IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Burgoyne v British Columbia (Information and Privacy Commissioner),* 2026 BCSC 2123

Date: 20261102
Docket: S-2614317
Registry: Victoria

In the Matter of the *Judicial Review Procedure Act*, RSBC 1996, c 241 and the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165 and in the Matter of Order F26-50 of the Delegate of the Office of the Information & Privacy Commissioner for British Columbia

Between:

Marie Burgoyne

Petitioner

And:

Information and Privacy Commissioner of British Columbia and the Ministry of Social Development and Poverty Reduction

Respondents

Before: The Honourable Justice J. Locke

On judicial review of a decision made by the Information and Privacy Commissioner, Order F26-50, dated June 17, 2026 (indexed as 2026 BCIPC 62)

Reasons for Judgment

The Petitioner, appearing on her own behalf:	M. Burgoyne
Counsel for Respondent, Information and Privacy Commissioner of British Columbia:	D. Redman
Counsel for Respondent, Ministry of Social Development and Poverty Reduction:	T. Bant
Place and Date of Hearing:	Victoria, B.C. September 14-15, 2026
Place and Date of Judgment:	Victoria, B.C. November 2, 2026

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A. Introduction and Overview

[1] This is a petition for judicial review arising from a request for access to records made by the petitioner, Marie Burgoyne, to the Ministry of Social Development and Poverty Reduction (the "Ministry") under the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165 [*FIPPA* or the Act].

[2] The principal decision under review is Order F26-50, dated June 17, 2026, made by Alexander Corley, an adjudicator and delegate of the Office of the Information and Privacy Commissioner for British Columbia (the "Commissioner" or "OIPC"). In that decision, the adjudicator granted the Ministry's application under s 43 of *FIPPA* and authorized it to disregard the petitioner's access request.

[3] This petition, however, is not confined to Order F26-50. The petitioner also challenges a series of decisions made during the proceedings before the Commissioner. The decisions challenged include: a decision to adjourn an earlier inquiry concerning the petitioner's request for a fee waiver pending the Ministry's s 43 application; a ruling excluding certain materials relating to settlement discussions from the record of the s 43 inquiry; the subsequent reopening of submissions following statutory amendments to s 43; and, the eventual decision to cancel the fee-waiver inquiry as moot after Order F26-50 was issued.

[4] Those decisions were made at different stages of the proceedings and by different delegates of the Commissioner. The petitioner challenges them on a number of grounds, including substantive unreasonableness and procedural unfairness. Although the individual decisions must be considered separately, they form part of a common procedural history arising from the petitioner's January 25, 2025 access request.

[5] *FIPPA* provides members of the public with a right of access to records in the custody or control of public bodies, subject to the exceptions and limitations established by the Act.

[6] The petitioner is a private individual who has had ongoing interactions with the Ministry. Her access request arose in the context of a broader research project which she described as concerning government programs and policies affecting persons with disabilities. In general terms, she sought information concerning the administration and cost of disability-related medical assistance and equipment programs, including eligibility and adjudication processes, approval and appeal rates, fraud investigation practices, and comparative approaches to the provision of disability-related supports. The request comprised 14 categories of information and extended over a period of almost 19 years, from June 1, 2006, to January 25, 2025.

[7] The Ministry does not question the petitioner's good faith in making the request or the legitimacy of her research purpose. Its concern is instead with the breadth of the request and the resources required to respond to it.

[8] The Ministry considered the request to be exceptionally broad and resource intensive. *FIPPA* permits a public body to charge prescribed fees for processing certain access requests, including where locating and retrieving the requested records requires more than three hours: *FIPPA* at s 75. The Ministry initially estimated the fee for processing the petitioner's request at approximately $35,000. The petitioner sought a waiver of that fee, and the resulting dispute proceeded to the OIPC for a fee-waiver inquiry. Before that inquiry was determined, however, the Ministry applied under s 43 of *FIPPA* for authorization to disregard the access request. The fee-waiver inquiry was adjourned so that the s 43 application could be determined first.

[9] Section 43 of *FIPPA* permits the Commissioner, on the application of the head of a public body, to authorize the public body to disregard an access request in specified circumstances. In Order F26-50, the adjudicator concluded that the petitioner's request was excessively broad and that responding to it would unreasonably interfere with the Ministry's operations. He accepted the Ministry's estimate that nearly 10,000 hours of staff time would be required to respond to the request and authorized the Ministry to disregard it.

[10] Five days later, on June 22, 2026, Elizabeth Barker, another delegate of the Commissioner, cancelled the fee-waiver inquiry. She concluded that, because Order F26-50 authorized the Ministry to disregard the underlying access request, the question whether the Ministry should waive or reduce the fee for processing that request had become moot.

[11] The petitioner now seeks judicial review of Order F26-50, as well as the related decisions that preceded and followed that order. The issues raised by this petition therefore include both the substantive basis upon which the Ministry was authorized to disregard the access request and the fairness and legality of the process by which that result was reached.

[12] The OIPC takes no position on the merits of the petitioner's challenges to the decisions under review. Consistent with the position generally taken by an administrative tribunal on judicial review, in order to preserve its impartiality, the OPIC's submissions were directed primarily to the statutory framework, the record before the decision makers, the applicable standards of review, and the principles governing available remedies. The Ministry opposes the petition on its merits. The factual and procedural history giving rise to the issues raised by the petition is set out below.

B. Factual Overview

[13] On January 25, 2025, the petitioner made an access request to the Ministry for records falling within 14 categories and dating from June 1, 2006, to January 25, 2025. As noted above, the requested records broadly concerned the administration of programs and policies affecting persons with disabilities, including the provision of medical supplements and equipment, eligibility and adjudication processes, program costs, fraud investigation, and related policies, correspondence and analysis.

[14] On March 17, 2025, the Ministry provided the petitioner with a fee estimate of approximately $35,000 for processing the request. On March 29, 2025, the petitioner requested that the fee be waived under s 75(5) of *FIPPA*. The Ministry did not agree to waive the fee in full. The petitioner sought review by the Commissioner of the

Ministry's decision, and the matter proceeded toward a fee-waiver inquiry. During the parties' dealings concerning the fee-waiver request, the Ministry made several partial reductions to its original fee estimate, resulting in a fee of approximately $9,000.

[15] The OIPC opened an inquiry into the fee dispute on November 6, 2025. On November 25, 2025, before that inquiry had been determined, the Ministry applied under s 43 of *FIPPA* for authorization to disregard the petitioner's access request. The Ministry also requested that the fee-waiver inquiry be adjourned so that its s 43 application could be determined first. The petitioner opposed both of those requests.

[16] On November 26, 2025, Elizabeth Barker, the OIPC's Director of Adjudication and a delegate of the Commissioner, adjourned the fee-waiver inquiry to permit the s 43 application to be determined first. I will refer to this as the "Sequencing Decision". Ms. Barker advised the parties that the Ministry's s 43 application would be forwarded to the OIPC's case-management team and assigned for processing.

[17] The OIPC subsequently established a schedule for submissions on the s 43 application. In December 2025, however, the Ministry requested an adjournment to permit the parties to discuss whether the access request could be resolved or narrowed. The OIPC granted the adjournment, and discussions between the parties continued until February 2026 without agreement. On March 4, 2026, the OIPC established a new schedule for submissions on the s 43 application.

[18] The Ministry delivered its submissions and supporting materials for the s 43 application on March 13, 2026. The petitioner delivered her responding materials on March 20, 2026. Her materials referred to the parties' discussions during the adjournment and included copies of some of their communications. The Ministry objected to the inclusion of those materials on the basis of settlement privilege. On March 26, 2026, the OIPC invited the parties to make submissions concerning their admissibility.

[19] On April 10, 2026, Ms. Barker ruled that portions of the petitioner's materials revealing what had occurred during the parties' settlement discussions were inadmissible in the s 43 inquiry on the basis of settlement privilege (the "Settlement Privilege Decision"). She directed the petitioner to revise and resubmit her materials. The petitioner delivered revised materials on April 17, 2026, and the Ministry delivered its reply submissions on April 24, 2026.

[20] The petitioner commenced this proceeding by filing her original petition for judicial review on April 28, 2026. At that time, the s 43 application had not yet been determined. The original petition principally challenged the Sequencing Decision and the Settlement Privilege Decision. The petition was subsequently amended as the proceedings before the OIPC continued and further decisions were made.

[21] Section 43 of *FIPPA* was amended effective May 28, 2026. On June 4, 2026, Alexander Corley, another delegate of the Commissioner, invited the parties to provide supplemental submissions concerning the effect of those amendments on the Ministry's application. The petitioner objected to what she characterized as the reopening of the record after the matter had been fully submitted and declined to provide further substantive submissions. The Ministry provided supplemental submissions on June 12, 2026.

[22] On June 17, 2026, Mr. Corley issued Order F26-50, granting the Ministry's s 43 application. He concluded that responding to the petitioner's access request would unreasonably interfere with the Ministry's operations and that the request was excessively broad. He therefore authorized the Ministry to disregard the request. He concluded that the result was the same under both the pre-amendment and amended versions of s 43.

