



Order F26-48

## FRASER HEALTH AUTHORITY

Amy O'Connor  
Adjudicator

June 16, 2026

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**Summary:** An applicant requested access under the *Freedom of Information and Protection of Privacy Act* to records held by the Fraser Health Authority (Fraser Health) in relation to adverse reactions from specific medical treatments administered at a named facility. Fraser Health refused to disclose the records, asserting it was prohibited from disclosure by s. 51(5) of the *Evidence Act*. The adjudicator found that s. 51(5) of the *Evidence Act* prohibits disclosure and confirmed Fraser Health's decision to withhold the records at issue.

**Statutes Considered:** *Evidence Act*, [RSBC 1996] c 124, ss. 51(5) and 51(7).

### INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an access applicant asked the Fraser Health Authority (Fraser Health) for records related to adverse medication reactions from iron infusion treatments administered at the Jim Pattison Outpatient and Surgical Centre (JPOSC) in a specified timeframe. Fraser Health refused to release the records on the basis that s. 51(5) of the *Evidence Act* applies and prohibits disclosure. The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review Fraser Health's decision to withhold the records. The OIPC's mediation did not resolve the issues in dispute, and the matter proceeded to this inquiry. Both Fraser Health and the applicant provided submissions.

### Preliminary Matters

*Section 6(2) no longer in dispute*

[2] Other than the applicability of s. 51 of the *Evidence Act*, the Notice of Inquiry and Investigator's Fact Report (Inquiry Documents) also identified s. 6(2)

of FIPPA as an issue.<sup>1</sup> This issue is whether, if s. 51 of the *Evidence Act* is found not to apply, Fraser Health is required to create a record pursuant to s. 6(2).

[3] In its initial submissions, Fraser Health says it is not relying on s. 6(2). It says that responsive records exist and, regardless, it is possible to generate a record using the available data. This section is not at issue, therefore, and I will not consider it any further.

#### *Section 6(1) raised by the applicant*

[4] Under s. 6(1), public bodies are required to make every reasonable effort to respond without delay to each applicant openly, accurately and completely. In his submissions, the applicant raises new issues related to this duty that are not set out in the Inquiry Documents. He says that Fraser Health contravened s. 6(1) by trying to change the wording of his access request, and he seems to question both the adequacy of Fraser Health's search and its response time.

[5] When parties attempt to introduce new issues at the inquiry stage, it undermines the integrity and effectiveness of the investigation and mediation phase of the OIPC's review and complaint process. That process is designed to benefit the parties by clarifying and solidifying the issues, potentially resolving them and determining if they warrant proceeding to inquiry.<sup>2</sup> As such, past OIPC orders have consistently held that parties may only add new issues to the inquiry if permitted to do so by the OIPC.<sup>3</sup> In addition, the OIPC's *Instructions for Written Inquiries* and the Notice of Inquiry clearly explain the process for adding new issues to an inquiry.

[6] With respect to adequate search, I note the applicant previously made such a complaint to the OIPC in relation to this access request. His complaint was the subject of a separate OIPC file (F23-93988), which has been closed. I will not revisit or address the adequacy of Fraser Health's search for records, as that complaint has already been dealt with by the OIPC. As to the remainder of s. 6(1), the applicant did not seek prior approval to add s. 6(1) as an issue, and I am not persuaded by the record before me that it would be fair to add this new issue or that there is any exceptional circumstance to warrant adding s. 6(1). Therefore, I decline to add or consider s. 6(1).

#### *Scope of access request*

[7] The applicant refers in his submissions to additional records and information that he says must be disclosed by Fraser Health. Fraser Health says

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<sup>1</sup> From this point forward, all section references are to FIPPA unless otherwise specified.

<sup>2</sup> Order F23-54, [2023 BCIPC 62](#), para 11 & the cases cited therein.

<sup>3</sup> See, for example, Order F22-29, [2022 BCIPC 32](#), para 12 & Order F12-07, [2012 BCIPC 10](#), para 6.

it is not open to the applicant to expand the scope of the request at this stage. I agree, for the reasons I have outlined above regarding new issues. More importantly, it is not possible to consider a public body's response to an access request that has not yet been made or processed. I therefore decline to expand the scope of the request.

