IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Vancouver (City) v. British Columbia (Information and Privacy Commissioner),* 2026 BCSC 881

Date: 20260513
Docket: S244644
Registry: Vancouver

Between:

City of Vancouver

Petitioner

And

Information and Privacy Commissioner for British Columbia and John Doe

Respondent

Before: The Honourable Justice Kirchner

Reasons for Judgment

Counsel for the Petitioner:	A. Aguilar
Counsel for the Respondent, Information and Privacy Commissioner for British Columbia:	T. Urquart
Counsel for the Attorney General of British Columbia:	T. Mason
No other appearances	
Place and Dates of Hearing:	New Westminster, B.C. February 5 and 6, 2026
Place and Date of Judgment:	Vancouver, B.C. May 13, 2026

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I. Introduction

[1] The City of Vancouver (the "City") seeks judicial review of a decision of an adjudicator appointed under the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 ("*FIPPA*") ordering the City to disclose certain information prepared for it by its contractor, Coriolis Consulting Corp. The requested information includes financial analysis and feasibility testing records for various types of new rental housing development in certain zoning districts within the City. The City uses this information to assess the potential for purpose-built rental housing in different areas of Vancouver and to determine how the City might encourage and incentivize developers to build that housing.

[2] After a review process and a mediation, the City disclosed all the records sought by the requesting party except for the street addresses (the "Case Study Addresses") of specific sites that Coriolis used as representative examples of rental housing development potential. This information was withheld because the owners of those properties are not informed that their property is used as a case study. The City maintained that if Case Study Addresses were disclosed, a person could connect the financial analysis and feasibility testing data, which was disclosed, with the specific Case Study Address. This would give the public financial information about the development potential (or lack of potential) for that specific property. The City maintained this could affect (positively or negatively) the land value for that property.

[3] The City relied on ss. 17(1) *FIPPA*, which permits a public body to refuse to disclose information that could reasonably be expected to harm its financial or economic interests, and s. 21(1), which requires the public body to withhold from disclosure certain types of records that are of or about a third party (s. 21(1)).

[4] In an order issued June 14, 2024, a statutory delegate of the Information and Privacy Commissioner (the "Adjudicator") ordered that the City must disclose the Case Study Addresses to the requesting party. The City now seeks judicial review of that decision.

[5] The requesting party, who is identified in the style of cause as “John Doe”, did not participate in this judicial review. Thus, with the Court’s leave, the Information and Privacy Commissioner made a substantive arguments supporting the Adjudicator’s decision. The Court also received submissions from the Attorney General of British Columbia.

II. Background

[6] In December 2021, as part of the City’s Secured Rental Policy, Vancouver City Council approved amendments to the zoning bylaw in an effort to “streamline” future rezoning applications in surrounding low-density areas. The objective was to accelerate the delivery of rental housing in local shopping areas and nearby low-density areas.

[7] As part of implementing these changes, the City retained Coriolis Consulting Corp. to perform financial modelling of various purpose-built rental housing development scenarios. The City had a long-standing relationship with Coriolis which had provided financial analysis for the City for over 25 years. It was, and is, the City’s primary consultant for this type of financial modeling work.

[8] Coriolis prepared three memoranda and a series of draft exhibits to support the conclusions in the memos. The exhibits were marked as "DRAFT for discussion purposes only". The memos were intended for public disclosure, and they were publicly disclosed on the City’s website, but the exhibits were not.

[9] The exhibits contain a financial analysis of hypothetical development scenarios for different areas in the City. The City refers to these as “pro formas”. The analysis includes financial modelling of the impact of different existing or proposed zoning scenarios on estimated profit margins or estimated supportable land values for various case study properties. This information is presented in a simplified form in the exhibits in a series of tables that identify the civic address of each case-study property, the existing land and income values for each property,

and estimates of what the land and income values would be for that property under a particular development scenario.

[10] Coriolis does the financial modeling by using actual residential and low-density commercial properties as case studies for potential rental housing development. It then generalizes its analysis of the case-study property to a broader neighbourhood or zoning district. The case study properties are selected as typical examples of sites with development potential within each area but are not currently undergoing development. The financial modelling is based on publicly available information, but the owners of the case study properties are not told that the analysis is being done of their property.

[11] Essentially, the purpose of the analysis is to assess the feasibility for profitable development in those areas so that private developers can be encouraged or incentivized by the City to build rental housing. The City's assessments typically allow for a profit to the developer that does not exceed 15% of the project costs. In practice, it manages to that notional cap by assessing "community amenity contributions" from developers to capture increases in land value that result from a re-zoning. Community amenity contributions are negotiated cash or in-kind contributions that developers provide to the City when council grants development rights through re-zoning: *Order F17-19; Vancouver (City)(Re),* 2017 BCIPC 20 at para. 34.