[23] On June 22, 2026, Ms. Barker cancelled the fee-waiver inquiry. She concluded that, because Order F26-50 authorized the Ministry to disregard the underlying access request, the question whether the Ministry should waive or reduce the fee for processing that request was moot. She also concluded that the issues

were not novel and that proceeding with the inquiry would not be an efficient use of OIPC resources.

C. Statutory Framework

[24] *FIPPA* establishes a statutory scheme governing access to records held by public bodies and the protection of personal information. Among its stated purposes are making public bodies more accountable by giving the public a right of access to records, subject to limited exceptions, and providing for independent review of decisions made under the Act: s 2(1).

[25] Section 4 of *FIPPA* provides that, subject to the exceptions and limitations set out in the Act, an applicant who makes a request under s 5 has a right of access to a record in the custody or under the control of a public body. Section 5 prescribes the requirements for making such a request. It requires the request to be in writing and to provide enough detail to enable an experienced employee of the public body, with reasonable effort, to identify the records sought.

[26] Section 6(1) of *FIPPA* imposes a duty upon the head of a public body to "make every reasonable effort to assist applicants" and to respond to each applicant "without delay" and "openly, accurately and completely." The scope and significance of this duty in the context of the Ministry's s 43 application is disputed and is addressed in more detail below in considering the petitioner's challenge to Order F26-50.

[27] Part 4 of *FIPPA* establishes the office and powers of the Commissioner. The Commissioner is an independent officer of the Legislature charged with overseeing the administration of *FIPPA*. The Commissioner's functions include reviewing decisions and investigating complaints concerning the handling of access requests by public bodies, conducting inquiries, and making orders under the Act. Those functions are carried out through the OIPC. The Commissioner may delegate many of these functions to members of the OIPC.

[28] Part 5 of *FIPPA* provides the framework for independent review by the Commissioner of public body decisions made under the Act. Under s 52(1), a person who has requested access to a record may ask the Commissioner to review a decision, act, or failure to act by the head of a public body relating to that request. Section 55 permits the Commissioner to authorize a mediator to investigate and attempt to settle a matter under review. If the matter is not referred to mediation or is not settled, s 56 permits the Commissioner to conduct an inquiry and to decide all questions of fact and law arising in the course of that inquiry. The parties must be given an opportunity to make representations, although the Commissioner determines the manner in which those representations are made and the extent to which a party may have access to or comment upon the representations of another party.

[29] Section 75 of *FIPPA* permits a public body to charge prescribed fees for certain services associated with responding to an access request, including locating and retrieving records, producing records, and preparing records for disclosure. No fee may be charged for the first three hours spent locating and retrieving records: *FIPPA* at s 75(2). The *Freedom of Information and Protection of Privacy Regulation*, BC Reg 155/2012, prescribes the maximum fees that may be charged. For a non-commercial applicant like the petitioner, the maximum fee for locating and retrieving records is $7.50 for each quarter-hour after the first three hours: s 13 and Schedule 1.

[30] Section 75(5) of *FIPPA* permits the head of a public body, on written request, to excuse an applicant from paying all or part of the prescribed fees where, in their opinion, the applicant cannot afford the payment or it is otherwise fair to excuse payment, or where the record relates to a matter of public interest, including the environment, public health, or public safety.

[31] Section 43 of the Act permits the Commissioner, on the application of the head of a public body, to authorize the public body to disregard an access request in specified circumstances. As noted above, s 43 was amended while the Ministry's

application in this case was before the OIPC. Both the petitioner's access request and the Ministry's s 43 application predated those amendments. At those times, s 43 provided as follows:

> 43 If the head of a public body asks, the commissioner may authorize the public body to disregard a request under section 5 or 29, including because:
>
> (a) the request is frivolous or vexatious,
>
> (b) the request is for a record that has been disclosed to the applicant or that is accessible by the applicant from another source, or
>
> (c) responding to the request would unreasonably interfere with the operations of the public body because the request
>
> (i) is excessively broad, or
>
> (ii) is repetitious or systematic.

[32] While the Ministry's application was under consideration, the Legislature enacted the *Freedom of Information and Protection of Privacy Amendment Act, 2026*, SBC 2026, c 19 [Amending Act]. As noted above, the amendments to s 43 came into force on May 28, 2026. Section 28 of the Amending Act expressly provides that the amended s 43 applies to requests received "before, on or after" the date that provision came into force.

[33] As amended, s 43 provides:

> 43 If the head of a public body asks, the commissioner may authorize the public body to disregard a request under section 5 or 29, including because:
>
> (a) the request is frivolous or vexatious,
>
> (a.1) the behaviour of the applicant is abusive or malicious,
>
> (b) the request is for a record that has been disclosed to the applicant or that is accessible by the applicant from another source,
>
> (c) responding to the request would unreasonably interfere with the operations of
>
> (i) the public body, or
>
> (ii) the ministry of the minister responsible for this Act, or
>
> (d) the request is

(i) an abuse of the right to make a request under section 5 or 29 because the request is repetitious or systematic, or

(ii) excessively broad.

[34] The amendments materially altered the structure of s 43. Under the former s 43(c), the Commissioner could authorize a public body to disregard a request where responding to it would unreasonably interfere with the operations of the public body because the request was excessively broad or repetitious or systematic. Thus, excessive breadth or a repetitious or systematic request was not, under the previous s 43, sufficient on its own to allow a public body to disregard a request; the request had to result in unreasonable interference with the public body's operations. Under the amended provision, those concepts are separated. Unreasonable interference with the operations of the public body is now itself a ground for relief under s 43(c), while excessive breadth is a separate ground under s 43(d)(ii). A repetitious or systematic request is separately addressed under s 43(d)(i) of the Amended Act, where it constitutes an abuse of the right of access.

[35] As discussed below, after the amendments came into force, Mr. Corley invited the parties to make supplemental submissions concerning the effect of those amendments on the Ministry's application. He ultimately concluded that the amendments did not affect the outcome.

D. Issues

[36] The petitioner advances a number of grounds in support of her petition for judicial review. Although several decisions and procedural rulings were made during the proceedings before the OIPC, I do not consider it necessary at this stage to characterize each of them as a separate decision subject to judicial review. Each of the petitioner's substantive complaints will be considered. Some, however, are more appropriately considered as steps in the process culminating in Order F26-50 and are thus addressed in assessing the petitioner's challenge to the fairness of that process, rather than as discrete decisions requiring separate review.

[37] The petitioner's challenge to Order F26-50 raises both procedural and substantive issues. She says the process leading to the order was procedurally unfair. Her procedural complaints include the Sequencing Decision, the Settlement Privilege Decision, and the invitation for further submissions following the amendments to s 43.

[38] The petitioner also challenges the substance of Order F26-50. Her principal arguments concern the adjudicator's treatment of the Ministry's duty to assist under s 6(1), the evidentiary basis for the findings that responding to the request would unreasonably interfere with the Ministry's operations and that the request was excessively broad, and the adjudicator's interpretation and application of s 43, including the authorities governing that provision.

[39] Finally, the petitioner challenges the subsequent decision to cancel the fee-waiver inquiry as moot following the issuance of Order F26-50. She maintains that issues arising from the fee-waiver application remained live notwithstanding Order F26-50.

[40] I will first address the applicable standards of review before considering these issues.

E. Standard of Review

i. Procedural Fairness – Correctness

[41] The parties agree that issues of procedural fairness are reviewed on a standard of correctness.

[42] The decision of Justice Iyer, then of this Court, in *Cimolai v British Columbia (Information and Privacy Commissioner)*, 2024 BCSC 948 [*Cimolai*], provides a helpful overview of the principles governing judicial review for procedural fairness.

> **STANDARD OF REVIEW**
>
> [22] The standard of review for procedural questions is correctness: *Murray Purcha & Son Ltd. v. Barriere (District)*, 2019 BCCA 4 at para. 3. The presumptive standard of review for substantive decisions is reasonableness. This includes jurisdictional questions that do not concern the boundaries

between two or more administrative tribunals or between courts and administrative bodies with concurrent jurisdiction: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 16-17.

FAIRNESS OF THE PROCESS

[23] Recently, in *Airbnb Ireland UC v. Vancouver (City)* 2023 BCSC 1137, Justice Basran summarized the principles of procedural fairness:

> [71] The duty of procedural fairness is triggered whenever an administrative body's decision affects the rights, privileges, or interests of an individual: *Taseko Mines Limited v. Canada (Environment)*, 2019 FCA 320 at para. 28 [*Taseko*] citing *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 20, 1999 CanLII 699.
>
> [72] The content of this duty is inherently contextual and must be determined having regard to the circumstances of a given case: *Taseko* at para. 30 and *Baker* at para. 21.
>
> [73] A non-exhaustive list of factors that inform the content of the duty of procedural unfairness includes:
>
> > a) The nature of the decision being made, and the process followed in making it;
> >
> > b) The nature of the statutory scheme;
> >
> > c) The importance of the decision to the affected individual or individuals;
> >
> > d) The legitimate expectations of the person challenging the decision; and
> >
> > e) The choices of procedure made by the administrative decision-maker itself.
>
> See *Baker* at paras. 23-27, cited with approval in Vavilov at para. 77.
>
> [74] The purpose of the participatory rights contained within the duty of procedural fairness is to "ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker": *Baker* at para. 22, cited with approval in *Taseko* at para. 29.

