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Order F12-13

BC CORONERS SERVICE

Elizabeth Denham, Information & Privacy Commissioner

September 13, 2012

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Summary: A reporter requested third party records obtained by the coroner in an investigation into the death of an Olympic luge athlete. The BC Coroners Service withheld the records under s. 21(1) of FIPPA. The Commissioner found that s. 21(1) of FIPPA did not apply to the records because BCCS and the third parties failed to demonstrate the harm in disclosing them. The Commissioner ordered BCCS to disclose the records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 21(1); *Coroners Act*, ss. 11, 63 and 64.

Authorities Considered: B.C.: Order 01-20, [2001] B.C.I.P.C.D. No. 21; Order F08-10, [2008] B.C.I.P.C.D. No. 17; Order 02-04, [2002] B.C.I.P.C.D. No. 4; Order 02-20, [2002] B.C.I.P.C.D. No. 20; Order 03-05, [2003] B.C.I.P.C.D. No. 5; Order 00-10, [2000] B.C.I.P.C.D. No. 11; Order 03-02, [2003] B.C.I.P.C.D. No. 2; Order 03-15, [2003] B.C.I.P.C.D. No. 15; Order F10-06, [2010] B.C.I.P.C.D. No. 9; Order F07-15, [2007] B.C.I.P.C.D. No. 21; Order 02-50, [2002] B.C.I.P.C.D. No. 51.

INTRODUCTION

[1] A reporter for CBC TV ("CBC") challenged the decision of the BC Coroners Service ("BCCS") to withhold third party records relating to the construction of the Whistler Sliding Centre at Whistler, B.C. for the Vancouver 2010 Winter Olympic Games. The BCCS withheld those records, consisting of 16 pages, under s. 21 of the *Freedom of Information and Protection of Privacy*

Act ("FIPPA") on the basis that disclosure would harm the business interests of two third parties.

[2] The third parties are IBG Consulting Engineering ("IBG") and the International Luge Federation ("FIL"). The records at issue were created by either FIL or IBG, who provided them to VANOC ("Vancouver Olympic Committee"). The third party records were subsequently the subject of a seizure order directed at VANOC that the coroner issued during the course of an investigation into a luge athlete's death. The release of the Coroner's Report on completion of his investigation was the catalyst for CBC's request. VANOC no longer exists. VANOC was never a public body for FIPPA purposes.

ISSUE

[3] The issue is whether s. 21(1) of FIPPA requires the BCCS to withhold the records. Section 57 of FIPPA places the burden of proof on the BCCS to justify the withholding of the records. Section 21 provides in part:

> 21(1) The head of a public body must refuse to disclose to an applicant information
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> (a) that would reveal
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> (i) trade secrets of a third party,
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> (ii) …scientific or technical information of or about a third party,
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> (b) that is supplied, implicitly or explicitly, in confidence, and
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> (c) the disclosure of which could reasonably be expected to
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> (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
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> (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,
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> (iii) result in undue financial loss or gain to any person or organization.

DISCUSSION

[4] **Background**—In February 2010, a member of the Georgian Luge Team died during an accident on the Whistler Sliding Centre luge track. The BCCS initiated an investigation into the athlete's death and made a report ("Coroner's Report").

[5] Under the *Coroners Act,* the coroner is responsible for the inquiry into, and investigation of, unnatural, unexpected, unexplained or unattended deaths in British Columbia, including accidental deaths. The focus of the coroner's inquiry is not on fault or blame but to ascertain the facts surrounding the death and determining both the identity of the deceased, including the "how, when, where and by what means" the deceased died. The coroner may, after completion of an investigation or inquiry, make recommendations for the purpose of preventing similar loss of life in the future.

[6] On October 7, 2010, following the release of the Coroner's Report, CBC sought access to all records related to the coroner's investigation of the luge athlete's death. CBC subsequently narrowed the request on November 18, 2010, to a list of specific documents.