[12] According to Edna Cho, Senior Housing Planner with the City, purpose-built rental development is generally less profitable than strata development and the City must provide financial incentives to developers to build rental housing. She deposed that Coriolis' financial modeling provides essential information to the City to assess what incentives and at what amount would be effective to promote rental housing developments.

[13] On July 5, 2021, John Doe made a request for the information contained in the exhibits. On August 27, 2021, the City provided several records in

response to John Doe's request but withheld other records in reliance on ss. 13(1) and 17(1) of *FIPPA*. Section 13(1) allows a public body to refuse to disclose information that would reveal advice or recommendations developed by or for the public body. Section 17(1), which I will discuss in detail below, provides that a public body may refuse disclosure of information where disclosure could reasonably be expected to harm the financial or economic interests of the public body.

[14] John Doe sought a review before the Office of the Information and Privacy Commissioner of the City's decision to withhold some records and a mediation was held under s. 55 of *FIPPA*. In that process, the City withdrew its reliance on s. 13(1) but decided to rely on s. 22(1), which obligates a public to refuse to disclose personal information if doing so would be an unreasonable invasion of a third party's personal privacy. However, during the mediation, the City again changed its position and withdrew its reliance on s. 22(1). By the end of the mediation, the City agreed to disclose all the remaining requested records except for the Case Study Addresses, which were redacted in the disclosed documents.

[15] The matter than proceeded to an inquiry under s. 56 of *FIPPA* before the Adjudicator. In the course of the inquiry, the City was given leave to add s. 21(1) of *FIPPA* as a ground for withholding the Case Study Addresses.

[16] Thus, at issue before the Adjudicator at the inquiry was whether s. 17(1) or s. 21(1) allowed the City to withhold from the Case Study Addresses from disclosure.

[17] The Adjudicator held that the City must disclose the Case Study Addresses. She accepted that the Case Study Addresses constituted financial information since those specific addresses could be matched with the financial data found in the redacted pro formas the City had agreed to disclose. She also accepted that if the City was compelled to disclose the Case Study Addresses,

Coriolis would not provide those addresses to the City in any future modeling work.

[18] However, with respect to s. 17(1), she found that the City's evidence fell short of establishing a reasonable expectation of financial or economic harm that would result from disclosure of the Case Study Addresses, even if Coriolis stopped sharing that information with the City in future modeling work. With respect to s. 21(1), the Adjudicator found that the Case Study Addresses and associated financial modeling was not information "of or about a third party", be it Coriolis or the owners of the case study properties. As that is a necessary element of s. 21(1), she dismissed the City's reliance on that section without further consideration.

III. Issues on Judicial Review

[19] The City argues the Adjudicator:

a) made findings of fact that cannot be justified on the record;

b) imposed an unduly high standard of proof for financial or economic harm under s. 17(1) and applied a novel and unwarranted "threshold of harm" test; and

c) unreasonably failed to apply the principles of statutory interpretation with respect to both s. 17(1) and 21(1).

[20] I propose to address these points by first reviewing the adjudicator's decision under s. 17(1) and then her decision under s. 21(1). I will address each of the City's points in the course of that analysis.

IV. Standard of Review

[21] There is no dispute the standard of review is reasonableness: *Airbnb Ireland UC v. Vancouver (City)*, 2024 BCCA 333 at para. 27. That is, the decision can only be set aside if the Court finds that it is unreasonable.

[22] Reasonableness focuses on the decision-maker's reasoning process and the outcome: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 83. It does not involve asking whether the reviewing court would have made the same decision. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, para. 85. Reasonableness is concerned with "the existence of justification, transparency and intelligibility within the decision-making process" and whether the decision falls within a range of possible, acceptable outcomes which are defensible on the facts and law": *Vavilov* para. 86.

[23] To be reasonable, a decision must be based on reasoning that is both rational and logical. Reasonableness review is not a "line-by-line treasure hunt for error" but 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 decision-maker from the evidence before them to their conclusion: *Vavilov*, para. 102.

[24] Where, as here, the decision maker has provided written reasons, those are the focal point for judicial review. A principled approach to judicial review puts those reasons first and the court must examine the reasons with "'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion": *Vavilov* para. 84. If the reasons, read wholistically and in light of the record before the decision maker, fail to reveal a rational chain of analysis or reveal that the decision was based on an irrational chain of analysis, the decision will be unreasonable: *Vavilov*, para. 103. Similarly, internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies: *Vavilov*, para. 104.

