

Date: 20250331
Place: Vancouver

In the Matter of:

**The *Freedom of Information and Protection of Privacy Act*,
R.S.B.C. 1996, c. 165 (the “Act”)**

And in the Matter of:

An Adjudication under Section 62 of the Act

Requested by R.W. on July 19, 2024

Reasons for Decision

of the

Honourable Madam Justice Devlin

(Sitting as an adjudicator appointed under Section 60 of the Act)

Counsel for the Commissioner, by written
submissions dated February 10, 2025:

K.R. Phipps

The requesting party, on his own behalf, by
written submissions dated March 1, 2025:

R.W.

Introduction

[1] Pursuant to s. 62 of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 [*FIPPA* or the “Act”], R.W. asks that an adjudicator review his request for access to records of the Office of Information and Privacy Commissioner (the “OIPC”), which the OIPC has refused.

[2] I was appointed to act as the adjudicator of this matter on October 22, 2024, pursuant to s. 60 of *FIPPA*. I received the written submissions of the OIPC on February 10, 2025, along with an affidavit of Ethan Plato, affirmed on February 6, 2025 and attaching nine exhibits (the “Plato Affidavit”). The written submissions of R.W. followed on March 4, 2025, as well as a book of materials containing ten exhibits.

Background Context

[3] The genesis of this adjudication appears to be a skiing accident that R.W. says he suffered in Whistler, B.C., some years ago. R.W. alleges that he received substandard medical treatment from a particular doctor for the injuries that he sustained as a result of the skiing accident. Among other things, R.W. alleges that the doctor falsified R.W.’s medical records and entered into a conspiracy with R.W.’s insurer to avoid a claim of medical malpractice.

[4] In connection with these grievances, R.W. says that he commenced a civil action in California (where he resides). For the purpose of that litigation, R.W. has made requests for access to the records of various healthcare organizations in British Columbia, including the College of Physicians and Surgeons of British Columbia (“CPSBC”), the Fraser Health Authority (“FHA”), and British Columbia’s Medical Services Plan (“MSP”): Plato Affidavit at para. 6. These organizations all

qualify as “public bodies” under *FIPPA*, with obligations to respond to access requests made under Part 2 of the Act.¹

[5] R.W. has lodged various complaints and requests for review with the OIPC in relation to his requests for access to the records of CPSBC, FHA, and MSP. He complained that his access requests were not responded to within statutory timelines, and substantively challenged the responses that he ultimately received: Plato Affidavit at para. 6. The OIPC advises that since 2019, it has opened 13 individual files in response to complaints or requests made by R.W., nearly all of which the OIPC says it has resolved: Plato Affidavit at paras. 5–9.

OIPC Access Request and Request for Adjudication

[6] On May 9, 2024, in the context of his pre-existing *FIPPA* proceedings, R.W. made a request of the OIPC, as a public body, for access to the following 24 items (the “OIPC Access Request”):²

1. Copies of all documents referencing [R.W.] in a personal or professional capacity;
2. Copies of all documents referencing [R.W.] and a family member;
3. Copies of all documents held or reviewed by OIPC with respect to [R.W.]’s complaint;
4. Copies of all documents created by OIPC and transmitted to third parties seeking information pertaining to [R.W.];
5. Copies of all internal and external memos and communications sent or received by OIPC concerning [R.W.];
6. Copy of the record of billings by [a doctor] for services provided to [R.W.] on December 22, 29 and 30, 1993; include also any other billings for the period December 14, 1993 thru January 31, 1994;
7. Copy of the record of billings by [a doctor], radiologist at MSA Hospital, for services provided to [R.W.] on December 22, 1993 thru January 31, 1994;

¹ The CPSBC is listed as a professional governing body in Schedule 3 of *FIPPA*, and thus qualifies as a “local public body” under Schedule 1 of the Act. The FHA is a regional health board identified in Schedule A of the *Regional Health Boards Regulation*, B.C. Reg. 293/2001, and accordingly is a “health care body” under Schedule 1 of *FIPPA*, meaning that it too is a “local public body”. Finally, the MSP forms part of the Ministry of Health, which qualifies as a “public body” under Schedule 1 of *FIPPA*.