[7] On January 21, 2011, the BCCS released some records, but withheld others under ss. 16 and 21 of FIPPA. On February 14, 2011, CBC requested a review of the BCCS's decision to withhold the records under s. 16 of FIPPA. The records that the BCCS withheld under s. 21 were dealt with separately. On November 25, 2011, the BCCS abandoned reliance on s. 16 as a basis for withholding some of the requested records. Instead, the BCCS made a new decision to withhold those same records under s. 21 of FIPPA. CBC sought review of the BCCS's decision, which is the subject of this inquiry.

[8] FIL is a non-government organization responsible for the sport of luge around the world. The FIL Statutes[1] give it the highest and sole authority in all questions which concern that sport worldwide. IBG is an engineering firm based in Germany. It has designed and assisted in the construction of the luge tracks for the past six Olympic Games, and has also designed the track to be built for the upcoming winter Olympic Games in Sochi, Russia. Both FIL and IBG participated as third parties in this inquiry.

[9] **Records at Issue**—As noted, there are 16 pages of records at issue, all of which relate to the building of the luge track for the 2010 Winter Olympics. They consist largely of communications between IBG and FIL, and FIL and VANOC in 2008 and 2009.

[10] **Harm to Third-Party Business Interests**—Previous orders have considered the application of s. 21(1) and the principles for its application are well established.[2] They set out a three-part test for determining whether disclosure is prohibited, all three elements of which must be established before

[1] URL: http://www.fil-luge.org/index.php?id=416.
[2] See for example, Order 03-02, [2003] B.C.I.P.C.D. No. 2 and Order 03-15, [2003] B.C.I.P.C.D. No. 15.

the exception to disclosure applies. The first part of the test requires the information to be a trade secret of a third party or the commercial, financial, labour relations, scientific or technical information of, or about, a third party. The second part of the test requires the information to have been supplied to the public body in confidence. The third part of the test requires that disclosure of the information could reasonably be expected to cause significant harm to the third party's competitive position or other types of harm as set out in s. 21(1)(c).

Scientific or technical information of or about a third party

[11] Previous orders[3] have defined "technical information" in the context of s. 21(1)(a)(i) as information belonging to an organized field of knowledge which would fall under the general categories of applied science or mechanical arts. Examples of these fields would include architecture, engineering or electronics. Although it is difficult to define the term concisely, it usually involves information prepared by a professional with the relevant expertise and describes the construction, operation and maintenance of a structure, process, equipment or entity.

[12] The BCCS argues that the withheld information falls under the general category of "applied engineering" as it relates to the design of the Olympic luge track in Whistler and consequently qualifies as "scientific" and/or "technical" information for the purpose of s. 21(1)(a). FIL and IBG also agree the records contain both scientific and technical information. IBG describes the records as containing "information about specific methods, scientific and technical information including calculations, the process of IBG's design of bobsleigh, skeleton and luge tracks (in Canada and abroad) and descriptions of proprietary work methodology". The FIL says that it provided the BCCS with access to its experts during the coroner's investigation in order to ensure that office understood the information, because the information was technical and complex.

[13] CBC argued that for the records to qualify as "scientific" information, they must contain or reveal the actual testing methods or hypothesis applied by IBG or FIL in relation to the changes made to the Whistler Sliding Centre luge track. In this respect, CBC relies on the government's FIPPA Manual as well as an Ontario Order where the Ontario Commissioner defined the term "scientific information" to mean "information belonging to an organized field of knowledge in either the natural, biological or social sciences or mathematics" which "must relate to the observation and testing [of] specific hypothesis or conclusions to be undertaken by an expert in the field".

[3] See, for example, Order F10-06, [2010] B.C.I.P.C.D. No. 9.

[14] CBC also submits that, although some of the records may contain some elements of scientific or technical information, "it is unlikely they contain the degree of specificity required to trigger" the s. 21 exemption. It reiterates its submission that s. 21 applies only if the records reveal the scientific or technical data itself. According to CBC, records that merely contain references to test results or the materials that were actually inspected do not qualify. It takes the position that only the actual tests or methodology qualifies. If some of the records do contain such information, CBC suggests that information can reasonably be severed from them.

