



Order F26-24

VANCOUVER COASTAL HEALTH AUTHORITY

D. Hans Hwang
Adjudicator

March 23, 2026

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Summary: The applicant made a request under *the Freedom of Information and Protection of Privacy Act* (FIPPA) to the Vancouver Coastal Health Authority (VCH) for records about an investigation into complaints against medical staff. VCH withheld the records and information in dispute under s. 14 (solicitor-client privilege) of FIPPA and s. 51 of the *Evidence Act*. The applicant argued the disclosure of the disputed information was in the public interest under s. 25(1) (public interest disclosure) of FIPPA. The adjudicator found that s. 51(5) of the *Evidence Act* applies to the responsive records, so VCH is required to refuse to disclose the records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 14 and 25(1); *Evidence Act*, RSBC 1996 c 124, ss. 51(1), 51(5), 51(5)(c)(i), 51(5)(c)(ii), and 51(7); *Hospital Act*, RSBC 1996 c 200, ss. 41(1)(a) and 41(1)(b).

INTRODUCTION

[1] A journalist (applicant) made an access request to the Vancouver Coastal Health Authority (VCH), under the *Freedom of Information and Protection of Privacy Act* (FIPPA), for records relating to VCH's investigation into alleged misconduct within VCH. The applicant argued that disclosure of the information in the requested records was in the public interest under s. 25(1) of FIPPA.

[2] VCH withheld all the information in the responsive records under s. 14 (solicitor-client privilege) of FIPPA, and it informed the applicant that it found the disclosure of this information was not in the public interest under s. 25(1).

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review VCH's decisions regarding ss. 14 and 25(1). The

OIPC's mediation and investigation process failed to resolve the issues between the parties and the matter proceeded to inquiry.

[4] During the inquiry, the OIPC granted VCH's request to add s. 51 of the *Evidence Act* as an issue in the inquiry. It also invited Providence Health Care (PHC) to participate in the inquiry. PHC agreed to participate in the inquiry and supported VCH's decision to refuse access to the information in the records.

[5] I adjudicated that inquiry without seeing the records. VCH did not provide the records for my review because it claimed that they were protected by solicitor client privilege. I issued Order F25-91 in which I found that s. 14 did not apply and ordered VCH to produce the records for my review so I could decide the remaining issues.¹

[6] VCH complied with the production order, so I can now dispose of all of the remaining issues.

ISSUES

[7] The issues I must decide in this order are:

1. Whether VCH is prohibited under s. 51 of the *Evidence Act* from disclosing information to the applicant?
2. Whether VCH is required to disclose any information contained in the records pursuant to s. 25(1)?

[8] Section 57 of FIPPA does not say who has the burden of proof regarding s. 51 of the *Evidence Act*, but previous orders have held that it is in the interests of both parties to present argument and evidence in support of their positions.² I adopt the same approach here.

[9] FIPPA is silent about whether there is a burden on either party to prove or disprove that s. 25(1) applies. Past orders have said that it is in the best interest of both parties to provide whatever evidence and arguments they have to support the positions they take, but that it is ultimately up to the Commissioner to determine whether s. 25(1) applies after considering all of the available evidence and arguments.³ I adopt the same approach here.

¹ Order F25-91, 2025 BCIPC 107 (CanLII).

² Order F10-41, 2010 CanLII 77327 (BC IPC) at para 5; Order F23-21, 2023 BCIPC 24 (CanLII) at para 15.

³ Order 02-38, 2002 CanLII 42472 (BC IPC) at para 39; Order 03-02, 2003 CanLII 49166 (BC IPC) at para 16; Order F22-64, 2022 BCIPC 72 (CanLII) at para 6.

DISCUSSION

Background

[10] VCH is a regional health authority designated under the *Health Authorities Act*.⁴ It operates medical facilities within its region.

[11] PHC is a registered society under the *Society Act*.⁵ It operates medical facilities and provides medical services in partnership with British Columbia's health authorities including VCH.