VI. Section 17(1)

[25] Section 17(1) allows a public body to refuse disclosure of information where that disclosure could reasonably be expected to harm:

a) the financial or economic interests of the public body or the government of British Columbia; or

b) the ability of "that government" to manage the economy.

[26] Before the Adjudicator, the City made two principal arguments on s. 17(1). First it argued that the City is a "government" as contemplated by s. 17(1) and the release of the Case Study Addresses could reasonably be expected to harm its ability to "manage the economy" as it relates to rental market housing in Vancouver.

[27] Second, it argued that if the Case Study Addresses had to be disclosed, Coriolis would stop providing that information to the City and that would harm the City's financial or economic interests.

A. Statutory Provisions

[28] The provisions of s. 17(1) applicable to the City's argument are 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;

[29] The parties agree that the Adjudicator correctly summarized the following legal principles applicable to s. 17(1):

a) The public body seeking to withhold disclosure under s. 17(1) must show there is a "reasonable expectation of probable harm" to its financial or economic interests if the disclosure were to be made: *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy*

Commissioner), 2014 SCC 31 at para. 52. It does not need to prove that disclosure will in fact result in harm or even that such harm is probable.

b) The risk of harm must be well beyond the merely possible or speculative, but it need not be proved on a balance of probabilities that disclosure will in fact result in such harm: *Ontario (Community Safety)* para. 52.

c) The inquiry under s. 17(1) is contextual, the amount and quality of evidence needed to meet the standard will depend on the nature of the issue and the "inherent probabilities or improbabilities or the seriousness of the allegations or consequences": *Ontario (Community Safety)*, para. 52; *Merck Frosst Canada Ltd. v. Canada (Health),* 2012 SCC 3 at para. 94.

d) Paragraphs (a) through (f) of s. 17(1) are examples of information which, if disclosed, could reasonably be expected to result in harm. They are neither an exhaustive list nor stand-alone provisions. Even if the information in question fits within one of those paragraphs, the public body must still establish that disclosure could reasonably be expected to result in harm to its financial or economic interests.

[30] The parties disagree on how the Adjudicator used language from former Privacy Commissioner Loukidelis' decision in *Order F08-22*, 2008 CanLII 70316 (BC IPC) at para. 50 where he said the "threshold for harm under s. 17(1) is not a low one met by any impact." The City argues the Adjudicator relied on this to unreasonably invoke a stand-alone "threshold of harm" test for s. 17(1) that has not otherwise been recognized. I will address that point later in these reasons.

B. Harm to the City's Ability to Manage the Economy

1. The Adjudicator's Decision

[31] The Adjudicator first dealt with the City's argument that disclosure of the Case Study Addresses could reasonably be expected to harm the City's ability to manage

the economy. Section 17(1) allows a public body to refuse to disclose information where the disclosure "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…" The City argued the underlined words apply not just to the government of British Columbia but to any public authority (as defined by the *Act*) that is also a government, including the City.

[32] The Adjudicator rejected that argument. She correctly stated the modern approach to statutory interpretation, namely that the words of an *Act* are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of the Legislature: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21. She then held that the word "that" before "government" referred only to the government of British Columbia and not other governments that might also be public bodies. Her reasons were as follows:

> [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 [footnote reference to ss. 33(5), 60(3)(b), 65(2), and 69(2)].

[33] Having concluded that harm to the government's ability to manage the economy applies only to the government of British Columbia, the Adjudicator did not further consider the City's submissions on this point.

2. Discussion

[34] I find nothing unreasonable in this aspect of the Adjudicator's decision. On judicial review, matters of statutory interpretation are evaluated on the reasonableness standard. The reviewing court does not undertake its own *de novo*

analysis of the decision-maker's interpretation but rather examines the decision as a whole and considers whether the decision-maker's interpretation of the statute falls within the bounds of reasonableness: *Vavilov* paras. 115-116. The decision-maker's interpretation of the statute must be consistent with the modern principle of statutory interpretation but the decision-maker need not engage in a formalistic statutory interpretation exercise in each case: *Vavilov,* paras. 118-120.

[35] The City argues the Adjudicator unreasonably focused her analysis on the single opening paragraph of s. 17(1) rather than considering the section as a whole in the context of the *Act*. It argues there is overlap between financial and economic harm to a government and harm to its ability to manage the economy. Thus, it argues, it is unreasonable to interpret the section to prevent a public authority that is also a government from withholding disclosure when disclosure may harm its ability to manage the economy. It also points out that Schedule 1 to the *FIPPA* where a "municipality" is included in the definition of "local government body".