[15] Having reviewed the records, I am satisfied they contain "technical" information for the purpose of s. 21(1)(a)(i). I agree with the BCCS that the withheld information would fall into the general category of applied engineering. It was prepared by experts and describes the construction, design or operation of a structure.

[16] Having concluded that s. 21(1)(a) applies, it is unnecessary for me to consider whether the records also contain either "scientific" information or, as IBG argued, "trade secrets".

Supplied in confidence

[17] The second part of the test in s. 21(1) requires consideration of whether VANOC "supplied" the information either implicitly or explicitly "in confidence". In order to undertake this analysis, it is necessary to separate the concept of "supplied in confidence" into two parts. The first is to determine whether the records were "supplied" to the BCCS. The second will be to determine whether the parties supplied those records "in confidence".

[18] In Order 01-20,[4] former Commissioner Loukidelis said that the concept of supplied entails "furnishing" or "providing". He went on to say that he thought it "possible for a third party to supply a public body with information which was not created by the third party". Similarly, in Order F08-10,[5] Senior Adjudicator Francis said that "a third party need not have supplied the information itself, in order for the information to have been 'supplied' to a public body".[6]

[19] The BCCS relies on these orders as well as Order 02-04, where former Commissioner Loukidelis found that third-party information may be supplied for the purpose of s. 21(1)(b) "even if someone other than the affected third party supplied that information to the public body or the information was supplied to another person, who then supplied it to a public body". The BCCS argues that s. 21(1)(b) applies to the withheld information even though IBG and FIL created

[4] [2001] B.C.I.P.C.D. No. 21, at para. 93.
[5] [2008] B.C.I.P.C.D. No. 17, at para. 56.
[6] See also Order 02-04, [2002] B.C.I.P.C.D. No. 4, at para. 15.

the records they provided to VANOC, rather than directly to the BCCS, as long as VANOC supplied them to the BCCS in confidence. I agree with the BCCS on this point.

[20] With respect to the confidentiality requirement, a party must show objectively that it had a reasonable expectation of confidentiality at the time.[7] The BCCS adduced evidence establishing that, at the time the records were provided, it told VANOC that it would keep the records confidential, subject only to any requirement to disclose under FIPPA and the *Coroners Act*. It maintains that s. 63 of the *Coroners Act* reinforces the idea that VANOC had a reasonable expectation that the records in dispute would be kept confidential. Section 63(1) of the *Coroners Act* provides in part that, except "as provided for under this Act or another enactment" (such as FIPPA), "a coroner … or a person acting on behalf of or under the direction of any of these, must not disclose or publish" "(b) any information provided, or a record compiled, made, used or submitted in the course of, or that arose out of, an investigation, an inquest or a review…". Relying on Order 02-20,[8] the BCCS submits that such a statutory non-disclosure requirement is a relevant factor in assessing whether VANOC supplied the information to the BCCS in confidence. The BCCS also submits that the following facts are relevant: that it has consistently treated any records it has obtained from law enforcement agencies and other third parties as confidential; that it has not disclosed the records to any other third party; and that they are not available from sources to which the public has access.[9]

[21] FIL and IBG state that they supplied the records to VANOC on a confidential basis. FIL submits that it and VANOC agreed implicitly that VANOC would use the records only for its internal purposes. As VANOC no longer exists, there is no means of corroborating this contention. FIL also argues that it prepared the requested information exclusively to assist VANOC in its internal investigations of the tragic accident. CBC takes issue with this. It submits that FIL and IBG prepared the records in advance of the Olympic Games and prior to the death of the luge athlete. CBC suggests that this means it would be wrong to conclude that they prepared the records to assist in VANOC's investigation or the coroner's investigation. The records clearly support CBC's point. CBC also points out that FIL has failed to provide any information to corroborate whether VANOC received the records in confidence. It merely asserts they were. While this is true, FIL is disadvantaged in this respect as VANOC no longer exists. In any event, this is just one factor to be considered when determining whether the confidentiality requirement has been met.