[12] The University of British Columbia (UBC)'s Faculty of Medicine operates its programs at medical facilities of both VCH and PHC. UBC medical students filed misconduct complaints against members of medical staff practising at those facilities (the Members). VCH and PHC investigated those complaints (the Investigation). Committees of VCH and PHC were responsible for the Investigation.

[13] The applicant requested access to the records related to the Investigation.

Records and information at issue

[14] The responsive records consist of 230 pages comprised of 12 reports (the Reports). VCH is withholding the Reports in their entirety.

Section 51 of Evidence Act

[15] VCH and PHC say that the Reports were created for a committee under s. 51 of the *Evidence Act*⁶ as part of an investigation into the professional misconduct involving the Members. For this reason, they say the disclosure provisions of FIPPA do not apply to them.⁷

[16] The purpose of s. 51 is to protect the confidentiality of proceedings before committees tasked with ensuring that high standards of patient care, professional competency, and ethics are maintained.⁸ Section 51 protects not only formal

⁴ RSBC 1996, c 180.

⁵ SBC 2015, c 18.

⁶ In my s. 51 of the *Evidence Act* analysis, whenever I refer to section numbers, I am referring to sections of the *Evidence Act* unless otherwise specified.

⁷ VCH's initial submission at para 15 and PHC's initial submission at para 57.

⁸ *Lew (Guardian ad litem) v Mount St Joseph Hospital Society*, 1995 CanLII 1291 (BCSC) at para 18, endorsed by the Court of Appeal in *Sinclair v March*, 2000 BCCA 459 at para 23.

committee proceedings but also the preliminary and investigatory communications leading up to them.⁹

[17] Sections 51(5) to (7) restrict the disclosure of information received by committee and boards of management as follows:

51 (5) A committee or any person on a committee must not disclose or publish information or a record provided to the committee within the scope of this section or any resulting findings or conclusion of the committee except

- (a) to a board of management or, in the case of a committee described in paragraph (b.1) of the definition of "committee", to the boards of management that established or approved the committee,
- (b) in circumstances the committee considers appropriate, to an organization of health care professionals, or
- (c) by making a disclosure or publication
 - (i) for the purpose of advancing medical research or medical education, and
 - (ii) in a manner that precludes the identification in any manner of the persons whose condition or treatment has been studied, evaluated or investigated

(6) A board of management or any member of a board of management must not disclose or publish information or a record submitted to it by a committee except in accordance with subsection (5)(c) or (6.1).

(6.1) If information or a record submitted by a committee to a board of management of a hospital includes information that the board of management considers relevant to medical or hospital practice or care in another hospital, or during transportation to or from another hospital,

- (a) the board of management may disclose the information or record to the board of management of the other hospital, and
- (b) the board of management of the other hospital must not disclose or publish the information or the record disclosed to it under paragraph (a), except in accordance with subsection (5) (c).

(7) Subsections (5) to (6.1) apply despite any provision of the *Freedom of Information and Protection of Privacy Act* other than section 44 (1) (b), (2), (2.1) and (3) of that Act.

[18] In order to determine whether the Reports fall within the scope of s. 51, the first step is to determine whether they were submitted to a "committee".

⁹ *Nagase v. Entwistle*, 2016 BCCA 257 at para 64.

Were the Reports submitted to a committee?

[19] VCH says that its board of directors (VCH Board) serves as a board of management for all hospitals in its region as required by the *Hospital Act*. It says that the VCH Board has established the Medical Staff Bylaws (VCH Bylaws) and the Medical Staff Rules (VCH Rules) to govern the activities of the medical staff practicing in VCH facilities.¹⁰

[20] VCH also says that the VCH Board established a health authority medical advisory committee (HAMAC) that provides recommendations on certain matters to the VCH Board. Those matters include the cancellation, suspension, restriction, non-renewal, or maintenance of the privileges to practice at VCH facilities.¹¹

[21] PHC says that its board of directors (PHC Board) oversees the management of hospitals, organizes the medical staff, and enacts the Medical Staff Bylaws (PHC Bylaws) and the Medical Staff Rules (PHC Rules).¹²

[22] PHC also says that the PHC Board established a medical advisory committee (MAC) that provides recommendations on certain matters to the PHC Board. Those matters include the cancellation, suspension, restriction, or non-renewal of staff members' privileges for violations of bylaws, rules, and policies.¹³

[23] The relevant part of s. 51(1) says:

“committee” means any of the following:

(a) a medical staff committee within the meaning of section 41 of the *Hospital Act*; ...