² To conform with the general practice on adjudications under s. 62 of *FIPPA*, I have anonymized references to the applicant throughout these *Reasons*, including in this list.

8. Copy record of billings by [a doctor], radiologist at MSA Hospital, for services provided to [R.W.] on December 22, 1993 thru 31, January 1994;
9. Copy of all documents referencing [a doctor] with respect to complaints about professional conduct or services;
10. Copy of all complaints by patients about billings by [a doctor];
11. Copy of all communications between MSP BC and legal counsel for [a doctor] with respect to complaints about his professional conduct;
12. Copy of the names and contact details for any and all physicians and surgeons who worked with [a doctor] at the Chelsea House medical practice in Abbotsford where [R.W.] received treatment;
13. Copy of the name and contact details of the practice manager and/or managers for [a doctor] at Chelsea House medical practice where [R.W.] received treatment;
14. Copy of the name and contact details of the physician who purchased or assumed the patients of [a doctor] at Chelsea House medical practice where [R.W.] received treatment;
15. Copy of documents received from Abbotsford Regional Hospital and Cancer Centre concerning [R.W.]’s treating physician and patient, [a doctor], pertaining to the complaint of medical malpractice and unprofessional conduct;
16. List of all documents received from [R.W.] by OIPC;³
17. List of all documents received from [R.W.] by OIPC, which they, in turn, forwarded to third parties and to which;
18. A list and all corresponding 171 pages of documents in the record package provided to OIPC by Fraser Health and/or Abbotsford Regional Hospital and Cancer Centre;
19. A comprehensive explanation for any and all of denials of disclosure by OIPC;
20. A detailed objective explanation with referenced legal citations in support of Investigator’s determination that the information and documentation being sought is of such a purely personal nature that sight of such would violate the privacy of the person to whom it pertains;
21. Details of the personal nature of the reason for denial, for example, including but not limited to medical; financial; occupational; address; professional disciplinary record; criminal record; etc.
22. A detailed objective explanation by Investigator as to why the Applicant, [R.W.], would not be harmed or prejudiced as a consequence of denial of sight of this this information and documentation;

³ I note that R.W. reiterated his request for Item 16 on January 13 and January 23, 2025. On the latter occasion, R.W. stated that he was not seeking a list of the documents received from R.W. by the OIPC, but instead the documents themselves. Each of these additional requests were refused by legal counsel for the OIPC. See Plato Affidavit at paras. 16–19.

23. A list of the names and gender of the people with associated “rank”, who have had sight of the corresponding documents, denied to Applicant;

24. A formal statement by the Investigator confirming that Applicant, [R.W.], will not suffer any harm or prejudice as a consequence of her or other OIPC employee’s actions and sight of these documents.

[7] Amy O’Connor, legal counsel for the OIPC, acknowledged receipt of the OIPC Access Request by way of a letter dated May 17, 2024. In a subsequent letter, dated June 20, 2024, the OIPC denied R.W.’s access requests (the “Denial Letter”):

In response to your requests numbered 4, 20, 22, and 24, there are no responsive records. Further, for 20, 22, and 24, the records are not required to be created pursuant to section 6 of the Act, as they cannot be created from a machine-readable record using our normal computer hardware and software and technical expertise.

The remaining records that you requested were created by or for the Commissioner and relate to the Commissioner’s functions under FIPPA. As operational records they fall within s. 3(3)(f) of FIPPA. As a result, FIPPA does not apply to these records ...

[Plato Affidavit, Exhibit C, p. 16. Emphasis added.]

[8] Email correspondence between R.W. and Ms. O’Connor followed the Denial Letter. As part of that correspondence, R.W. requested access to a list of records in the OIPC’s possession that refer to his name.⁴ Ms. O’Connor stated that in the OIPC’s view, R.W.’s additional request for access was a restatement of the one that the OIPC had already denied.⁵ She advised R.W. that he could request a review of the denial by writing to the Minister of Citizens’ Services.