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[7] Order 01-36, [2001] B.C.I.P.C.D. No. 37, at para. 23.
[8] [2002] B.C.I.P.C.D. No. 20.
[9] Affidavit of Chief Coroner, paras. 4.24, 4.25.

[22] IBG says that it originally supplied the information to FIL with the implied expectation of confidentiality based on previous practice over many years. IBG admits that it did not have a contract with FIL, but submits that during all the years of work relating to the construction of the Whistler track, communications with FIL were confidential because they were of a technical nature and contained trade secrets. IBG goes on to say that VANOC and IBG, as parties to a contractual agreement, were both subject to a confidentiality clause, which explicitly restricted the parties from disclosing confidential information relating to this contract. However, even if I was prepared to accept that the IBG records related to its contract with VANOC in this sense (a matter about which I have considerable doubt as the records were responsive to FIL inquiries), that confidentiality clause specifically required IBG to acknowledge that information provided to VANOC might be provided or made available to organizations subject to FIPPA. It also provided that if IBG considered any such information to be confidential it was to identify it and inform VANOC in writing, which IBG did not do because, it says, it was never notified by VANOC that it might provide any of its information to a public body.

[23] IBG has no direct evidence but believes VANOC provided its information to the BCCS in response to the coroner's seizure order. IBG points to s. 11(3) of the *Coroners Act* (which requires, "If the coroner seizes a thing under subsection (1)(f), the coroner must ensure the thing is kept in safe custody until it is no longer required for the investigation or an inquest at which time the coroner must, (a) return it to the person from whom it was seized, or (b) dispose of it") to argue that VANOC supplied the information implicitly in confidence to the BCCS. IBG submits that the general disclosure prohibition in s. 63 of the *Coroners Act*, discussed above, reinforces this point. In addition s. 64 of the *Coroners Act* provides in part:

> (3) The chief coroner may refuse to disclose any part of a record that contains confidential information to a person who has a right of access under the *Freedom of Information and Protection of Privacy Act* to the record.

[24] To this, CBC responds that the requested records are not "things" as described in s. 11(3) of the *Coroners Act* but rather are "records" which may be seized (with no corresponding obligation to destroy or return them on completion of an investigation) under s. 11(1)(e). I agree. As for IBG's reliance on s. 64(3) of the *Coroners Act*, CBC submits it has no application here because "confidential information" is defined in s. 1 of the *Coroners Act* to mean "information … provided by a person to a member of the child death review unit or a death review panel". I agree with CBC that, as no death panel was convened and the investigation did not relate to the death of a child, s. 64(3) does not apply. In addition, the BCCS did not rely on this provision.

[25] CBC states that, to the extent the BCCS relies on its confidentiality provision in its Policy and Procedures Manual, it does not apply to the records at issue, because they are not "agency reports" as that term is there defined, nor are they reports prepared for the Coroners Service. In response to the BCCS relying on s. 63 of the *Coroners Act*, CBC submits that a proper reading of that section is that FIPPA takes precedence over the confidentiality requirements of the *Coroners Act*. As the *Coroners Act* is subject to FIPPA, it cannot rely on s. 63(1) to withhold information in response to a request under FIPPA. I agree with CBC on this point as well. However, the BCCS does not argue that s. 63(1) trumps FIPPA's s. 21. Rather the BCCS reasonably asserts that the s. 63(1) non-disclosure provision reinforces any expectation of confidentiality on the part of VANOC at the time it provided the records to the BCCS.

[26] In my view, the fact that the coroner's seizure order compelled VANOC to provide the records to the BCCS does not mean that VANOC has not "supplied" them for the purposes of s. 21(1) of FIPPA. Nor does the fact of the order to seize render VANOC's confidentiality expectations unreasonable. This is especially so in the face of the requirements set out in s. 63(1) of the *Coroners Act*.

[27] I am satisfied, based on the BCCS's affidavit evidence that, when VANOC provided the records in dispute to the BCCS, it did so with a reasonable expectation that BCCS would keep them confidential.

[28] I therefore find that s. 21(1)(b) of FIPPA applies.