[24] Justice L'Heureux-Dube's often-cited comments in *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817, are worth repeating:

> [21] The existence of a duty of fairness... does not determine what requirements will be applicable in a given set of circumstances. As I wrote in *Knight v. Indian Head School Division No. 19*, 1990 CanLII 138 (SCC), [1990] 1 S.C.R. 653, at p. 682, "the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case". All of the circumstances must be considered in order to determine the content of the duty of procedural

> fairness: *Knight*, at pp. 682-83; *Cardinal*, supra, at p. 654; *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, 1990 CanLII 31 (SCC), [1990] 3 S.C.R. 1170, per Sopinka J.
>
> [22] Although the duty of fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected, it is helpful to review the criteria that should be used in determining what procedural rights the duty of fairness requires in a given set of circumstances. I emphasize that underlying all these factors is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.
>
> [Emphasis in original.]
>
> (See also *Downing v. Strata Plan VR2356*, 2023 BCCA 100.)
>
> [...]
>
> [40] As established in *Baker* and subsequent cases, the hallmarks of a fair process in most situations are: notifying each party about the nature of the case, providing them an opportunity to present information and argument, and ensuring that an impartial decision-maker renders a decision.

[43] These principles inform the assessment of the petitioner's procedural fairness challenges.

ii. Substantive Decisions – Reasonableness

[44] The parties disagree as to the standard of review applicable to the petitioner's substantive challenges. The petitioner accepts that decisions of the Commissioner involving the interpretation and application of *FIPPA* generally attract reasonableness review. She submits, however, that what she characterizes as "extricable questions of law" are reviewable on a standard of correctness. On that basis, she characterizes a number of the alleged errors in the decisions under review, including the interpretation of ss 6 and 43 of *FIPPA*, as questions attracting correctness review.

[45] I do not accept that submission. The petitioner identifies no authority supporting the application of a correctness standard to what she describes as "extricable questions of law" in the circumstances of this case. More importantly, that

approach is inconsistent with the framework established by the Supreme Court of Canada in *Vavilov Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[46] *Vavilov* establishes a presumption that reasonableness is the applicable standard of review when a court reviews the substantive merits of an administrative decision. That presumption is displaced where the legislature has indicated that a different standard is to apply, including by providing a statutory appeal mechanism, or where the rule of law requires correctness review. The latter category encompasses constitutional questions, general questions of law of central importance to the legal system as a whole, and questions concerning the jurisdictional boundaries between two or more administrative bodies: *Vavilov* at paras 16–17, 53 and 69.

[47] None of those exceptions are engaged here. A question does not attract correctness review merely because it involves statutory interpretation or can be characterized as a question of law. As *Vavilov* expressly confirms at para 115, "[m]atters of statutory interpretation are not treated uniquely and, as with other questions of law, may be evaluated on a reasonableness standard." Where a reasonableness standard applies, the reviewing court does not undertake its own *de novo* interpretation of the statutory provision or ask what it considers to be the correct interpretation. Rather, it considers whether the decision-maker's interpretation is reasonable having regard to the text, context, and purpose of the provision: *Vavilov* at paras 116–120.

[48] The same is true where the interpretation of an administrative decision-maker's statutory authority is in issue. *Vavilov* rejected a separate correctness category for jurisdictional questions, concluding that a robust application of reasonableness review is sufficient to ensure that administrative decision-makers remain within the authority conferred upon them by the legislature: at paras 65–68, 109.

[49] Accordingly, subject to the petitioner's procedural fairness challenges, the substantive decisions challenged in this proceeding are reviewable on a standard of reasonableness. That includes the adjudicators' interpretation and application of *FIPPA* and the legal and factual constraints bearing upon the exercise of their statutory authority.

F. Analysis

i. Procedural Fairness

a) The Sequencing Decision

[50] As discussed above, the fee-waiver inquiry was underway when, on November 25, 2025, the Ministry asked that it be adjourned pending determination of its application under s 43. The Ministry maintained that the access request was excessively broad and vague and that responding to it would require many thousands of hours. It sought authorization under s 43 to disregard the request and submitted that the fee-waiver inquiry should be adjourned while that application was determined.

[51] The petitioner was provided with the Ministry's adjournment request and responded later that same day. Her response was detailed. She expressly opposed an adjournment and disputed, among other things, the Ministry's characterization of the access request and the asserted workload associated with responding to it. She also challenged the basis upon which the Ministry had assessed and reduced the fee, relied upon the public-interest considerations underlying her request for a waiver, and maintained that issues concerning the imposition and waiver of fees would remain regardless of the outcome of the s 43 application.

[52] On November 26, 2025, Ms. Barker advised the parties that she had reviewed the Ministry's request and the petitioner's response. She stated that she had decided that "the appropriate course of action" was to adjourn the fee-waiver inquiry to permit the OIPC to determine the s 43 application first. She did not provide further reasons for that decision.

[53] The petitioner challenges the Sequencing Decision on procedural fairness grounds. In her amended petition, she seeks to have the decision set aside on the basis that the adjournment was granted without reasons. In her submissions, she develops that argument further. She says that Ms. Barker did not substantively address her objections to the proposed sequencing or explain why the Ministry's position was preferred. She emphasizes that the adjournment remained in place for several months and maintains that some of the issues she had raised concerning the fee waiver would have remained live regardless of the outcome of the s 43 application.

[54] The petitioner does not contend that the OIPC lacked jurisdiction to determine the order in which the two proceedings would be addressed. The nature of her challenge nevertheless engages, as part of the context in which procedural fairness must be assessed, the authority of an administrative decision-maker to control its own process.

[55] In *Prassad v Canada (Minister of Employment and Immigration)*, [1989] 1 SCR 560 at p 568–569, the Supreme Court of Canada recognized the general principle that, in the absence of specific statutory rules to the contrary, an administrative tribunal is master of its own procedure, subject to the requirements of procedural fairness and natural justice. That principle has recently been applied in the context of proceedings before the OIPC: *Pyne v British Columbia (Information and Privacy Commissioner)*, 2026 BCSC 677 at para 59. *FIPPA* leaves significant aspects of the conduct of proceedings to the Commissioner. In particular, s 56 grants the Commissioner broad authority to conduct inquiries, determine questions arising in the course of those inquiries, and determine both the manner and extent to which parties may make representations.

[56] The decision whether to determine the s 43 application before completing the fee-waiver inquiry was a matter concerning the management and sequencing of related proceedings before the OIPC. The Commissioner had authority to control that process. The Commissioner's ability to control that process does not, however,

answer the petitioner's procedural fairness challenge. The Commissioner's exercise of its authority remained subject to the requirements of procedural fairness.

[57] As Justice Iyer observed in *Cimolai* at para 40, the hallmarks of a fair process in most circumstances include notice of the nature of the case, an opportunity to present information and argument, and determination by an impartial decision-maker.

[58] In this case, the petitioner was afforded a meaningful opportunity to participate in the Sequencing Decision. She was given notice of the Ministry's adjournment request. She knew what the Ministry was asking the OIPC to do and the basis upon which it sought that result. She responded before any decision was made and provided detailed submissions explaining why she opposed an adjournment. Ms. Barker expressly recorded that she had considered both the Ministry's request and the petitioner's response before making her decision.

[59] I accept that Ms. Barker's November 26, 2025 decision did not explain why she concluded that the s 43 application should be determined first. The absence of fuller reasons is relevant to the petitioner's complaint, but it must be considered in the context of the nature of the decision and the process that preceded it. This was a case-management decision concerning the order in which two related proceedings would be determined. The petitioner had notice of the proposed sequencing, knew the Ministry's reasons for requesting it, and had a full opportunity to explain why she opposed it.

[60] There was also an evident relationship between the two proceedings. The s 43 application raised the threshold question of whether the Ministry should be required to process the access request at all. If the Ministry were authorized to disregard the request, there would no longer be a practical need to determine what fee should be charged for processing it or whether that fee should be waived. That is what ultimately occurred. After Order F26-50 authorized the Ministry to disregard the request, Ms. Barker determined that the fee-waiver inquiry was moot. Whether that later determination was itself proper is a separate issue which I address below.

[61] Considering the process as a whole, I am satisfied that the petitioner was accorded procedural fairness in the making of the Sequencing Decision. The brevity of the reasons given for that decision did not, in the circumstances, render the process unfair.

b) The Settlement Privilege Decision

[62] After the Sequencing Decision, the OIPC established a schedule for the Ministry's s 43 application. Before submissions were exchanged, however, the parties began discussing whether the dispute could be resolved without proceeding to an inquiry. On December 4, 2025, Ministry counsel advised the OIPC that the Ministry remained hopeful that it could negotiate with the petitioner to narrow and clarify the access request and thereby resolve the s 43 application.

[63] On December 8, 2025, the Ministry requested a general adjournment of the s 43 inquiry to permit the parties to discuss and negotiate the access request, either directly or with the assistance of the OIPC. The Ministry referred to the possibility of changing the parameters of the request and "seeking compromise" with the petitioner.

[64] The petitioner did not oppose an adjournment for the purpose of attempting to resolve the dispute. In her response that evening, she said that she did not oppose participating in "non-binding mediation" and would welcome the assistance of a neutral mediator. She also said that, if mediation were unsuccessful, she would proceed to the inquiry. The following day, the OIPC granted the adjournment to allow what the registrar described as the "mediation process" to proceed and potentially resolve the outstanding issues.