[36] I do not find these arguments persuasive. The Adjudicator correctly stated the modern principle of statutory interpretation. She considered the ordinary and grammatical meaning of "that government" in the context of the section. She considered other sections of the *Act* where the demonstrative pronoun "those" is used to connote more than one thing. In my view, her interpretation is a reasonable one that is consistent with the modern approach.

[37] I do not read Schedule 1 *FIPPA* as assisting the City's argument. I do not see the definition of "local government body" in the Schedule as informing the meaning of "that government" in s. 17. Further, the definition of "local government body" in the Schedule includes municipalities but it also includes a municipal police board, a library board, and a board of trustees established under the *Cremation, Interment and Funeral Services Act*. It cannot be reasonably suggested any of these entities would be a "government" that manages the economy as contemplated by s. 17(1).

[38] I would not accede to this ground of judicial review.

C. Harm to the City's Financial or Economic Interests

1. The Adjudicator's Findings

[39] Next the Adjudicator considered the City's argument that disclosure of the Case Study Addresses could harm the City's financial or economic interests because:

a) disclosure could alter behavior in the real estate market;

b) disclosure would cause Coriolis to stop providing the Case Study Addresses to the City which would cause financial harm to the City in two respects:

i. the City would incur additional staffing costs to adjust to a new consultant who would provide the Case Study Addresses or to a new approach to financial modeling that did not require disclosure of the Case Study Addresses;

ii. financial and economic harm would flow from the City's inability to scrutinize and fully rely on the Coriolis' financial modeling without the benefit of the Case Study Addresses.

(a) Altered Behavior in the Real Estate Market

[40] On the first point, the City argued that altered behavior in the real estate market would harm its financial or economic interests because if a development did not proceed or was delayed, the City will be deprived of development fees and would face increased staffing costs. It also argued that altered behavior would impact the City's ability to manage the housing market or cause undue financial gain or loss to the owners of the property since there would be public information about the financial benefits or detriments to developing their property.

[41] The City relied on Ms. Cho's evidence that "financial modelling would have the effect of encouraging or discouraging development at particular sites, and/or

would increase or decrease property values". The Arbitrator found Ms. Cho's evidence to be "ambiguous, vague, and speculative" and thus unpersuasive.

[42] The City also relied on the evidence of Blair Erb, the owner of Coriolis, that "disclosure of the land value estimates could have an impact on the price a purchaser would be willing to pay for a property if the development scenario identified in the Exhibits was permitted by City policy". He was particularly concerned that disclosure could cause a sale to fall through if an agreed upon deal had not been completed. Mr. Erb deposed that in the past, the City implemented Coriolis' recommendations on another project and it "dampened the values that developers paid for the sites" in Coriolis' study area.

[43] The Arbitrator found Mr. Erb's evidence lacked details and specificity. In particular, she said Mr. Erb failed to provide any detail about Coriolis' advice on the past project and how implementing of that advice "dampened the values" in a way that is relevant to disclosing the street addresses for the study properties.

[44] Next the City argued that the data in the exhibits could be misinterpreted by the public who might assume an estimate in the exhibit applies to a particular site when in fact it refers to a scenario that is not actually permitted by the present zoning. The Arbitrator doubted that such a misinterpretation would occur but even if it did, she found the City did not adequately explain how it would alter behavior in the real estate market.

[45] Overall on this issue, the Arbitrator concluded that the City had not established that disclosure of the Case Study Addresses would alter behavior in the real estate market. Since that was the premise for the City's first submission on harm to its financial or economic interests, she found the City had not established a reasonable expectation of such harm.

[46] The City did not pursue this issue with any vigour on judicial review, focusing instead on other points discussed below. To the extent it is still in issue, I find nothing unreasonable in the Adjudicator's conclusion. She was simply assessing the

evidence before her and found it was insufficient to establish more than a speculative risk that release of the Case Study Addresses would alter behavior in the real estate market. I find nothing unreasonable in how she weighed that evidence. To the extent the City maintains this conclusion arises from the Adjudicator applying an unreasonably high evidentiary standard, I will address that submission below when dealing the balance of the City's submissions on s. 17(1).

(b) Coriolis Ceasing to Provide the Information

[47] The Arbitrator accepted as a fact that Coriolis would stop providing the Case Study Addresses to the City in the future if disclosure of that information was required. However, she rejected the City's two arguments that this would give rise to a reasonable prospect of probable financial or economic harm. On the City's first argument she found it did not establish a risk of financial harm in the form of increased staffing costs to shift to a new system of financial modeling because the City "does not explain or provide evidence about how much additional staff time and resources it anticipates, or the costs associated with these items."