[24] Relevant provisions of the *Hospital Act*¹⁴ state:

1 In this Act:

“board of management” means the directors, managers, trustees or other body of persons having the control and management of a hospital;

...

41 (1) In this section, “medical staff committee” means a committee established or approved by a board of management of a hospital for

¹⁰ In its initial submission at para 12. VCH provides the online links to VCH Bylaws and VCH Rules.

¹¹ VCH's initial submission at paras 12-13.

¹² PHC's initial submission at para 47. In its s. 51 submissions, PHC provides a copy of PHC Bylaws and PHC Rules.

¹³ PHC's initial submission at paras 50-51.

¹⁴ RSBC 1996 c 200.

- (a) evaluating, controlling and reporting on clinical practice in a hospital in order to continually maintain and improve the safety and quality of patient care in the hospital, or
- (b) performing a function for the appraisal and control of the quality of patient care in the hospital.

[25] For the reasons that follow, I am satisfied that HAMAC and MAC fall within the definition of a committee in s. 51(1)(a).

[26] To support its position, VCH provided an affidavit from its general counsel (VCH Lawyer). VCH Lawyer provides the background and context for the Reports. She explains that the VCH Bylaws and the VCH Rules establish a mechanism for investigating complaints regarding the professional conduct of medical staff.¹⁵ She says that the Reports were generated by investigators pursuant to processes set in the VCH and PHC Medical Staff Bylaws and Rules, conducted in accordance with section 51 of the *Evidence Act*.¹⁶ In my view, however, this affidavit on its own does not provide sufficient evidence to find HAMAC and MAC qualify as a committee under s. 51(1) of the *Evidence Act* and s. 41 of the *Hospital Act*.

[27] I find the Reports themselves provide the additional details, and the Bylaws and Rules of VCH and PHC provide the context of the Reports.

[28] VCH Bylaws set out the purpose and responsibilities of HAMAC as follows:¹⁷

Article 8 – THE HEALTH AUTHORITY MEDICAL ADVISORY COMMITTEE

8.1 Purpose

8.1.1 The Board of the Directors shall appoint a Health Authority Medical Advisory Committee (HAMAC).

8.1.2 The HAMAC makes recommendations to the Board of Directors with respect to cancellation, suspension, restriction, non-renewal, or maintenance of the privileges of all members of the medical staff to practice within the facilities and programs operated by [VCH].

8.1.3. The HAMAC provides advice to [VCH Board] and to the CEO on:

- .1 the provision of medical care within the facilities and programs operated by [VCH];
- .2 the monitoring of the quality and effectiveness of medical care provided within the facilities and programs operated by [VCH];
- .3 the adequacy of medical staff resources;
- .4 the continuing education of the members of the medical staff; and
- .5 planning goals for meeting the medical care needs of the population served by [VCH].

¹⁵ VCH Lawyer's affidavit #1 at para 4.

¹⁶ VCH Lawyer's affidavit #2 at para 4.

¹⁷ Medical Staff Bylaws for VCH revised on June 20, 2018.

8.3.5 Professional and Ethical Conduct of Members of the Medical Staff

.1 The HAMAC reviews and reports on any concerns related to the professional and ethical conduct of physicians to [VCH Board], and, where appropriate, reports those concerns to the appropriate regulatory College.

[29] PHC Bylaws set out the following about the purpose and responsibilities of MAC:¹⁸

8.1 Purpose

8.1.1 The Board of the Directors shall appoint a Medical Advisory Committee (MAC).

8.1.2 The MAC makes recommendations to the Board of Directors with respect to cancellation, suspension, restriction, non-renewal, or maintenance of the privileges of all members of the medical staff to practice within the facilities and programs operated by Providence Health Care.