[9] R.W. sent a letter to the Minister, dated July 19, 2024. On July 24, 2024, Simon Tomkins, a policy analyst at the OIPC, emailed R.W. to confirm whether or not R.W. intended his letter to be a request for an adjudication pursuant to s. 62 of *FIPPA*. After some additional correspondence, R.W. confirmed that he was requesting such a review.

⁴ Plato Affidavit, Exhibit E, p. 22.

⁵ Plato Affidavit, Exhibit E, p. 20.

Parties' Positions

Position of the OIPC

[10] The OIPC opposes R.W.'s request for adjudication. As reflected in the Denial Letter, the OIPC advises in its written submissions that some of the information sought by R.W. does not exist (namely, Items 4, 20, 22 and 24 of the OIPC Access Request). The OIPC says it has located the balance of requested information in its case files. However, the OIPC submits that the records in its possession relate to the exercise of its functions under *FIPPA* (specifically, the investigation and adjudication of complaints and requests for review under the Act initiated by R.W.). Consequently, the OIPC submits that the records are "operational records" exempt from disclosure under s. 3(3)(f) of *FIPPA*.

[11] In relation to Item 16 of the OIPC Access Request, the OIPC acknowledges that it possesses the records sought by R.W. because R.W. himself sent them to the OIPC. The OIPC emphasizes, however, that the mere fact that a record was submitted to it by an applicant has no bearing on whether or not the requested record is "operational" in nature. The OIPC further advises that its file management system does not have the functionality to generate a list of the documents that R.W. has requested under Item 16. The OIPC says that creating such a list, or compiling the documents themselves, would require significant administrative effort.

Position of R.W.

[12] R.W. submits that the OIPC has improperly invoked s. 3(3)(f) of *FIPPA* in this case as a "catchall" to deny him access to records which he says should not be exempted from disclosure. In particular, R.W. submits that he is entitled to access records that pertain to his personal medical history, as well as related family records. In other words, R.W. submits that the exception to access set out in s. 3(3)(f) of *FIPPA* does not serve to exclude access to an applicant's personal health records. R.W. submits that he is also entitled to be informed of professional disciplinary investigations relating to the doctor who he says treated him poorly for his skiing injuries, and who is the subject of his civil action in California.

[13] In his submissions, R.W. also generally takes issue with prior decisions made by the OIPC in relation to his requests for access to the records of other public bodies.⁶ He says that some of these past OIPC decisions demonstrate “profound bias”, including gender bias against him. R.W. also emphasizes that denying him access to the records that he seeks in this case risks obstructing and compromising the viability of his civil action in California.

Governing Legal Principles

[14] The twin purposes of *FIPPA* are to make public bodies more accountable to the public and to protect personal privacy: *FIPPA*, s. 2. The Act identifies a number of measures intended to facilitate these purposes:

- (a) giving the public a right of access to records,
- (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves,
- (c) specifying limited exceptions to the right of access,
- (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies, and
- (e) providing for an independent review of decisions made under this Act.

[*FIPPA*, s. 2. See also *The Office of the Information and Privacy Commissioner for British Columbia v. Airbnb Ireland UC*, 2024 BCCA 333 at para. 9.]

[15] Section 4 of *FIPPA* provides an applicant the right to access records “in the custody or under the control of a public body”, including records containing personal information about the applicant. The requirements for applications of this sort are described in s. 5 of the Act. The balance of Part 2 sets out the duties of public bodies to respond to access requests, the exceptions to access, and the notice to be given to third parties of a decision providing or refusing access to a record.

[16] The Information and Privacy Commissioner (the “Commissioner”) is responsible for monitoring how *FIPPA* is administered and ensuring that its purposes are achieved: *FIPPA*, s. 42. The Commissioner does so by, *inter alia*, conducting

⁶ E.g., *College of Physicians and Surgeons of British Columbia (Re)*, 2023 BCIPC 48 (a copy of which is attached as Exhibit A of the Plato Affidavit).

reviews (on request) of decisions, acts, or failures to act by public bodies in relation to requests for access to records: s. 52. See also ss. 53–59.01.