[65] No mediator was subsequently appointed and the OIPC did not participate in the discussions. Instead, the parties communicated directly between December 2025 and February 2026 concerning the access request, including its scope and possible means of resolving the dispute. Although the process was conducted bilaterally, both parties at times referred to it as "mediation". The petitioner, for example, stated in correspondence dated February 5, 2026 that she remained

committed to a “constructive mediation process” and to working collaboratively toward a resolution.

[66] A disagreement subsequently arose concerning the use that could be made of those communications if the matter proceeded to inquiry. On February 25, 2026, Ministry counsel advised the petitioner that it considered mediation materials inadmissible at the inquiry on the basis of settlement privilege. The petitioner disagreed. She maintained that communications exchanged during mediation were not automatically excluded from the record and that either party could introduce them if relevant to the issues before the adjudicator. In her view, the informal nature of the process was intended to encourage good-faith efforts to resolve the dispute without prejudicing either party, rather than to prohibit the later use of relevant information. She maintained that the adjudicator retained broad discretion to determine what evidence could be considered.

[67] The Ministry filed its submissions on the s 43 application on March 13, 2026. The petitioner filed her response on March 20, 2026. Her response referred to and reproduced portions of the communications exchanged during the preceding discussions. The Ministry objected and asked that those portions of the petitioner’s response be removed on the basis that they disclosed communications protected by settlement privilege. The OIPC paused the inquiry and invited the parties to make submissions on the admissibility of the disputed material.

[68] The parties took different positions both as to the character of the discussions and the scope of settlement privilege. The petitioner maintained that the parties had not participated in a formal mediation: there had been no mediator, facilitation, or OIPC involvement. More importantly, she distinguished between offers, concessions, and negotiating positions, which she accepted were protected by settlement privilege, and what she characterized as procedural communications, factual clarifications, and exchanges concerning statutory obligations. She maintained that the latter could be separated from protected negotiating positions and could be relied upon to explain matters such as her efforts to clarify and refine

the scope of the request and to respond to the Ministry's characterization of her conduct.

[69] The Ministry took a broader view. It maintained that the communications had been exchanged during mediation for the purpose of resolving the s 43 application and were thus protected by settlement privilege. It had not consented to their use in the inquiry and opposed the petitioner's attempt to rely upon portions of those communications.

[70] On April 10, 2026, Ms. Barker ruled on the admissibility of those communications. She concluded that the parties had been engaged in settlement discussions from shortly after the December 8, 2025 adjournment until March 2, 2026. She recognized that no independent mediator had been involved but concluded that this did not mean that the parties had not been engaged in settlement discussions. She found that the communications occurred in the context of a dispute which the parties mutually intended to resolve and noted that both parties had referred to the process as mediation. She therefore concluded that, with one minor exception, the portions of the petitioner's submissions identified by the Ministry disclosed communications protected by settlement privilege and could not be considered in the s 43 inquiry.

[71] Ms. Barker also rejected the petitioner's proposed distinction between protected negotiating positions and other communications concerning process, factual clarification, and statutory obligations. She concluded that those communications were made in the course of attempting to settle the dispute and were thus properly characterized as subject to settlement privilege. She was also not persuaded that an exception to the privilege was established on the basis of fairness.

[72] The petitioner challenges the Settlement Privilege Decision on two related but distinct grounds. She submits (1) that the process by which the admissibility issue was determined was procedurally unfair, and (2) that Ms. Barker erred in concluding that the disputed communications were protected by settlement privilege. I will

address the procedural fairness challenge first before turning to the substance of the ruling.

[73] As discussed above in relation to the Sequencing Decision, the requirements of procedural fairness are flexible and context specific. In this setting, the essential requirements included that the petitioner know the issue to be determined and have a meaningful opportunity to make submissions concerning it: *Cimolai* at para 40. The content of the duty depends upon the circumstances of the particular administrative process: *Vavilov* at para 77.

[74] Those requirements were met in the Settlement Privilege Decision. When the Ministry objected to the petitioner's reliance on the communications, the OIPC did not determine the objection immediately. The inquiry was paused and both parties were invited to provide submissions concerning the admissibility of the disputed material. The petitioner took advantage of that opportunity. As described above, she made detailed submissions concerning the nature of the parties' discussions, the scope of settlement privilege, the distinction she drew between settlement positions and other communications, and her position that fairness required admission of the material for the purposes she identified.

[75] Ms. Barker considered those submissions and gave reasons explaining why she did not accept the petitioner's position. I am satisfied that the petitioner was accorded procedural fairness in the making of the Settlement Privilege Decision. The fact that Ms. Barker ultimately rejected the petitioner's characterization of the communications and her proposed distinction between different categories of information does not establish procedural unfairness. Those matters concern the substance of the Settlement Privilege Decision, to which I turn next.

[76] The Commissioner's authority to control the conduct of an inquiry, discussed above in relation to the Sequencing Decision, necessarily includes the authority to determine questions concerning the admissibility of materials placed before the decision-maker. The issue on judicial review is not whether this Court would have made the same evidentiary ruling, but whether Ms. Barker's determination was

reasonable having regard to the governing law, the OIPC's own procedures, and the nature and context of the communications in question.

[77] Ms. Barker considered both the OIPC's Instructions for Written Inquiries and the common law governing settlement privilege. She referred, in particular, to *Sable Offshore Energy Inc*. v *Ameron International Corp*., 2013 SCC 37 [*Sable*] at paras 2, 12–13 and 19, and *Union Carbide Canada Inc*. v *Bombardier Inc*., 2014 SCC 35 [*Union Carbide*] at paras 31–34.

[78] Those authorities describe settlement privilege as a common law rule of evidence and a class privilege protecting communications exchanged by parties in attempting to resolve a dispute. The purpose of settlement privilege is to promote settlement by permitting parties to negotiate frankly, without concern that what they say in the course of those negotiations may later be used to their prejudice if settlement is not achieved: *Sable* at paras 2, 12–13; *Union Carbide* at paras 31–32. The protection of settlement privilege is not confined to communications expressly designated "without prejudice". What matters is the parties' intention to settle the dispute, and negotiations undertaken for that purpose are protected: *Sable* at para 14; *Union Carbide* at para 34.

[79] The fact that no independent mediator participated in the discussions did not, in itself, preclude the application of settlement privilege. The relevant question was the nature and purpose of the communications. Here, as discussed above, the discussions followed the Ministry's request for an adjournment specifically to permit the parties to attempt to resolve the s 43 application. Both parties subsequently described the process as mediation and communicated over a period of several months concerning possible changes to the scope of the access request and the resolution of the dispute. Ms. Barker's conclusion that these were settlement discussions was available to her on that record.

[80] The communications themselves also reinforce that conclusion. I have reviewed the relevant communications, including the exchanges to which the petitioner specifically directed me during the hearing.

[81] The Ministry's January 28, 2026 communication advanced a proposal directed toward resolving the dispute. The petitioner responded on February 5, 2026. Although her response addressed a number of matters concerning the access request and advanced her position concerning the Ministry's obligations under *FIPPA*, it was contextually a response to the Ministry's proposal. It did not purport to terminate the negotiations or move to some separate process. Rather, it formed part of the continuing exchange directed toward attempting to resolve the dispute.

[82] The Ministry responded on February 25, 2026. In doing so, counsel expressly reiterated the Ministry's position that mediation materials were not admissible at the inquiry and that the communications exchanged in that context were for the purpose of the parties working together to arrive at a solution. The petitioner disagreed with the Ministry's position concerning admissibility but continued to engage with the substance of the parties' discussions. Considered as a whole and in context, these communications support Ms. Barker's characterization of the exchange as settlement discussions.

[83] During the hearing of this petition, and with the consent of the parties, I admitted as part of the record the petitioner's original response submissions to the s 43 application. Because those submissions contain material that Ms. Barker determined was protected by settlement privilege, I received them subject to a sealing order. The petitioner directed me to three paragraphs which she submits she was improperly required to remove. It is unnecessary to reproduce their contents here.

[84] I have reviewed those paragraphs together with the communications to which they refer. In substance, the petitioner sought to rely upon aspects of the settlement discussions to support propositions concerning the Ministry's conduct, including the extent to which it had responded to matters she raised and whether it had fulfilled what she says were its obligations under s 6 of *FIPPA*.

[85] That proposed use of the communications illustrates the difficulty with the petitioner's position. The purpose of settlement privilege is to allow parties to pursue

settlement freely without concern that their communications will later be used to their prejudice if settlement is unsuccessful: *Union Carbide* at para 31. As *Sable* explains, the protection extends to the settlement negotiations themselves.

[86] Given that the purpose of settlement privilege is to encourage parties to openly engage in negotiations the character of a protected communication cannot be determined in the manner proposed by the petitioner, that is by isolating individual statements from the negotiation and asking whether, viewed independently, they concern facts, procedure, or statutory obligations. Rather, the question of whether settlement privilege applies requires consideration of the impugned communication in its full context, including the circumstances in which it was made and the purpose for which it was exchanged. *Sable* is particularly instructive in this respect. At para 14, the Court explains that it is the parties' intention to settle that matters and that negotiations undertaken for the purpose of settling are inadmissible.

