium. Past orders establish that s. 21(1)(c)(ii) generally does not apply where there is a financial incentive for providing the information. In the procurement context, there is clearly a financial incentive for a proponent to provide a proposal setting out in detail how it meets the RFP criteria. This improves the proponent's chances of winning a potentially lucrative contract. Manulife says it would not have provided the same level of detail if it had known that the disputed information would be disclosed. However, I am not persuaded that other proponents would no longer supply detailed information given the clear financial incentive to provide a fulsome proposal. I conclude that s. 21(1)(c)(ii) does not apply to the disputed information.
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> [footnotes omitted, emphasis added]

[78] Wall Financial says that *BCIT* is distinguishable because it arose in the procurement context instead of rezoning. I do not find this submission persuasive. Financial incentives may differ in nature and degree: *City of Vancouver* at para. 16. However, the jurisprudence does not limit consideration of financial incentives to any particular context and rather demonstrates that the same reasoning applies irrespective of the context within which financial incentives may arise. For the same reason, I am not persuasive that *BCHMC* is likewise distinguishable on the basis that it involved disclosure of a contract of purchase and sale.

[79] The adjudicator's conclusions under s. 21(1)(c)(ii) turned at least in part of her finding that there are clear incentives to participating in rezoning enquiry process. Mr. Wall repeatedly asserted that Wall Financial would no longer participate in the rezoning enquiry process if the disputed records were disclosed, but also testified at length to how "highly beneficial" that process is to both it and the City. He testified that the preliminary discussions with the City afforded by the rezoning enquiry process in turn enable Wall Financial to pursue redevelopment in a more "efficient and effective" manner; put differently, the process results in significant savings of both time and expense for Wall Financial. Mr. Wall quantified the cost savings of not needing to revise plans and drawings within the formal rezoning process alone at $500,000:

> [30] Based on my extensive experience in the industry, it is more efficient and effective for everyone involved, including the residents and citizens, to be able to review and refine options before going to the expense of final plans, drawings and proposals in the formal application process that need to be revised and change in ways that can be addressed to the community's benefit in advance. Further, it could cost approximately $500,000 to revise drawings and plans as part of a formal re-zoning application.
>
> [31] Therefore, there is significant benefit to Wall Financial, Revera and the City in ironing out any issues and/or concerns with potential re-development options prior to submitting a formal re-zoning application, at which time the public is able to provide input and commentary.

[80] The adjudicator found these incentives outweighed Wall Financial's bare assertion that it would not participate in the future, and the City's unsupported concerns about what other proponents might (or might not) do. The adjudicator's conclusion that "the Wall CEO provided clear evidence that the enquiry process provides financial benefits to proponents" (Decision at para. 90) was amply supported by the evidence, which the adjudicator summarized as follows:

> [87] However, the Wall CEO also provides detailed evidence about the benefits of the process to Wall Financial. He explains that the rezoning enquiry process was "highly beneficial" to Wall Financial because it allowed Wall to gauge the City's level of support, receive full and frank feedback from the City, and workout any potential issues prior to committing to a formal re-development application. He also deposes that it was more efficient for Wall Financial to be able to refine options before going to the expense of obtaining final plans and drawings – which he states cost approximately $500,000.

[81] The adjudicator did not apply an overly formalistic approach to her consideration of whether negated a reasonable apprehension of harm under s. 21(1)(c)(ii). She considered the significant financial incentives at play and, in my view, her conclusions respected and reflected the prevailing factual and legislative context.

[82] In assessing whether there were financial incentives at play which would negate the harms contemplated in s. 21(1)(c)(ii), the adjudicator did that which she was required to: she considered and weighed the totality of the evidence, applied the law to the evidence, and arrived at conclusions which I find were reasonable and available to her on the record. Wall Financial and the City are effectively asking the Court to reweigh the evidence and come to different conclusions than the adjudicator. This is not the proper role of the Court and I decline to do so.

[83] Accordingly, I conclude that the Decision is not unreasonable because the adjudicator misapprehended the evidence, imposed too high an evidentiary standard, or substituted her own opinion in place of the actual evidence.

Conclusion

[84] The Decision is not unreasonable on any of the grounds of review advanced by Wall Financial and the City. The petition is thus dismissed.

[85] If the parties are unable to agree on the appropriate costs order in the circumstances, leave is granted to make submissions as to costs, within 30 days.

"Hughes J."