Disclosure could result in similar information not being supplied

[29] The BCCS argued that s. 21(1)(c)(ii) of FIPPA applies. This provision protects against disclosure of information in circumstances where it could reasonably be expected to "result in similar information no longer being supplied to the public body when it is in the public interest that similar information continues to be supplied". With respect to this provision, the coroner's seizure powers are relevant. Under s. 11(1) of the *Coroner's Act*, the coroner has the power, with some exceptions, to "(e) inspect, copy and seize any records relating to the deceased person or the circumstances of the death that the coroner has reason to believe are relevant to the investigation". Section 11(2) provides that "[d]espite any other enactment and any claim of confidentiality or privilege, other than a claim based on solicitor-client privilege, a person who receives a request for records under subsection (1)(e) must promptly comply with the request".

[30] The BCCS submits that the coroner's seizure powers extend only to persons within British Columbia. Therefore, he or she cannot compel the production of information from persons or entities outside of this province for

investigation, inquiry or inquest purposes. The BCCS described the situation facing the coroner this way:[10]

> 4.26 The distinction between situations where the Service is able to compel the production of records under the *Coroners Act* and those where it cannot is significant. For instance, even within British Columbia, we have situations where a party will only be willing to provide records to the Service upon receipt of an order to seize. In those cases, the third party will indicate that if they have discretion as to whether to provide the records or not, they will refuse to provide the records unless and until they are legally required to do so. As such, it is imperative for the Service to be able to maintain the confidentiality of records provided by third parties who are located outside of British Columbia given that such persons cannot be legally required to provide information or records to the Service.
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> 4.28 The Service submits that if the Records are publicly released, persons and/or organizations outside of British Columbia could reasonably be expected to refuse to supply similar records to the Coroner's Service in future, despite the fact that it is in the public interest that such information be provided, because the Service will be unable to ensure that such records were kept confidential.
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> 4.29 It is not uncommon for the Service to seek records from agencies and third parties located outside of British Columbia, including corporations, federal agencies and private individuals. Examples include investigations where the Service has had to request records or information from Transport Canada and Bell Helicopters. Other examples include an investigation relating a custody death in Vancouver where a police force in Alberta was the agency responsible for conducting an investigation and the Service requested the records relating to that investigation. Records that are provided from third party agencies are currently provided to the Service on a cooperative basis with the understanding that they are not to be released to the public.
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> 4.30 There are situations where injuries happen outside of British Columbia but the death takes place within British Columbia. For instance, the accident may take place in Alberta or Washington and the injured person is taken to British Columbia for medical treatment. One case involved an individual who collapsed in a race in Las Vegas but died in British Columbia days later. In such cases, it will be common for the Service to seek records from third parties outside of British Columbia (for instance, hospitals, labs, law enforcement agencies and other third parties).
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[10] Public body initial submission, pp. 14-16.

> 4.32 There have been coroners' investigations in the past where the coroner has looked into the safety of products. Such cases have involved the Service seeking technical information and/or records from companies outside of British Columbia. There have also been many cases where the Service has sought technical reports prepared for third parties outside of British Columbia.

[31] The BCCS submits that third parties outside of British Columbia have no legal and no financial incentive to cooperate with it when records requested relate to a death investigation. Therefore, they would likely refuse to provide information, such as sensitive technical or scientific information, if they fear that it might be publicly released. The BCCS argues that this will, in turn, harm its ability to conduct investigations and inquire into sudden and unexpected deaths and make recommendations that are designed to prevent similar deaths in future. Release of the information might also result in an increase in the number of times agencies challenge its authority to seize, because they fear their records will become subject to public scrutiny. The BCCS cites as an example, IBG's comments that, if confidential information can be disclosed, "the Coroner's Service might have difficulty obtaining information from foreign entities to assist in the conduct of Coroner's investigations in future". As for the FIL, it argues that:

> It is the FIL's belief that the release of these documents to a third party or for public consumption would violate the trust it placed in VANOC (and the Service) and that the documents could be grossly misinterpreted in the hands of a third party or the public not privy to the complete background information. The disclosure of these documents would reverberate throughout the sports world and will, in the FIL's opinion, result in international federations not being forthcoming in cooperating with authorities should a similar tragedy take place in the future on Canadian soil. Furthermore, the release of the documents to a third party against the will of the FIL will lead it to reconsider awarding future competitions to Canada.