[87] That principle has particular application here. In attempting to negotiate a resolution of the s 43 application, the Ministry was entitled to determine how it would respond to the petitioner's proposals and arguments, what information it would provide in doing so, and which matters it would or would not address. The petitioner was equally entitled to advance her own position vigorously in response. Those exchanges did not cease to be settlement negotiations merely because they also addressed matters that might also have been relevant to the underlying dispute.

[88] It follows that the petitioner was not entitled to rely upon the Ministry's responses, or its failure to respond to particular matters she raised during settlement negotiations, as evidence that the Ministry had failed to discharge its duty under s 6 of *FIPPA*. At the negotiation stage, the parties were attempting to resolve the s 43 dispute, not to establish whether the Ministry had fulfilled its duty under s 6. To permit one party to subsequently rely upon what the other said, how it responded, or what it chose not to address during those negotiations as evidence concerning the merits of the underlying dispute would undermine the protection that settlement privilege is intended to provide.

[89] This does not mean that an independently existing fact becomes privileged merely because it is referred to during settlement negotiations. Settlement privilege does not prevent a party from proving such a fact through otherwise admissible evidence. The distinction is between proving the fact independently and relying upon the protected settlement communication itself as evidence of the fact or of the other party's conduct in relation to it.

[90] The petitioner also relied upon the recognized exceptions to settlement privilege. Citing *Sable* at para 19, she submitted that, even if the communications were privileged, the justice of the case required their admission because the Ministry had placed her conduct and the history of the request in issue. She maintained that procedural fairness required a complete and accurate record from which she could respond to the Ministry's characterization of her willingness to narrow the request.

[91] Ms. Barker considered that argument but was not persuaded that fairness required an exception to settlement privilege in this case. That conclusion was reasonable. *Sable* recognizes that settlement privilege may yield where, on balance, a competing public interest outweighs the public interest in encouraging settlement. The examples identified by the Court include allegations of misrepresentation, fraud or undue influence, and the prevention of overcompensation. There is no allegation or evidence of anything of that nature here.

[92] More importantly, the petitioner sought to rely upon the communications for a purpose closely connected to the very risk against which settlement privilege protects. She sought to rely upon the Ministry's statements, omissions and conduct during the settlement negotiations as evidence of its conduct in relation to the access request and its obligations under *FIPPA*. The petitioner's interest in answering the Ministry's characterization of the history of the request was legitimate. It did not, however, follow that she was entitled to do so by relying upon otherwise privileged settlement communications. The public interest in a fair and accurate administrative record did not require that the parties' protected negotiations themselves become evidence concerning the merits of the dispute.

[93] Viewed in that context, Ms. Barker's rejection of the petitioner's proposed distinction between negotiating positions on the one hand and what she characterized as procedural communications, factual clarifications, and exchanges concerning statutory obligations on the other was reasonable. Her conclusion did not depend merely upon the parties having used the term "mediation." She considered the circumstances in which the communications occurred, their relationship to the parties' attempt to resolve the s 43 application, the parties' own characterization of the process, and the use the petitioner proposed to make of the communications.

[94] Having also reviewed the communications to which the petitioner directed me, I see no basis to conclude that Ms. Barker's characterization of them was unreasonable. The January 28, February 5, and February 25 communications were part of an ongoing exchange directed toward attempting to resolve the dispute. The fact that the parties used those communications to advance their respective positions concerning the access request does not take them outside the settlement process. It is characteristic of settlement negotiations that parties explain and advocate the positions from which they are negotiating.

[95] I am therefore satisfied that Ms. Barker reasonably concluded that the disputed communications were protected by settlement privilege and reasonably rejected the petitioner's contention that the circumstances justified an exception to that privilege.

c) Supplemental Submissions Following the Amendment to s 43

[96] As noted above, s 43 was amended while the Ministry's s 43 application remained before the OIPC and before a decision had been rendered. The amendments altered the statutory provision under which the Ministry sought authorization to disregard the petitioner's access request. Importantly, the relevant statutory transition provision expressly provided that the amended s 43 applied to access requests received before, on or after the amendments came into force: *Amending Act* at s 28. The amendments therefore applied to the petitioner's access

request and were potentially relevant to the determination of the Ministry's pending s 43 application.

[97] On June 4, 2026, Mr. Corley invited both parties to provide supplemental submissions concerning the effect of the amendments on the Ministry's application. The petitioner objected to what she characterized as the reopening of a record that had already closed and declined to provide substantive supplemental submissions. The Ministry provided supplemental submissions on June 12, 2026.

[98] The petitioner submits that this process was unfair. Among other things, she argues that the application had already been fully submitted under the former legislation and that reopening the record altered the legal framework midstream.

[99] The petitioner also relies upon the fact that, in Order F26-50, Mr. Corley ultimately concluded that it was unnecessary to rely upon the amendments or the supplemental submissions in deciding the application. In her submission, if the amendments were ultimately irrelevant to the outcome, there was no reason to reopen the record to receive submissions concerning them. I do not accept that argument. The relevant question is whether it was fair and appropriate to invite submissions at the time the amendments came into force, not whether those submissions ultimately proved necessary to the result. Given the express transition provision, Mr. Corley was required to consider the potential application of the amended provision to the request before him. Inviting the parties to address that question was an appropriate means of doing so and was consistent with procedural fairness.

[100] Mr. Corley could not know, before considering the amended provision and the parties' positions concerning it, whether the amendments would affect his determination. The fact that he ultimately concluded that the result was the same under either version of s 43 does not render the earlier invitation unnecessary or unfair. Rather, that was the conclusion he reached after considering the potential significance of the amendments.

[101] Nor was the process unfair as between the parties. Both parties were afforded the same opportunity to make supplemental submissions. The petitioner chose not to do so because she objected to the process. Her decision not to take advantage of the opportunity provided to her did not make the process itself unfair.

[102] I am therefore satisfied that the invitation for supplemental submissions following the amendments to s 43 did not breach the requirements of procedural fairness.

d) Overall Fairness of the Process Leading to Order F26-50

[103] The petitioner also submits that these procedural events must be considered cumulatively. She says that the adjournment of the fee-waiver inquiry, the exclusion of evidence, and the reopening of the record following the amendments to s 43 created an unstable and unpredictable process which, viewed as a whole, was procedurally unfair. She also relies upon the delay that resulted over the course of the proceedings and raises concerns respecting the way the OIPC received and dealt with some of the parties' submissions.

[104] I do not agree that the process, considered as a whole, was procedurally unfair. For the reasons given above, each of the principal procedural steps challenged by the petitioner had an identifiable purpose and afforded her an appropriate opportunity to participate. The course of the proceeding was affected by several developments, including the parties' attempts to resolve their dispute, an evidentiary issue that arose concerning settlement privilege, and amendments to the governing legislative framework. Those developments necessarily affected the course and timing of the proceeding, but they did not deprive the petitioner of notice of the matters to be determined or a meaningful opportunity to make submissions concerning them. Considered individually and cumulatively, I am satisfied that the process leading to Order F26-50 was fair.

ii. Reasonableness of Order F26-50

[105] I turn next to the petitioner's challenge to the reasonableness of the decision itself. As discussed above, that question is not determined by asking whether I would have reached the same conclusions as the adjudicator. The Court must consider whether the decision, read as a whole, in light of the record and governing statutory framework, is justified, transparent, and intelligible: *Vavilov* at para 95.

[106] Although the petitioner advances numerous and overlapping criticisms of Order F26-50, her challenge can usefully be organized around three principal arguments. First, she submits that the adjudicator erred in refusing to consider the Ministry's duty to assist under s 6(1) of *FIPPA*.

[107] Her argument extends beyond the proposition that compliance with s 6(1) was a prerequisite to a s 43 application. She maintains that the Ministry's alleged failure to assist her in clarifying and narrowing the request contributed to the very breadth and burden of the access request upon which the Ministry subsequently relied in seeking authorization to disregard it.

[108] Second, the petitioner challenges the adjudicator's finding that responding to the request would unreasonably interfere with the Ministry's operations. She submits that the adjudicator accepted the Ministry's estimate of nearly 10,000 staff hours without an adequate evidentiary foundation and, in doing so, effectively reduced the statutory standard of "unreasonable interference" to one of "significant interference." She emphasizes, among other things, that the estimate was extrapolated from only 2 of the 14 categories of records and submits that the Ministry did not provide sufficient evidence concerning the actual effect of responding to the request upon its operations.

[109] Third, the petitioner submits that the adjudicator failed to undertake the proportionality analysis she says was required before authorizing the Ministry to disregard the request in its entirety. She maintains that the adjudicator was required to consider whether less intrusive alternatives, including further narrowing, staged

processing, or partial searches, could adequately address the Ministry's concerns before permitting the whole request to be disregarded.