8.1.3 The MAC provides advice to the Board of Directors and to the CEO on:

- .1 the provision of medical care within the facilities and programs operated by Providence Health Care;
- .2 the monitoring of the quality and effectiveness of medical care provided within the facilities and programs operated by Providence Health Care;
- .3 the adequacy of medical staff resources;
- .4 the continuing education of the members of the medical staff; and
- .5 planning goals for meeting the medical care needs of the population served by Providence Health Care.

8.3.5 Professional and Ethical Conduct of Members of the Medical Staff

.1 The MAC reviews and reports on any concerns related to the professional and ethical conduct of physicians to [PHC Board], and, where appropriate, reports those concerns to the appropriate regulatory College

[30] As set out above, the VCH and PHC Bylaws contain almost identical frameworks and provisions, including their articles about the purpose and functions of medical advisory committees.

[31] In my view, it is clear on the face of the VCH Bylaws that the VCH Board serves as a board of management for all hospitals in its region, and has established HAMAC under its Bylaws. I am satisfied that HAMAC's responsibilities include reviewing and reporting on concerns related to the professional and ethical conduct of physicians. I find such responsibilities are consistent with a committee's function to evaluate on clinical practice to maintain and improve quality of patient care. I further find HAMAC performs the function of appraisal and control of the quality of patient care in the hospital. I am therefore satisfied that the functions of HAMAC bring it within the meaning of a medical staff committee under s. 41(1) of the *Hospital Act*.

¹⁸ Medical Staff Bylaws for PHC approved on September 20, 2018.

[32] I am also satisfied that the PHC Board has established MAC under the PHC Bylaws, and MAC carries out its duties and functions as the medical staff committee under s. 41(1) of the *Hospital Act*.

[33] As a result of the above findings, I find that HAMAC and MAC meet the definition of a “committee” in s. 51(1)(a) of the *Evidence Act*.

Were the Reports provided to HAMAC and MAC within the scope of s. 51(5)?

[34] Section 51(5) states that a committee or any person on a committee must not disclose or publish information or a record provided to the committee within the scope of s. 51 or any resulting findings or conclusions of the committee.

[35] VCH and PHC broadly said that s. 51 prohibits the disclosure of the Reports under FIPPA, without adequately identifying which of the circumstances under ss. 51(5), (6) or (7) apply.¹⁹ Therefore, I determined that they had not sufficiently explained what they claimed, and had not provided sufficient evidentiary basis.

[36] Because of the mandatory nature of the restrictions on disclosure in s. 51, I offered VCH and PHC an opportunity to provide a further submission to clarify what they claimed. In response, VCH and PHC provided supplemental submissions.²⁰ I also offered the applicant an opportunity to respond to VCH and PHC’s supplemental submissions, which she took.²¹

[37] VCH says that the Reports were generated for a committee as defined in s. 51, therefore disclosure of the Records is prohibited under ss. 51(5) and (6).²² To support its position, VCH relies on the evidence of VCH Lawyer which I accept.

[38] PHC says that VCH and PHC jointly retained an investigator to conduct an investigation into complaints against the Members.²³ PHC further says the investigator prepared the Reports for the members of a committee and board of management at VCH and PHC,²⁴ therefore, disclosure of the Reports is prohibited under ss. 51(5) and (6).²⁵

[39] The applicant says that VCH and PHC would not be violating s. 51 if they disclosed the Reports to her because s. 51(5)(c) applies.²⁶ Section 51(5)(c) says

¹⁹ VCH’s initial submission at paras 15-21; PHC’s initial submission at paras 54-58.

²⁰ OIPC’s December 19, 2025 letter.

²¹ Applicant’s January 28, 2026 email.

²² VCH’s s. 51 submission at para 35.

²³ PHC’s initial submission at para 17.

²⁴ PHC’s s. 51 submission at para 9.

²⁵ PHC’s s. 51 submission at paras 26-30.