[32] CBC's response is that the type of harm the BCCS has identified is not of the nature s. 21(1) was designed to protect (*i.e.* harm to third party business interests). I do not agree. Section 21(1)(c)(ii) ensures that confidential business information that need not be supplied, except for on a voluntary basis, remain available to a public body. For example, in Order 03-05,[11] former Commissioner Loukidelis applied this provision to a third party's commercial information which was provided to the City in confidence and in doing so was "attempting to be a good corporate citizen by assisting the City in its own endeavours". In that case, the commercial information was of value to the City, just as the information here was of value to the coroner in his endeavours. The former Commissioner was satisfied that, if the third party information was disclosed, there was

[11] [2003] B.C.I.P.C.D. No. 5.

a reasonable expectation that such information would no longer be supplied to the City, when it was in the public interest for the City to receive it.

[33] CBC next argues that the records are not "similar" to those the BCCS fears will not be available in future because they were all obtained by VANOC, a body over which the coroner did have jurisdiction. Relying on the government's FIPPA Manual, CBC says it is unlikely that similar information would no longer be supplied, where it is legally required. This was essentially what former Commissioner Loukidelis found in Order 03-05 (relying on earlier orders as well as Ontario orders to a similar effect):

> [15] … These decisions indicate that the necessary reasonable expectation under s. 21(1)(c)(ii) will be found not to exist where a third party supplies information under statutory compulsion (or in circumstances where the prospect of compulsion exists) or where there is a financial incentive for the third party to supply the information. The compulsion to supply information may also be contractual (as may a financial incentive to supply information). Similar principles have been established in decisions under the Ontario legislation. …

[34] Applying the principles that former Commissioner Loukidelis established in that case, the necessary reasonable expectation under s. 21(1)(c)(ii) does not exist where a third party (like VANOC) supplies information under statutory compulsion. I accept the concern of the BCCS that, if third party information it has received in confidence from entities outside of British Columbia was subject to disclosure under FIPPA, it might not receive such information in future, in cases where it would be in the public interest that it do so. However, that is not what happened here. Neither FIL nor IBG provided the information to the BCCS. Rather, as CBC points out, they provided the records to VANOC, a body over which the Coroner had jurisdiction to statutorily compel production of the records in dispute. For this reason, I am unable to find that disclosure of the records here could reasonably be expected to result in third parties declining in future to voluntarily provide information to assist the coroner in the discharge of his duties under the *Coroners Act*. I have therefore concluded that s. 21(1)(c)(ii) does not apply.

Harm to third party interests

[35] Past orders have set out the evidentiary requirements for the application of FIPPA's harms-based exceptions like s. 21. In order for the BCCS to meet its burden of proof:

> [17] … there must be a confident and objective evidentiary basis for concluding that disclosure of the information could reasonably be expected to result in harm … . Referring to language used by the Supreme Court of Canada in an access to information case, I have said "there must be a clear

> and direct connection between disclosure of specific information and the harm that is alleged".[12]

[36] As noted in orders such as Order 00-10,[13] the standard of proof applicable to harms-based exceptions like s. 21 is found in FIPPA's wording, namely whether disclosure of the information could reasonably be expected to cause the specific harm to be protected against. On the one hand, there is no need to prove certainty of harm. On the other, it is not enough to rely on speculation. Returning always to the standard set out in FIPPA, the expectation of harm from disclosure must be based on reason.