Requests for Review by an Adjudicator

[17] Schedule 2 of *FIPPA* designates the OIPC as a “public body”. Accordingly, an application for access to records can be made for records in the possession of the OIPC, like a request of any other public body: *Adjudication (B.F.)*, 30 August 2018, Adjudication Order No. 27 at para. 20 [*B.F.*].

[18] Evidently, the OIPC cannot review its own decision to allow or refuse access to a record in its possession: *Adjudication (M.O.)*, 18 October 2019, Adjudication Order No. 29 at para. 13 [*M.O.*]. *FIPPA* addresses this issue by providing for the review of decisions made by the OIPC in its capacity as a public body by Supreme Court judges designated as adjudicators under the Act: *FIPPA*, ss. 60 and 62. On such an adjudication, the burden rests on the OIPC to prove that the aggrieved party has no right of access to the record, or to a part of it: *FIPPA*, ss. 57(1) and 65(1). See also *B.F.* at para. 23.

[19] Generally speaking, following an adjudicator’s review of the OIPC’s decision to refuse access to all or part of a record (as occurred here), the adjudicator must either: (a) require the OIPC to give the applicant access to all or part of the record; (b) confirm the decision of the OIPC to refuse access; or (c) require the OIPC to reconsider its decision. See *FIPPA*, ss. 58(2) and 65(2).

[20] I emphasize that the jurisdiction of a Supreme Court judge appointed as an adjudicator under s. 60 of *FIPPA* is narrow. The role is strictly confined to reviewing a decision of the OIPC in relation to a request of the OIPC for access to records, and determining whether the decision was made in accordance with *FIPPA*. The jurisdiction does not extend to reviewing the adequacy of the OIPC’s investigation into a *FIPPA* complaint about another public body, nor to reviewing the OIPC’s decision for procedural fairness or natural justice. See *Adjudication (Jane Doe)*, 6 January 2015, Adjudication Order No. 26 at paras. 17 and 19 [*Jane Doe*]. Grievances relating to the OIPC’s procedures or the adequacy of its investigation

into a *FIPPA* complaint may only be litigated by way of judicial review: *M.O.* at para. 15.

Operational vs. Administrative Records

[21] *FIPPA* identifies the Commissioner, along with several other heads of public bodies, as an “officer of the Legislature” for the purposes of the Act: *FIPPA*, s. 37(2) and Schedule 1. This means that the duties imposed by *FIPPA* on the OIPC as a public body are qualified by s. 3(3)(f) of the Act, which reads as follows:

(3) This Act does not apply to the following:

...

(f) a record that is created by or for, or is in the custody or under the control of, an officer of the Legislature and that relates to the exercise of functions under an Act;

[Emphasis added.]

[22] Adjudications under ss. 60 and 62 of *FIPPA* have generally turned on the application of this provision. Prior adjudications refer to the types of records contemplated in s. 3(3)(f) as “operational records”. The provision is clear that records of this sort are excluded from the right to access set out in *FIPPA*. By contrast, past adjudications have referred to records which do not relate to the OIPC’s functions under *FIPPA*, and to which access may be properly requested, as “administrative” records. See *B.F.* at paras. 24–25.

[23] The determinative question in these sorts of adjudications thus becomes whether the records at issue are “operational” or “administrative” in nature. Justice Grauer summarized the findings of prior adjudications on the issue in *B.F.*, as follows:

[27] Operational records have been held to include any record specific to a case file, such as case management or tracking sheets and lists, notes and working papers (including draft documents) of the Commissioner or his/her staff, or any other case-specific records received or created by the Commissioner’s office in the course of opening, processing, investigating, mediating, settling, inquiring into, considering, taking action on, or deciding a case: see, for example, *Doe*, citing *Mr. and Mrs. Y v. Information and Privacy Commissioner*, (05 December 2008) Adjudication Order No. 17 at

paras. 20—23; *Adjudication (G.R.)*, (30 June 1997) Adjudication Order No. 3 at paras. 16—19 [G.R.]; *Adjudication (C.M.)*, (5 January 1998) Adjudication Order No. 7 at paras. 14—15; *Adjudication (F.G.B.)*, (17 May 2000) Adjudication Order No. 13 at para. 13.

[Emphasis added.]