[48] On the second argument that the City could reasonably suffer financial harm by being materially less confident in relying on Coriolis' modeling without access to the Case Study Addresses, she found the evidence did not explain why that would be so. She observed that Coriolis is highly experienced in this work and has a longstanding relationship with the City such that there was good reason to continue to rely on Coriolis' work, even if it did not provide the Case Study Addresses to the City.

2. Discussion

(a) Increased Staffing Costs

[49] The City argues the Adjudicator applied an unreasonably high standard of proof for financial or economic harm that is not justified for s. 17(1). I disagree. The City's evidence makes no mention of a potential new or different procedure for completing the financial modeling without the street address data. Nor does it speak

to additional staff time or resources that would be needed to implement a new system. Ms. Cho's evidence focused on harms to the City if it could not receive the Case Study Addresses. It does not contemplate moving to a new system for financial modeling, let alone suggest any range of costs for doing so. It seems this argument was developed by counsel for purposes of the inquiry but there is no evidentiary foundation for the suggestion that the City would change consultants or have to adapt to a new modeling system.

[50] The City further argues the Adjudicator unreasonably adopted a novel, stand-alone "threshold of harm" test for s. 17(1) by misinterpreting Commissioner Loukidelis' discussion in *Order F08-22* at para. 50 about the "nature and gravity" of the harm captured by s. 17(1). I disagree. The Adjudicator correctly summarized the legal test for s. 17(1) at paras. 15-20 of her reasons. She relied on *Order F08-22* for the proposition that it is not just any financial impact that will meet the standard for financial harm under s. 17(1). Rather, the decision maker must assess the nature and gravity of the harm to determine if it justifies withholding disclosure.

[51] I find the Adjudicator's interpretation and application of the law as it applies to s. 17(1) is reasonable. There is nothing in *Ontario (Community Safety)* that suggests any financial impact, no matter how small, will meet the standard of reasonable prospect of probable harm. I find the Adjudicator reasonably adopted *Order F08-22* at para. 50 in articulating a need to assess the nature and gravity of the alleged harm and did not create or recognize some new threshold.

[52] Her discussion of a "threshold" of harm in the context of the impact of Coriolis ceasing to provide the Case Study Addresses related to the fact the City had led no evidence of what might be involved with transitioning to a new or different procedure to receive the financial modeling and the associated costs of that might be. Her point was that without any evidence of a possible transition or what it might involve, the nature or magnitude of the alleged harm could not be assessed. A transition might be a simple adjustment for staff or it might be burdensome and costly, but without some evidence of that, the Adjudicator could not assess the nature or magnitude of

the expense the City alleged in could be put to. I find her reasoning process and her conclusion on that point is sound.

[53] Contrary to the City's submissions, this is not a matter of the Adjudicator requiring it to provide "a detailed breakdown of the staff time". It is a matter of the City needing to provide some evidence that would allow the Adjudicator to weigh the nature and gravity of the alleged harm. Without evidence on the point, the alleged harm is speculative and fails to meet the "reasonable expectation of probable harm" standard.

[54] I make the same finding with respect to the City's assertions about altered behavior in the real estate market. While there was some evidence on this point, I find the Adjudicator reasonably assessed that evidence as lacking in detail and specificity and that it was speculative. Even on the threshold of a reasonable expectation of probable harm, evidence must be sufficiently clear and cogent to meet that standard, even if it need not prove the likelihood of harm. I find nothing unreasonable in the Adjudicator's assessment of that evidence.

(b) Inability to Scrutinize the Modeling

[55] On the question of whether it is necessary for the City to receive the Case Study Addresses so it can scrutinize Coriolis work with the benefit of that information, I find a core aspect of the Adjudicator's decision is unreasonable. Specifically, I find her conclusion that City can rely on Coriolis' work without the Case Study Addresses is a clear logical fallacy.

[56] Crucially, the Adjudicator accepted that Coriolis would not provide Case Study Address information to the City with future modelling if those addresses must be disclosed. However, she found the City had not established that Coriolis' work becomes any less reliable simply because the City cannot scrutinize it against the Case Study Addresses. She reasoned that with Coriolis' experience and expertise in this modeling work, and its long-standing relationship with the City, there is no basis to conclude that Coriolis' work would be any less reliable if the City did not have

access to the Case Study Addresses used by Coriolis. Respectfully, I find this conclusion misses the point of Ms. Cho's evidence.