[37] IBG relies on ss. 21(1)(c)(i) and (iii) to argue that disclosure of the withheld information could reasonably be expected to cause significant harm to its competitive position; significant interference with its negotiating position; and undue financial loss. IBG says that designing highly specialized tracks is a specialty discipline and there are few designers in the field, which is a point CBC also makes, noting that the FIBT (International Federation responsible for Bobsleigh) described IBG in its March 10, 2004 letter to VANOC, as one of the "limited number of firms capable of undertaking this work [and as] being especially qualified, experienced, reliable and capable". CBC also notes that IBG has designed the past six tracks used during the winter Olympic Games and the track to be used in the next winter Olympic Games. IBG also points out that the Coroner's Report refers to the design of such tracks as a small "niche market" in which IBG has worked diligently to develop unique experience. It is on the basis of this expertise, reputation and goodwill that the company receives these design contracts. Given that there are very few companies that have the capability to undertake this type of work, IBG says disclosing the withheld information (its trade secrets and technical information) would significantly harm its business and its ability to negotiate future contracts and provide competitors with a competitive advantage.

[38] To this, CBC responds that the requested information relates to an existing structure and that any future bid by IBG and its competitors would reflect different specifications from the Whistler luge track. It therefore seems unlikely, CBC submits, that competing firms could exploit the information respecting the Whistler track to their advantage. IBG's response is that, while it is correct to say that each venue has its own challenges and specificities based on the geography of the location, IBG uses the data gathered from its previous experience with other tracks combined with proprietary software and methodology to bid for and

[12] Order F07-15, [2007] B.C.I.P.C.D. No. 21. See also, Order 02-50, [2002] B.C.I.P.C.D. No. 51, at paras. 124-137.
[13] [2000] B.C.I.P.C.D. No. 11, at paras. 35 and 38.

complete the work on the combined bobsleigh, skeleton and luge tracks for a variety of other clients. IBG goes on (at p. 4 of its Reply Submissions):

> The Information contains confidential information about several tracks, including factors considered in calculations, the results of calculations, deviations, description of the proprietary work methodology in calculating certain factors relevant to the design of combined tracks.
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> If the Information is released to the public, IBG's competitors could have access to this technical information and could incorporate it into their own bids for future work. The Information could also be used by other design and engineering firms (new to the market) to bid for future work.
>
> These other firms would benefit unjustly from the confidential technical information, proprietary methodology and technical expertise that IBG has spent several decades gathering, refining and applying. This would significantly harm IBG's competitive position and could cause IBG significant financial harm.

[39] I accept, as IBG asserts, that designing luge tracks is a specialty discipline and that it is one of the few designers in the field. More particularly, it has three main competitors, one of which also bid for the design work for the 2014 Olympic track at Sochi, Russia, as well as some other firms which IBG understands will be competing for the new Olympic 2018 track in PyeongChang, Korea.

[40] However, IBG's arguments about the harm that disclosure of the withheld records could reasonably be expected to cause to its competitive position, negotiating position and financial interests are broad, vague and speculative assertions. Having reviewed the records, there is only one record which can be said to contain information about IBG's calculations and deviations but only in a descriptive and very general way. Additionally, the records do not reveal any detailed information about its methodology or how it applied that methodology to arrive at its calculations. IBG does not explain how and why disclosure of this particular information would establish the harm that is claimed. In my view, IBG's arguments therefore lack a sufficiently confident and objective evidentiary basis on which I could conclude that such harm might reasonably result. Therefore, I am not persuaded that it has a reasonable expectation that the release of the records will result in any harm to their competitive position, significant interference with their negotiating position or undue financial loss. I would only add that, in reaching this conclusion, I have considered the contents of the records themselves. Accordingly, I find that ss. 21(1)(c)(i) and (iii) do not apply.

CONCLUSION

[41] I find that s. 21(1) of FIPPA does not require the BCCS to refuse to give the CBC access to the records at issue. For the reasons given above, under s. 58 of FIPPA, I require the BCCS to give the applicant access to the information it requested within 30 days of the date of this order, as FIPPA defines "day", that is, on or before October 26, 2012. The BCCS must concurrently copy me on its cover letter to the applicant, together with a copy of the records.

September 13, 2012

ORIGINAL SIGNED BY

Elizabeth Denham
Information and Privacy Commissioner
for British Columbia

OIPC File No.: F11-44515