[110] These arguments overlap. In particular, the petitioner relies upon the alleged failure to assist under s 6(1) of *FIPPA* both as an independent error and as a reason to question the reliability of the Ministry's estimate of the burden associated with the request. Similarly, her proportionality argument is closely connected to her contention that further narrowing could have reduced that burden. I will nevertheless address the three arguments separately before considering the petitioner's remaining challenges to the adjudicator's interpretation and application of s 43.

a) Section 6(1) duty to assist

[111] The petitioner places considerable reliance on the Ministry's duty to assist under s 6(1) of *FIPPA*. That provision provides as follows:

> **Duty to assist applicants**
>
> **6** (1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.
>
> (2) Moreover, the head of a public body must create for an applicant a record to which section 4 gives a right of access if
>
> (a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and
>
> (b) creating the record would not unreasonably interfere with the operations of the public body.

[112] The petitioner raised s 6(1) in her response to the Ministry's application. She argued that the Ministry could not obtain relief under s 43 without first fulfilling its statutory duty to assist. She also maintained that the Ministry had failed to ask appropriate clarifying questions, identify the areas in which responsive records were likely to be concentrated, or otherwise provide information that would have enabled her to refine or narrow the request.

[113] The Ministry responded that compliance with s 6(1) was not an issue in the inquiry. It noted that the provision had not been identified as an issue in the OIPC's

December 5, 2025 Notice of Request for Application to Disregard and that the OIPC's Instructions for Written Inquiries generally require permission to add an issue not identified in the Notice.

[114] The adjudicator accepted that submission in part. He concluded that the Ministry's compliance with s 6(1) was not properly an issue in the inquiry because it had not been identified in the Notice and the petitioner had not sought permission to add it. He nevertheless addressed the petitioner's argument concerning the relationship between ss 6 and 43. He rejected her contention that the Ministry was required to positively establish compliance with s 6(1) before the merits of its s 43 application could be considered, observing that she had identified no authority imposing such a requirement.

[115] There is, in my view, an important distinction between asking the adjudicator to determine whether the Ministry breached s 6(1) as a separate issue, and relying upon that provision in assessing whether the Ministry had established its entitlement to relief under s 43. The adjudicator's conclusion that the petitioner was not permitted to raise s 6(1) as a separate issue because it was not properly an issue in the inquiry was reasonable. However, I read the petitioner's responsive submissions as advancing, at least in part, an argument that s 6(1) should be considered in determining whether the Ministry had established its entitlement to relief under s 43.

[116] I am not satisfied that the procedural materials provided to the petitioner clearly required her to obtain the OIPC's permission to advance such an argument. The Notice advised her that the Ministry sought authorization under s 43 to disregard her request and identified the grounds upon which that relief was sought. The Instructions required permission to add a new "issue" not identified in the Notice. They did not expressly state that a respondent required permission to rely upon another provision of *FIPPA*, in this case s 6(1), in arguing that the statutory requirements for the relief sought had not been established.

[117] I need not determine whether the adjudicator's refusal to treat s 6(1) as a new issue resulted in procedural unfairness. The petitioner was not prevented from

advancing her argument regarding the influence of s 6(1) on the s 43 decision. She raised s 6(1) in this context, the Ministry responded to it, and the adjudicator considered and rejected the proposition principally advanced before him: that compliance with s 6(1) had to be positively established before relief could be granted under s 43.

[118] On judicial review, the petitioner develops this argument further, maintaining that the Ministry's failure to assist contributed to the very breadth and burden relied upon to justify relief under s 43. Resolving that argument requires closer consideration of the duty imposed by s 6(1).

[119] There does not appear to be any decision of this Court or the Court of Appeal addressing the scope of that duty. The OIPC has, however, considered s 6(1) in numerous orders. Those decisions are not binding upon this Court but provide a useful body of administrative interpretation concerning the meaning and application of this provision.

[120] The OIPC has consistently interpreted s 6(1) as requiring a public body to interpret an access request reasonably, to seek clarification where necessary to understand what information is sought, to conduct an adequate search for responsive records, and to respond openly, accurately, completely and without delay: *British Columbia Lottery Corporation, Re*, Order 00-33, 2000 CanLII 14398 (BC IPC) [Order 00-33]; *Vancouver (City), Re*, Order F21-41, 2021 BCIPC 49 at para 68; *Vancouver (City), Re*, Order F22-36, 2022 BCIPC 40 at para 57; *British Columbia (Health), Re*, Order F25-96, 2025 BCIPC 112 [Order F25-96] at paras 21–24 and 45. The required standard is one of reasonableness rather than perfection.

[121] The obligation to seek clarification is contextual. Where there is uncertainty concerning the parameters of a request, s 6(1) may require the public body to contact the applicant to ensure that it understands what information is sought: Order 00-33. Conversely, where the request is clear on its face and the surrounding circumstances introduce no ambiguity, clarification is not required: Order F25-96 at paras 35–36.

[122] The OIPC has also recognized that reasonable assistance may extend beyond resolving ambiguity. In *Vancouver Police Department, Re*, Order 00-30, 2000 CanLII 14395 (BC IPC), then Commissioner Loukidelis referred with approval to guidance recommending that, where a request would result in the review and disclosure of vast amounts of information, the public body should contact the applicant to determine whether the request can be narrowed while continuing to meet the applicant's information needs. Significantly, Commissioner Loukidelis described the focus of that exercise as defining more clearly the information the applicant wants, rather than identifying the classes of records held by the public body.

[123] I consider these principles to be consistent with the language of s 6(1) of *FIPPA*. The provision imposes a meaningful, positive obligation on the public body to make "every reasonable effort" to assist an applicant. What that requires will depend upon the request and the surrounding circumstances. It may require clarification, explanation, and assistance in defining the information sought. Where a request is exceptionally broad, it may also require engagement about ways in which its scope might be refined. It does not follow, however, that the public body is responsible for achieving a particular outcome from that engagement.

[124] The Ministry's conduct must therefore be considered against that standard. The question is whether the Ministry failed to provide the assistance required by s 6(1) and, if so, whether that failure contributed to the breadth of the request or the burden upon which the Ministry relied in seeking relief under s 43.

[125] At an early stage of the petitioner's access request, Information Access Operations (IAO), the branch of the Ministry of Citizens' Services that initially manages and processes access requests, reviewed the petitioner's 14-part request, reorganized it into proposed request descriptions, identified the Ministries likely to hold responsive records, and sought her confirmation and further clarification. The petitioner responded by providing additional detail about the information she sought.

[126] IAO subsequently advised the petitioner that the estimated fee could be reduced by narrowing the time period, identifying particular staff or program areas, limiting the types of records sought, or requesting records electronically. It offered to work with her to identify an efficient and cost-effective means of providing the records. The parties thereafter agreed to reduce the applicable time period by reference to government records-retention schedules, and the Ministry recalculated its fee estimate. It later invited further narrowing. Before the commencement of the settlement discussions, the Ministry also provided the applicable retention schedules and invited the petitioner to propose a shorter date range.

[127] I do not suggest that each of these steps was independently required by s 6(1). They do, however, demonstrate that the Ministry engaged with the petitioner concerning the clarification and scope of her request and provided information and opportunities directed toward refining her request.

[128] The petitioner's argument on judicial review goes further. She submits that the Ministry should have identified where responsive records were likely to be concentrated, provided information concerning its organizational and record-holding structure, and engaged with her in a more iterative process through which the request could be narrowed. She maintains that, had the Ministry done so, she could have materially narrowed the request and thereby reduced the burden upon which the Ministry subsequently relied on for relief under s 43.

[129] There was some foundation for that argument in the submissions before the adjudicator. The petitioner complained that the Ministry had failed to ask clarifying questions, identify what she described as "record-rich" and "record-poor" areas, or propose meaningful refinements to the request. She also submitted that the Ministry's failure to assist contributed to the perceived breadth of the request. I therefore would not characterize the argument advanced on judicial review regarding the role of s 6(1) in the s 43 analysis as entirely new.

[130] The petitioner's argument on this point is, however, considerably more developed on judicial review. Before the adjudicator, she referred to "record-rich"

and “record-poor” areas, and to the Ministry’s familiarity with its own records, in challenging the reliability of its estimates of the volume of responsive records and the time required to locate them. On judicial review, she advances a more specific argument: that further assistance from the Ministry would have enabled her to narrow her request substantially, thereby reducing the burden upon which the Ministry relied in seeking relief under s 43. She did not develop that connection as clearly before the adjudicator.

[131] I do not consider that distinction determinative. Even if the adjudicator had understood the petitioner’s argument in the manner in which it has now been advanced, I do not accept that s 6(1) imposes a duty of the breadth for which she contends.

[132] Information concerning a public body’s organization and record holdings may assist an applicant in deciding whether and how to narrow a request. It does not follow that s 6(1) requires a public body to identify which portions of an otherwise clear request are likely to generate the greatest volume of responsive records, map its record holdings for the applicant, or continue an iterative process until the applicant has reduced the request to a materially narrower scope.

[133] There is an important distinction between a duty to make every reasonable effort to assist and a duty to achieve a particular result through that assistance. Narrowing an otherwise intelligible request ultimately requires a choice by the applicant. A public body may explain the practical consequences of the request, seek clarification, identify possible means of refinement, and assist in defining the information sought. It cannot itself determine which responsive information the applicant is prepared to cease pursuing.

[134] Nor does the record establish that the breadth of this request resulted principally from a failure by the Ministry to understand what the petitioner was seeking. Her 14-part request was detailed and clearly articulated. Its breadth was largely a product of the categories of information sought and the lengthy period to which the requests related. Indeed, before the adjudicator, the petitioner herself

maintained that expressions such as “related to”, “including”, “includes”, and “any and all” were not inherently unclear.