[57] Ms. Cho deposed that Coriolis' financial modeling informs City staff when they make decisions about broad-based zoning changes or financial incentives for developers to build rental housing. (I take her to mean decisions about what to recommend to City Council.) She said it is vital for the City staff to know and have input on the case-study properties that are used in the financial modelling so it can verify the accuracy of Coriolis' financial modeling work and be satisfied the case-study properties are representative of a potential development site for the area. She stated that since this analysis informs City policy for future development, the City must have confidence in the analysis. For this reason, City staff themselves will often select which addresses to use or at least collaborate with Coriolis in deciding specific properties to use as case studies. She deposed that knowing the Case Study Addresses is material to the City's confidence in the financial modeling:

> I believe withholding the case study addresses would significantly harm the City's ability to perform this type of financial modeling 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.

[58] As seen in this passage, Ms. Cho does not say that Coriolis' work itself would be less reliable but that City staff would be less confident in relying on the modelling if they do not know the Case Study Addresses. I read this as saying that City staff need a comprehensive understanding of the financial modelling so they are properly informed in making important decisions to recommend zoning changes or financial incentives for developers.

[59] Notably, John Doe, the requesting party, recognized the importance of having the Case Study Addresses to fully understand the modeling. He stated in his evidence that these financial models "can be highly sensitive to what inputs are used [and] rely on judgments and assumptions for some of those inputs". He added:

> The public has a right to the full records so they (or more likely) experts chosen by them can determine if they get the same or very similar results as those in the City's pro-formas.

[60] In my respectful view, the Adjudicator misapprehended the full reasons why it is important for the City to have the Case Study Addresses. While withholding the Case Study Addresses from the City would not diminish the quality of Coriolis' work, it is unreasonable to expect the City to forego its ability to scrutinize and fully understand the work it retains and pays Coriolis to do for it.

[61] Consider, for example, a meeting at which City Council is voting on a potential zoning change recommended by staff or considering a proposed financial incentive for a developer. If Council were to ask the responsible staff member if they are confident in the modeling on which their recommendation is based, I would think Council would be dissatisfied with an answer that the staff member had not independently analyzed the modeling because they could not know the inputs on which it was based. Surely Council's expectation would be that for a decision of that magnitude, staff would have as much information about it as they could, regardless of how experienced and trustworthy the consultant is.

[62] In my view, having accepted as a fact that Coriolis will stop sharing the Case Study Addresses with the City in the future if they must be disclosed, it was unreasonable for the adjudicator to determine that the City does not need to continue receiving that information.

[63] However, even if the City experiences harm from not having this information, it remains to be determined whether it is financial or economic harm and is of a nature and magnitude to fall within s. 17(1). The City argues such harm is self-evident by the very fact that the City retained Coriolis to do this work. It argues "the fact it undertook those activities is evidence that these activities were of value to the City, or it would not have undertaken them." It argues the Adjudicator "appears to find that these activities … are not of value to the City" because the City would no

longer be able to do these activities if Coriolis no longer supplied the specific address information.

[64] I question whether it is necessarily "self-evident" that the modeling work has financial or economic value to the City simply because the City has undertaken this work. There is logic in that submission but it is also plausible that the work is done for social reasons to promote needed rental accommodations in the city, which may or may not enhance the City's financial or economic position.

[65] Moreover, the argument misapprehends the Adjudicator's decision and the City's evidence. The Adjudicator did not find that the City would stop commissioning the modeling work, she simply found that the City would either have to trust Coriolis' work without scrutinizing it against the Case Study Addresses, find another way for Coriolis to do the modeling without the Case Study Addresses, or find a new consultant who would provide the Case Study Addresses to the City even if they would be publicly disclosed. Nor did Ms. Cho depose that the City would stop commissioning this work altogether. She said it would harm the City's ability to do this kind of work in the future and the City would be materially less confident in relying on it but she did not say the City would stop doing it.

[66] Nevertheless, the evidence does suggest some nexus between the modeling work and the City's financial or economic circumstances, at least to the extent that the work informs decisions about financial incentives for developers to build rental housing. Since the City relies on this information to set financial incentives for developers, and those financial incentives would have some financial or economic cost to the City, perhaps in the form of actual costs or foregone community amenity contributions, it is certainly conceivable that the City's economic or financial interests could be harmed by the inability to rely on the modeling with full confidence in making decisions about zoning or financial incentives.

[67] In my view, however, that is not a question that can be decided on judicial review. It should be decided by the statutory decision-maker. The legislature entrusted that question to the Information and Privacy Commissioner or their delegate. On judicial review, it is only appropriate for this Court to make the decision assigned to the statutory decision maker when it is evident that a particular outcome is inevitable: *Vavilov,* para 142. That is not the case here. The specific nature of the harm must be identified, and its magnitude must be assessed and weighed against the public's interest in disclosure. That is a task properly left to the statutory decision-maker.