²⁶ Applicant’s response submission at paras 47- 51.

that information or a record provided to the committee within the scope of s. 51 or any resulting findings or conclusion of the committee may be disclosed or published for the purpose of advancing medical research or medical education, and in a manner that precludes the identification in any manner of the persons whose condition or treatment has been studied, evaluated or investigated.

[40] Both PHC and VCH respond that the purpose of s. 51(5)(c) is to provide a committee with the discretion to release information, and it does not compel a committee to release information.²⁷ They also submit that even if s. 51(5)(c) applied (which they dispute), they exercised their discretion to not disclose the Reports to the applicant under s. 51(5)(c).²⁸

[41] In my view, it is clear that the Reports were provided to HAMAC and MAC within the scope of s. 51 based on the following factors:

- HAMAC and MAC were responsible for the investigation into complaints against the Members;²⁹
- VCH retained an investigator (Lead Investigator), to investigate the complaints, and provide a legal opinion;³⁰
- The Lead Investigator and a co-investigator (collectively, the Investigators) generated the Reports pursuant to the processes set out in VCH and PHC's bylaws and rules, and the Reports were provided to VCH and PHC;³¹ and
- Every complaint regarding a medical staff member's professional competence, their ethics, and behaviour may ultimately be referred to HAMAC and then to VCH Board to make a final determination.³²

[42] I am not persuaded by what the applicant says about s. 51(5)(c).

[43] The applicant seems to be arguing that because s. 51(5)(c) exists, VCH should not worry about having to comply with the mandatory disclosure prohibition in s. 51.

[44] However, s. 51(5)(c) is a discretionary provision. This means that VCH's authority to disclose information or a record under that section is discretionary and not mandatory. I do not see, and the applicant does not provide evidence, that VCH had exercised its discretion to disclose the Reports.

²⁷ VCH's reply submission at para 29.

²⁸ PHC's reply submission at para 26. VCH's reply submission at para 29.

²⁹ VCH's initial submission at para 13 and PHC's initial submission at para 51.

³⁰ VCH Lawyer's affidavit #1 at paras 7-8.

³¹ VCH Lawyer's affidavit #2 at para 4.

³² VCH Lawyer's affidavit #1 at para 6.

[45] The applicant also says that she believes UBC administrators have a copy of the Reports and that completely undermines VCH and PHC's arguments that s. 51 applies.³³ I do not think this claim is relevant to determine whether the Reports were provided to HAMAC and MAC within the scope of s. 51(5). Having considered the mandatory nature of the restrictions on disclosure in s. 51, even if VCH had contravened the s. 51 restriction by sharing the Reports with UBC (as the applicant alleges) that does not mean VCH is required to contravene it again by disclosing the Reports to the applicant.

[46] For all of the above, I find the Reports were provided to VCH and PHC within the scope of s. 51 and s. 51(5) prohibits their disclosure.

Public interest disclosure, s. 25 of FIPPA

[47] The applicant submits VCH should disclose the Reports under s. 25(1).³⁴

[48] Section 25 requires disclosure without delay in certain circumstances. This section overrides all of FIPPA's discretionary and mandatory exceptions to disclosure.

[49] As set out above, I have found s. 51(5) of the *Evidence Act* applies to the Reports. Section 51(7) provides that ss. 51(5) to (6.1) apply despite any provision of FIPPA (with the exception of certain s. 44 provisions that are not relevant here). In light of what s. 51(7) says, I conclude s. 51(5) of the *Evidence Act* applies despite s. 25 of FIPPA.

[50] As a result, it is not necessary for me to consider whether if there are any circumstances that require VCH to disclose the information at issue under s. 25.

CONCLUSION

[51] For the reasons given above, under s. 58 of FIPPA, I confirm VCH's decision that it is required to refuse to disclose the Reports to the applicant under s. 51 of the *Evidence Act*.

March 23, 2026

ORIGINAL SIGNED BY

D. Hans Hwang, Adjudicator

OIPC File No.: F24-96233

³³ Applicant's October 21, 2025 Sur-reply submission and January 28, 2026 email.

³⁴ Applicant's response submission at paras 34-36.