[135] This does not mean that a public body's compliance with s 6(1) can never be relevant to an application under s 43. In different circumstances, for example, if the burden relied upon under s 43 resulted materially from a public body's unreasonable interpretation of an ambiguous request, or from its failure to seek clarification where s 6(1) required it, that conduct could bear upon whether the statutory requirements for disregarding the request had been established.

[136] Those are not the circumstances here. Measured against the scope of the duty I have described, the Ministry made every reasonable effort required by s 6(1) to assist the petitioner in understanding, clarifying, and refining her request. The provision did not additionally require the more extensive process the petitioner now advances, the success of which would ultimately depend upon her agreement to relinquish some of the information she continued to seek.

[137] I therefore do not accept that the adjudicator’s treatment of s 6(1) renders Order F26-50 unreasonable. He considered and rejected the proposition principally advanced before him. To the extent the petitioner has developed that argument on judicial review by contending that the Ministry’s failure to provide more extensive assistance caused or materially contributed to the breadth and burden of her request, that argument depends upon a conception of s 6(1) that I do not accept. In any event, the record establishes that the Ministry fulfilled the duty imposed upon it by s 6(1) in the circumstances.

b) The Ministry’s Estimate of the Work Required

[138] The petitioner advances several related challenges to the evidentiary foundation underlying the adjudicator’s conclusion that responding to the access request would unreasonably interfere with the Ministry’s operations. She submits that the Ministry’s estimate of nearly 10,000 hours rested upon estimates, assumptions, and extrapolations rather than evidence of actual interference. She emphasizes that the Ministry developed detailed volume estimates for only 2 of the

14 categories of information sought and says the adjudicator failed to explain why extrapolation from those categories to the other categories provided a sufficient evidentiary foundation for his conclusions.

[139] The petitioner also distinguishes between the work required to search for potentially responsive records and the further work required to process and produce those records for disclosure. She submits that the Ministry's estimate was confined to search time and therefore did not establish the processing burden necessary to demonstrate unreasonable interference. She further argues that the adjudicator failed to consider whether narrowing, staged processing, or partial searches could reduce the burden. I have addressed the latter argument, insofar as it rests upon the Ministry's duty to assist, in considering s 6(1) above.

[140] The Ministry maintained that its estimates were neither speculative nor unsupported. Its evidence was that Ministry staff spent 3,000 minutes, or approximately 50 hours, searching for and estimating the volume of records responsive to only two categories of the request. Those estimates were based upon actual searches as well as sampling and methodologies developed to identify responsive records across the Ministry's various record-keeping systems. The Ministry explained that the breadth and complexity of the request prevented it from generating reliable estimates through automated tools or high-level data queries and required consultation with employees having specialized and, in some instances, historical knowledge of the relevant record-keeping practices.

[141] That evidence is significant when considering the petitioner's characterization of the Ministry's estimates as speculative. The Ministry did not simply select two categories and apply an unsupported assumption to the remainder of the request. It undertook approximately 50 hours of work searching for records and developing volume estimates for those two categories alone. The resulting estimate was that they would generate approximately 597,721 pages of responsive records for those two categories. The Ministry maintained that the total volume responsive to all 14 categories would necessarily be greater.

[142] The adjudicator accepted the Ministry's evidence on this point. He found that its affidavit evidence established a reasonable estimate that nearly 10,000 hours of staff time would be required to search through potentially responsive records and compile a response. He considered that commitment of resources sufficient to overwhelm even a large and well-resourced public body and impair its ability to meet its obligations to other access applicants.

[143] In my view, the adjudicator's factual findings concerning the magnitude of the anticipated burden on the Ministry were reasonably available to him on the record. His task was to assess the evidence before him. It is not the function of this Court on judicial review to reweigh that evidence or determine whether it would have reached the same factual conclusions: *Vavilov* at para 125.

[144] The fact that the Ministry's evidence necessarily involved estimation and extrapolation does not render the adjudicator's reliance upon it unreasonable. Some degree of estimation is inherent in an application of this nature. The Ministry sought authorization to disregard the request because of the resources that would be required to respond to it. Requiring the Ministry first to identify and review all potentially responsive records to establish with precision their number and the time required to process them would require it to substantially undertake the very work from which it sought relief. The approximately 50 hours already devoted to searching for records and developing estimates for only two categories illustrates the practical difficulty with the petitioner's position.

[145] Nor was the adjudicator required to treat the fact that detailed volume estimates had been developed for only 2 of the 14 categories as undermining the Ministry's evidence. He accepted the evidence that those two categories alone were likely to generate nearly 600,000 pages of responsive records. Because they represented only part of the request, it was open to him to reason that responding to the whole request would produce an even greater volume of material.

[146] I also do not accept the petitioner's submission that the Ministry's estimate was confined to search time. The Ministry described the 9,962 hours as a

"Response Time Estimate." Its evidence was that the estimate assumed an average processing time of one minute per page and that responding to the request would involve not only searching for responsive records, but reviewing individual records for responsiveness and applicable exceptions, compiling and digitizing records, and severing information where required. The petitioner's characterization of the estimate as "solely a search-time projection" does not reflect that evidence.

[147] In any event, even if the petitioner were correct that the estimate accounted only for the work required to identify and collect responsive records, that would not assist her. The additional work she identifies – reviewing records, applying statutory exceptions, severing information and preparing records for disclosure – would add to, rather than reduce, the staff time required to respond. If anything, that would mean that the 10,000-hour estimate understates the time required to respond to the request.

[148] Finally, the adjudicator was alive to the petitioner's criticism that the Ministry's evidence rested upon estimates, assumptions, and extrapolations. He expressly acknowledged that argument before finding that the Ministry's affidavit evidence established a reasonable estimate of the resources required. His reasons need not respond separately to every component of the petitioner's challenge. Read as a whole, they disclose why he accepted the Ministry's evidence.

[149] I am therefore satisfied that the adjudicator's findings concerning the anticipated volume of records and staff time required to respond to the request had a reasonable evidentiary foundation. Whether, in light of those findings, he reasonably interpreted and applied the statutory requirement of "unreasonable interference" under s 43 is a separate question that I address below.

c) Excessive Breadth

[150] The petitioner also challenges the adjudicator's finding that her request was excessively broad. She submits that he placed too much weight on the estimated volume of responsive records and failed to consider whether the breadth of the request was justified by the nature and purpose of her research. She also says that

the adjudicator failed to distinguish between excessive breadth and unreasonable interference.

[151] As discussed above, the adjudicator accepted the Ministry's estimate that 2 of the 14 categories in the request would alone produce nearly 600,000 pages of responsive records. He regarded that volume as sufficient to establish that the request was excessively broad.

[152] The petitioner argued before the adjudicator that the temporal and subject-matter scope of the request was necessary to fulfill her research objectives and therefore did not make the request excessively broad. She maintained that the request was organized into discrete categories with those categories directed to particular aspects of the administration, evolution, and legal compliance of disability-related programs.

[153] The adjudicator did not accept that the purpose of the request determined whether it was excessively broad. He understood "excessively broad" to refer to the amount of responsive material generated by the request, rather than whether the request went beyond what the applicant reasonably needed to fulfil the purpose of her request. On that basis, he concluded that the petitioner's explanation for seeking the information did not answer the Ministry's concerns about the breadth of the request.

[154] I see nothing unreasonable in that approach. The petitioner's research objectives may explain why she sought such a wide range of information, but they do not change the scope of the request or the amount of material responsive to it. Those are different questions. It was open to the adjudicator to consider the breadth of the request by looking at what the Ministry would actually be required to produce.

[155] Nor was the adjudicator required to have estimates for all 14 categories before reaching the conclusion that the request was "excessively broad." For the reasons I have already given, it was open to him to accept the Ministry's estimate that two of the requests alone would produce nearly 600,000 pages of responsive

records. As he observed, if those two parts of the request would produce that volume of material, the request as a whole would necessarily produce more.

[156] I also do not agree with the petitioner's argument that the adjudicator treated excessive breadth and unreasonable interference as the same thing. He considered them separately and made separate findings on each. The fact that some of the same evidence was relevant to both does not mean that he failed to distinguish between them. The volume of responsive records was relevant to whether the request was excessively broad. It was also relevant to the amount of work the Ministry would have to undertake to respond to it.

[157] I am therefore satisfied that the adjudicator's finding that the request was excessively broad was reasonable.

d) Interpretation and Application of s 43

[158] The petitioner also challenges the adjudicator's interpretation and application of s 43. This requires some consideration of the amendments to that section which came into force while the Ministry's application was before him, as well as the decision in *Besler v British Columbia (Information and Privacy Commissioner)*, 2025 BCSC 662 [*Besler*].

[159] *Besler* was decided under the former version of s 43. Under that provision, the Commissioner could authorize a public body to disregard an access request where responding to it would unreasonably interfere with the operations of the public body *because* the request was excessively broad, repetitious, or systematic. Excessive breadth and unreasonable interference were therefore not independent grounds for relief: *Besler* at paras 46, 49–52.