Analysis

[24] While past *FIPPA* adjudications have considered the meaning of operational and administrative records under the Act, and therefore assist in understanding the legislative framework and related legal principles that govern adjudications of this sort, each adjudication ultimately turns on its own unique facts and circumstances.

[25] To that end, I will first address the items in R.W.'s access request for which the OIPC says it does not possess responsive records. I will then discuss the balance of requested items, for which the OIPC says it does possess responsive records but which the OIPC submits are excluded from access by s. 3(3)(f) of *FIPPA*. I reiterate that in relation to both categories of requested items, the onus rests on the OIPC to demonstrate that R.W. is not entitled to access them: *FIPPA*, ss. 57(1) and 65(1).

Is the OIPC obligated to create the responsive records that it does not currently possess?

[26] For ease of reference, the requested items for which the OIPC says it does not possess responsive records are as follows:

4. Copies of all documents created by OIPC and transmitted to third parties seeking information pertaining to [R.W.];
20. A detailed objective explanation with referenced legal citations in support of Investigator's determination that the information and documentation being sought is of such a purely personal nature that sight of such would violate the privacy of the person to whom it pertains;
22. A detailed objective explanation by Investigator as to why the Applicant, [R.W.], would not be harmed or prejudiced as a consequence of denial of sight of this this information and documentation;
24. A formal statement by the Investigator confirming that Applicant, [R.W.], will not suffer any harm or prejudice as a consequence of her or other OIPC employee's actions and sight of these documents.

[27] I accept the OIPC's submission that it does not possess responsive records for these items. I have not been provided with any basis to question that submission. There remains the question, however, of whether s. 6(2) of *FIPPA* imposes a positive obligation on the OIPC to create these records:

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.

[Emphasis added.]

[28] In *Yeager v. Canada (Correctional Service)*, 2003 FCA 30, leave to appeal to SCC ref'd, 29665 (17 July 2003) [*Yeager*], the Federal Court of Appeal considered a similarly-worded provision of the federal *Access to Information Act*, R.S.C. 1985, c. A-1: s. 4(3). The court explained that the extent to which a non-existent record may be created "from a machine readable record" is a "largely contextual and fact-specific" question. One notable factor is whether the record can be created by "purely mechanical and routine editing or manipulation", or conversely whether it requires "independent composition". See *Yeager* at para. 40.

[29] I remain cognizant of the need to interpret *FIPPA*, including s. 6(2), in a manner consistent with the overall purpose of access-to-information legislation, and in particular with a view to the important democratic functions that access to information facilitates: *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2009 ONCA 20 at paras. 44–47 [*Toronto Police*]. Thus, provisions such as s. 6(2) of *FIPPA* can, in certain circumstances, impose obligations on public bodies to engage in processes that are more complex than simply retrieving and organizing pre-existing information. By way of example, in *Toronto Police Justice Moldaver* (as he then was) concluded that a provision similar to s. 6(2) of *FIPPA* required a police service to create a new computer program in order to produce a requested record: at paras. 52 and 58.

[30] However, in my view, the circumstances in this case contemplate something further. R.W. does not simply ask the OIPC to engage in a technical process to retrieve and collate, in a new record, machine-readable information that the OIPC already possesses. He asks instead that the OIPC create entirely new documents that set out, in detail, legal conclusions and the justifications for them. Fulfilling this request would clearly require the OIPC to engage in complex, independent composition far afield from the “mechanical and routine editing or manipulation” that s. 6(2) of *FIPPA* generally contemplates: *Yeager* at para. 40.

[31] Thus, I confirm the OIPC’s decision to deny R.W. access to Items 4, 20, 22, and 24 of the OIPC Access Request.

Is the OIPC obligated to provide R.W. access to the responsive records in its possession?

[32] The OIPC acknowledges that it possesses responsive records for the balance of items requested by R.W., but submits that the records are exempt from access by way of s. 3(3)(f) of *FIPPA*. I agree.

[33] The materials provided to me by the parties indicate that R.W. has had a long and complex involvement with the OIPC. R.W. has lodged numerous *FIPPA* complaints and requests with the OIPC, pertaining to requests that he made for access to the records of various public bodies in British Columbia. The OIPC has responded to these complaints and requests, in accordance with its mandate to administer *FIPPA*, by opening 13 individual files relating to R.W., most of which the OIPC says it has resolved.