D. Conclusion on Section 17(1)

[68] In summary I find the Arbitrator reasonably concluded that the City's evidence failed to establish a reasonable expectation of probable harm relating to an alleged change in market behavior or the cost of switching to a different system of financial modeling that does not require disclosure of the Case Study Addresses. However, I find she unreasonably concluded that the City does not need to receive the Case Study Addresses in the future to rely on Coriolis' modeling work. I would therefore set aside the Adjudicator's decision and remit the matter back to Office of the Information and Privacy Commissioner to determine whether there is a reasonable expectation of probable financial or economic harm to the City arsing from its inability to fully scrutinize and understand Coriolis' financial modeling without the benefit of the Case Study Addresses.

VII. Section 21(1)

[69] The second broad ground on which the City sought to withhold the Case Study Addresses from disclosure is under s. 21(1) of *FIPPA* which relates to harms to third parties who provide information in confidence to the public body. It argued the Case Study Addresses, when combined with the financial modeling data, is financial information about the owners of the case study properties or of Coriolis who compiled the information. It argues the information was supplied to the City by

Coriolis in confidence, that Coriolis will no longer supply similar information in the future if it must be disclosed, and there is a public interest in the City continuing to receive that information.

A. Statutory Provisions

[70] The provisions of s. 21(1) relied on by the City are 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
>
> [Emphasis added]

[71] To come within these provisions, the City must establish all of the following:

a) the Case Study Addresses are commercial, financial, or technical information "of or about" a third party (be it Coriolis or others);

b) Coriolis supplied the Case Study Addresses to the City in confidence;

c) disclosure of the Case Study Addresses would result in Coriolis no longer supplying that kind of information to the City; and

d) it is in the public interest that the City continue to be supplied with that information.

B. The Adjudicator's Decision

[72] The Adjudicator was satisfied that the Case Study Addresses are financial information. Although they are simply street addresses of the properties used as case studies for the financial modeling, the Adjudicator accepted that disclosure of those addresses would permit a person to connect each address to the generalized financial data in the pro formas prepared by Coriolis and this would reveal financial information (land and revenue values) for each property.

[73] However, the Arbitrator did not accept that the Case Study Addresses are "of or about" a third party. She rejected the City's submission that the information is "about" the owners of the case study properties because the financial analysis "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 that this developer may receive". She viewed the hypothetical developer as "separate and distinct" from the current owners of the property and the financial information contained in the pro forma for each property is about a hypothetical development that is dependent on the current owner no longer owning the property.

[74] She also found the information is not "of" Coriolis because, while Coriolis created the information, it does not own it. Rather, the City owns the information, having paid Coriolis for it. Applying principles of statutory interpretation, she found the words "of … a third party" in s. 21(1)(a)(ii), when considered in the broader context of the *Act*, does not extend to information that is simply created by a third party.

[75] Having found this threshold requirement in 21(1)(a)(ii) was not met, she did not go on to consider the remaining steps in the analysis and held the section did not permit the City to withhold disclosure of the Case Study Addresses.

C. Analysis

1. "About" the Owners

[76] In my view, the Adjudicator's finding that the pro-forma for a specific case study property is not information "about" the owner of that property is not reasonable. The Adjudicator's chain of analysis is transparent and intelligible but it exhibits a logical fallacy, namely that the financial information in the pro-forma can be separated from the property and its present owner because the development scenario is hypothetical. That finding disregards the fact that the information is still about the property itself, including what it tells us of that property's development potential (or lack of potential) and how that might affect its value now or in the future. In my view, that necessarily makes it financial information about the property and the owner of that property.

[77] The owner is not told their property is used by the City and Coriolis as a case study to assess its potential for future development and what the financial implications of that might be. A homeowner may, rationally or not, find it disconcerting to learn that the City and its contractor had used their home as a development case study without their knowledge or consent. They may be quite upset to learn that a development scenario for their property, including the financial implications for the property's value, was then made public. A homeowner might reasonably view that as an intrusion of their privacy, whether the release of that information causes them financial harm or not. The whole process would shine a spotlight on financial aspects of their home without them even knowing it was happening. The same might be said of a commercial land owner.

[78] The information may or may not impact the property's current or future value. However, it is inescapable that this information, hypothetical or not, is still financial information about the specific property and thus about the owner of the property. I find the only reasonable conclusion is that the modeling data in the hypothetical pro forma for each case study property is information about the property and its owner such that the City met the requirement of s. 21(1)(a)(ii).