[160] In *Besler*, Hardwick J. described s 43 as a remedial provision intended to curb misuse of the right of access. She emphasized that the right of access is important and that authorization to disregard a request is the exception rather than the rule. At the same time, the access rights of one applicant must be considered in the context

of the rights of other applicants and the ability of public bodies to carry out their functions: *Besler* at para 47.

[161] With respect to excessive breadth, Hardwick J. observed that previous OIPC decisions had treated a request as excessively broad where it was likely to produce a volume of responsive records that could fairly be described as "overwhelming" or "inordinate": *Besler* at para 52. Under the former s 43, a finding of excessive breadth did not end the inquiry. The Commissioner was also required to determine whether responding to the request would unreasonably interfere with the operations of the public body: *Besler* at paras 51, 55. That required an objective assessment of the circumstances, including the size and nature of the public body and the effect that responding to the request would have upon its operations and the access rights of others: *Besler* at para 55.

[162] As noted above, s 43 was amended, effective May 28, 2026: *Amending Act*. The amendments separated excessive breadth and unreasonable interference. Under the amended provision, the Commissioner may authorize a public body to disregard a request where responding to it would unreasonably interfere with the operations of the public body *or* where the request is excessively broad. Those are now independent grounds for relief.

[163] The adjudicator was aware of this change. He identified the difference between the former and amended provisions and, as discussed above, invited further submissions from the parties concerning the effect of the amendments. He ultimately found it unnecessary to decide whether the outcome depended upon the amended provision. He found both that the request was excessively broad and that responding to it would unreasonably interfere with the Ministry's operations. He therefore concluded that the requirements for relief were satisfied under both versions of s 43.

[164] The petitioner submits that the adjudicator nevertheless applied too low of a standard in determining unreasonable interference. She relies upon *Besler* and argues that significant interference is not sufficient. She says the Ministry

established, at most, significant interference and that the adjudicator failed to consider whether that interference was unreasonable in the circumstances.

[165] I do not accept that the adjudicator applied the wrong test. He expressly identified the question as whether responding to the request would unreasonably interfere with the Ministry's operations. He recognized that what amounts to unreasonable interference is flexible and must take account of the resources and capacity of the particular public body. He then considered the Ministry's size and resources and the effect that committing nearly 10,000 staff hours to this request would have upon its ability to respond to other access requests.

[166] The adjudicator also expressly considered *Besler*. He concluded that it did not establish a new or higher standard for unreasonable interference and was consistent with the approach previously taken in *Crocker v British Columbia (Information and Privacy Commissioner)* , 1997 CanLII 4406 (BCSC) [*Crocker*] and *Mazhero v British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 (BCSC) [*Mazhero*]. I see nothing unreasonable in that conclusion. *Besler* confirms that unreasonable interference should be assessed in the circumstances of the particular public body: *Besler* at para 55. That is the approach the adjudicator undertook.

[167] The fact that the adjudicator found the anticipated burden to be substantial does not mean that he substituted substantial or significant interference for the statutory test. The reasons must be read as a whole. The adjudicator did not simply find that 10,000 hours was a large number and stop there. He considered that burden in relation to the Ministry's resources and its obligations to other access applicants. His conclusion was that the commitment of those resources to a single request would overwhelm the Ministry's resources and impair its ability to meet its other obligations.

[168] The petitioner also emphasizes the importance of her research and the public interest she says it serves. Section 43 does not, however, require the Commissioner to weigh the value of the information sought against the burden of responding to the request.

[169] The adjudicator considered the petitioner's reliance upon the purposes of *FIPPA* and the public interest in disclosure. He referred to *Crocker*, where the Court held that the purposes set out in s 2 do not provide a basis for restricting the meaning of s 43. The statutory scheme of *FIPPA* protects access to information but it also recognizes the public interest in the reasonable administration of that scheme. The demands imposed by one request may affect the ability of a public body to respond to others.

[170] In her written submissions on this judicial review the petitioner submits that the adjudicator failed to consider values underlying the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act 1982,* being Schedule B to the *Canada Act 1982,* 1982, c 11 (UK) [*Charter*]. She did not develop that argument in her oral submissions. In her written submissions, she emphasizes that her research concerns government programs affecting persons with disabilities and says that the information sought relates to matters affecting a *Charter*-protected group, including access to essential medical benefits for that group.

[171] Where a discretionary administrative decision engages *Charter* protections, its reasonableness is assessed under the framework developed in *Doré v Barreau du Québec*, 2012 SCC 12 [*Doré*], and *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 [*Loyola*]. Under the *Doré/Loyola* framework, the reviewing court considers whether the administrative decision reflects a proportionate balancing of the *Charter* protections at stake and the relevant statutory objectives. The framework applies not only where an administrative decision limits a *Charter* right, but also where it engages and limits a relevant value underlying a *Charter* right: *Commission scolaire francophone des Territoires du Nord-Ouest v Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 at paras 64–67.

[172] This framework does not, however, require an administrative decision maker to consider a *Charter* value that is not relevant to the decision being made. For example, in *Levett v Canada (Attorney General)*, 2022 FCA 117 at para 49, the Court held that there was no need to complete the *Doré/Loyola* balancing analysis

where the administrative action under review did not engage the asserted *Charter* rights.

[173] In my view, the necessary connection between the administrative action and the asserted *Charter* rights is absent here. The subject matter of the petitioner's research undoubtedly concerns persons with disabilities and government programs affecting them. Order F26-50, however, did not determine anyone's eligibility for or entitlement to those programs, nor did it make any decision based upon disability. Rather, that order determined whether the Ministry could disregard this particular access request under s 43 because of its breadth and the burden associated with responding to it. The petitioner has not identified a *Charter* right or a value underlying one that was limited by that decision. The fact that the records she seeks concern matters that may themselves have constitutional dimensions does not establish that the administrative decision concerning access to those records engages the *Charter*.

[174] The *Doré/Loyola* proportionality framework was therefore not engaged.

[175] The petitioner also relies upon *Besler* in arguing that any remedy under s 43 must be proportionate and impair the right of access no more than necessary. In *Besler*, Hardwick J. held that the remedy must be proportional to the harm and reflect the objectives of s 43. That principle is particularly important where the Commissioner grants prospective relief restricting an applicant's ability to make future requests. Section 43 permits such relief: *Besler* at paras 57–58; *Crocker* at paras 40–43; *Mazhero* at paras 25–30.

[176] No such prospective relief was sought or granted here. The Ministry asked only for authorization to disregard the access request before the adjudicator. Having found that the specific request was excessively broad and that responding to it would unreasonably interfere with the Ministry's operations, the adjudicator authorized the Ministry to disregard that request. The concerns arising from restrictions upon future access requests were therefore not engaged.

[177] In my view, the adjudicator's interpretation and application of s 43 was reasonable. His findings concerning the volume of responsive records and the resources required to respond to the request were reasonably available to him for the reasons I have already given. He applied the statutory standard of unreasonable interference to those findings, considered the Ministry's size and resources and the effect upon other access applicants. He separately considered whether the request was excessively broad. Those findings satisfied both the former and amended versions of s 43. The amendments therefore did not affect the result.

iii. Fee-Waiver Inquiry Mootness Decision

[178] As discussed above, the petitioner also challenged the Ministry's refusal to waive or reduce the fee assessed for processing her access request. That issue was proceeding separately before the OIPC under s 75 of *FIPPA*.

[179] Following the release of Order F26-50, the petitioner asked that the fee waiver inquiry proceed. On June 22, 2026, Elizabeth Barker, whom I have previously identified as the OIPC's Director of Adjudication, decided to cancel the inquiry.

[180] Ms. Barker concluded that Order F26-50 had rendered the fee dispute moot. She found that, because the Ministry had been authorized to disregard the access request, deciding whether it was required to waive or reduce the fee for processing that request would be an academic exercise and no meaningful remedy would be available under s 58. She also concluded that the issues were not novel, that deciding them was not necessary to clarify or advance the law under s 75, and that proceeding with a moot inquiry would not be an efficient use of OIPC resources.

[181] I see nothing unreasonable in that decision. Once the Ministry was authorized to disregard the access request, there was no longer any practical issue concerning the fee required to process that request. Ms. Barker considered whether there was nevertheless a reason to decide the issue and concluded there was not. The issues were not novel, and their determination was not necessary to clarify or develop the law concerning fee waivers under s 75.

[182] I do not accept the petitioner's submission that Ms. Barker cancelled the inquiry on the basis of efficiency. Her conclusion was that Order F26-50 had rendered the fee dispute moot and that no meaningful remedy remained available. Her reference to the efficient use of OIPC resources was an additional consideration in deciding whether there was nevertheless reason to adjudicate the moot issue.

[183] The petitioner also argues that the fee dispute remained live because Order F26-50 was under judicial review. I do not accept that submission. Unless and until it was set aside, Order F26-50 remained the OIPC's decision authorizing the Ministry to disregard the access request. Ms. Barker was entitled to proceed on that basis.

[184] It was open to Ms. Barker to conclude that the fee dispute was moot and that there was no reason to continue the inquiry. Her decision to cancel it was reasonable.

G. Disposition

[185] For the reasons set out above, the petition is dismissed.

[186] Neither the Ministry nor the OIPC seeks costs of the petition. I therefore make no order as to costs.

"J. W. Locke, J."