[34] It is apparent that the OIPC only came to possess records relating to R.W., his family members, medical treatment that R.W. received, and the various doctors and healthcare organizations who R.W. says provided him medical care, as a result of exercising its mandate under *FIPPA* to address the specific complaints and requests lodged by R.W. in relation to other public bodies.⁷ The same, of course, is

⁷ i.e., Items 1–3 and 5–17 of the OIPC Access Request.

true of records in the OIPC's possession that concern the OIPC's decision-making process in relation to R.W.'s specific *FIPPA* complaints and requests.⁸

[35] Such records are therefore clearly "operational" in nature, in the sense that they are specific to the *FIPPA* cases involving R.W. In other words, I find that the OIPC only received or created these records "in the course of opening, processing, investigating, mediating, settling, inquiring into, considering, taking action on, or deciding" the cases handled by the OIPC that were initiated by R.W.: see *B.F.* at para. 27. I am therefore satisfied that the records in the OIPC's possession which are responsive to the items identified in R.W.'s access request are excluded from access by s. 3(3)(f) of *FIPPA*.

[36] R.W.'s submissions demonstrate that he views this adjudication as a forum to complain about how the OIPC handled his requests and complaints in relation to other public bodies (e.g., the CPSBC). The thrust of R.W.'s submissions is that the OIPC has failed to treat him fairly in responding to these requests and complaints, including by demonstrating gender bias against him. A Supreme Court judge acting as an adjudicator under s. 62 of *FIPPA* simply does not have the jurisdiction to review complaints of this sort, the gravamen of which appear to be allegations that the OIPC has failed to adhere to the principles of natural justice in carrying out its function as the administrator of *FIPPA*. If R.W. wishes to pursue such matters, he will have to do so by way of judicial review. See *M.O.* at para. 25.

[37] I appreciate that the distinction between reviewing the OIPC's decision-making as an adjudicator and doing so on judicial review may appear overly formalistic. That distinction is nonetheless determinative of this case. I am constrained in my jurisdiction as an adjudicator. My role is only to review the OIPC's decision-making as a public body, subject (like other public bodies) to access requests. My role simply does not allow me to consider R.W.'s submissions about

⁸ i.e., Items 18, 19, 21 and 23 of the OIPC Access Request.

the unfairness he says he experienced at the hands of the OIPC and its alleged failures in carrying out its function as the administrator of FIPPA.

[38] Before concluding, I wish to specifically address Item 16 of R.W.'s access request. I acknowledge, as does the OIPC, that R.W.'s request under this item contemplates records that he himself sent to the OIPC. However, that fact is not determinative of whether or not R.W. is entitled to access the records received by the OIPC from him, or whether the OIPC is obligated to compile a list of such records: see *Adjudication (S.V.)*, 12 April 2024, Adjudication Order No. 31 at para. 28. As with the balance of records in the OIPC's possession, it is apparent that the records received by the OIPC from R.W. were received in the course of the OIPC exercising case-specific functions under *FIPPA*. These records, then, also evidently qualify as "operational", and are similarly exempt from disclosure.

[39] Certainly, the OIPC may provide R.W. with the records responsive to Item 16 of his access request. That is a decision within its discretion. The OIPC advises that collating these documents or compiling a list of them would be administratively costly. My narrow role as the appointed adjudicator in this case does not permit me to direct the OIPC how to manage its own resources or exercise its discretion, in circumstances when it is not obligated by *FIPPA* to permit R.W. access to the requested records.

[40] Accordingly, I am satisfied that the OIPC has discharged its onus to demonstrate that R.W. is not entitled to access the records in the OIPC's possession responsive to the items identified in R.W.'s access request.

Conclusion

[41] For the foregoing *Reasons*, pursuant to ss. 58(2)(b) and 65(2) of *FIPPA*, I confirm the OIPC's decision to refuse R.W.'s access request, and dismiss R.W.'s request for adjudication.

Devlin J. 