2. "Of" Coriolis

[79] Although my finding that the hypothetical pro formas contain financial information "about" the owners of the case study properties is sufficient to move on to the next step of the s. 21(1) analysis, I will also consider the Adjudicator's finding that the information is not "of" Coriolis as that may impact subsequent steps in the analysis.

[80] The City argues that the Adjudicator construed "of … a third party" too narrowly in finding that it does not include information "created by" or "originating from" a third party. It argues again that she did not reasonably apply the modern approach to statutory construction.

[81] The Adjudicator held that in most cases information will be "of" a third party when the third party owns the information. She was not categorical in this conclusion and said 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". However, she was not persuaded the term could be interpreted so broadly that it captures *any* information created by or originating from a third party.

[82] The City argues this interpretation is too narrow and is inconsistent with other *FIPPA* decisions which have considered s. 21(1). The City relies in particular on *F20-04*, *Vancouver (City) (Re)*, 2020 BCIPC 4 where an arbitrator found that a technical report prepared for the City by a consultant was "technical information" for the purposes of s. 21(1)(a). I find this decision to be of little assistance because, while the arbitrator in that case was satisfied the report fell within the scope of s. 21(1)(a), she evidently was not asked to interpret "of … a third party". She found the report was "technical information" within the meaning of s. 21(1)(a) but she does not seem to have turned her mind to whether the report was "of" the contractor. Moreover, she ultimately found the report was not shielded from disclosure.

[83] I was also referred to *Order 01-36 Ministry of Water, Land and Air Protection*, 2001 CanLII 21590 (BC IPC) where Commissioner Loukidelis considered a contact list of suppliers that a third party commercial enterprise, Western Rubber, had compiled from various publicly-available sources. Western Rubber did not own the information but it had compiled it into a list for is own commercial purposes. The list was later supplied to the Ministry for other purposes and a competitor of Western Rubber sought disclosure of the list from the Ministry under *FIPPA*. Commissioner Loukidelis found the list was commercial information "of" Western Rubber. He said at para. 21 that while the list was compiled from public sources, it was "prepared for a business purpose specific to Western Rubber".

[84] This is an example of a third party not owning the information but it did compile the information from different sources into a list that had commercial value to the third party. I consider this to be quite distinct from the present case.

[85] While it is conceivable that "of … a third party" might be open to a broader interpretation than the Adjudicator's reasons may suggest, I find her conclusion that the Case Study Addresses and the pro formas more generally are not "of" Coriolis is reasonable. Coriolis' own financial or commercial interests are not at stake in the way Western Rubber's were in that case. The broad interpretation urged by the City risks undermining purposes of *FIPPA* as set out in s. 2(1), particularly (a) "giving the public a right of access to records" and (c) "specifying limited exceptions to the right of access" [my emphasis]. In my view, the Adjudicator's conclusion in this point is reasonable.

3. The Remaining Elements of s. 21(1)

[86] Having found that the Case Study Addresses, when combined with the other information in the disclosed hypothetical pro formas, is financial information about a third party (the property owners), it is necessary to consider the balance of s. 21(1), which the Adjudicator did not do in light of her conclusion on s. 21(1)(a). While she found that Coriolis will not continue to supply Case Study Addresses if they are disclosed in this case, and the evidence seems fairly clear that Coriolis provided that

information to the City in confidence, the question of whether it is in the public interest for the City to continue receiving the Case Study Addresses in the future ought to be decided by statutory decision maker as intended by the legislature rather than this Court. I would therefore remit the matter back to the Office of the Information and Privacy Commissioner to decide in light of these reasons.

VIII. Summary and Conclusion

[87] In summary, I find two discrete aspects of the Adjudicator's decision to be unreasonable: one relating to s. 17(1) and one relating to s. 21(1). With respect to s. 17(1), I find the Adjudicator unreasonably held that the City does not need the Case Study Addressers to confidently rely on Coriolis financial modeling work and hypothetical development pro formas. I find the City should have access to the Case Study Addresses to fully inform itself about that work. With respect to s. 21(1), I find the Adjudicator unreasonably held that the Case Study Addresses, when combined with the financial modeling data in the hypothetical pro formas, is not information "about" the owners of the case study properties within the meaning of s. 21(1)(a). I would therefore set aside the Adjudicator's decision and remit the matter back to the Office of the Information and Privacy Commissioner to reconsider and complete the analyses under ss. 17(1) and 21(1) in light of these reasons.

[88] I make no order as to costs since they are not sought by any party.

"Kirchner J."