*Sufficiency of evidence to establish applicability of Evidence Act*

[8] Fraser Health did not provide the records for my review. Instead, it provides affidavit evidence in support of its submissions. Fraser Health submits this is sufficient for me to determine whether or not s. 51 of the *Evidence Act* applies. Fraser Health also says it is not able to voluntarily produce the records without a production order.

[9] The applicant says Fraser Health is required to produce the records in dispute, referring to previous OIPC orders involving s. 51 of the *Evidence Act* where production of the records was ordered.<sup>4</sup> He submits that I am bound by this precedent due to the principle of *stare decisis*, and required to order production of the records.<sup>5</sup>

[10] Under s. 44(1)(b), the Commissioner or their delegate can order a public body to produce a record for the purposes of conducting an inquiry under s. 56. The OIPC's practice is to utilize this power only where it is necessary to fairly decide the issues in the inquiry.<sup>6</sup> As the applicant notes, the OIPC has previously exercised such authority in inquiries involving s. 51 of the *Evidence Act*. It is well-established, however, that *stare decisis* does not apply to administrative tribunals such as the OIPC.<sup>7</sup>

[11] In this case, Fraser Health says the records are contained in a web-based patient safety event reporting, learning and management information system called the Patient Safety & Learning System (PSLS). It provides affidavit evidence from an employee with oversight and responsibility for PSLS (Employee).

[12] I am satisfied that the Employee has direct and sufficient knowledge of the nature and content of the records at issue. I have reviewed the Employee's evidence, and I find that it clearly sets out the facts and particulars necessary for me to determine whether s. 51(5) of the *Evidence Act* applies. In conclusion, I accept the sworn evidence provided by Fraser Health, and I am satisfied I have

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<sup>4</sup> Order F25-91, [2025 BCIPC 107](#), paras 59-60.

<sup>5</sup> *Stare decisis* is the legal principle that courts must follow previous judicial decisions to ensure consistency and predictability in the law.

<sup>6</sup> Order F23-61, [2023 BCIPC 59](#), para 84.

<sup>7</sup> *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#), para 129.

sufficient evidence to decide if s. 51(5) of the *Evidence Act* applies. I therefore find it is not necessary to order production of the records.

### *Request to cross-examine the Employee*

[13] The applicant submits it was necessary for him to cross-examine the Employee on her affidavit to “test her evidence and expose problems, deficiencies, and inaccuracies in it”. He says the principles of natural justice and procedural fairness require it. I understand this to be a request for an oral hearing, as s. 56(4)(a) gives the Commissioner the power to decide whether representations are to be made orally or in writing.

[14] The OIPC, akin to a tribunal, is master of its own procedure.<sup>8</sup> While cross-examination *may* be a necessary element of procedural fairness if important issues of credibility are raised, or where there is no other effective means of refuting the allegations or arguments of the other side, the opportunity to cross-examine a witness does not necessarily follow from the fact of a written inquiry or the right to be represented by legal counsel.<sup>9</sup>

[15] In this case, I do not find that any issues of credibility, reliability or accuracy have arisen in respect of Fraser Health’s evidence. The applicant has not identified any specific issues that persuade me a cross-examination of the Employee is necessary. I find that the applicant has had a sufficient and meaningful opportunity to respond to Fraser Health’s evidence, and I have sufficient evidence and argument before me on which to assess the applicability of s. 51(5) of the *Evidence Act*. As such, I decline the applicant’s request to cross-examine the Employee on her affidavit at an oral hearing.

### **ISSUE AND BURDEN OF PROOF**

[16] The issue I must decide in this inquiry is whether Fraser Health is prohibited from disclosing the records pursuant to s. 51(5) of the *Evidence Act*.

[17] Section 57 of FIPPA does not say who has the burden of proof regarding s. 51(5) 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.<sup>10</sup> I adopt the same approach here.

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<sup>8</sup> See Order F16-20, [2016 BCIPC 22](#), para 16.

<sup>9</sup> *Ibid.*

<sup>10</sup> See Order F25-91, *supra* note 4, para 11 and the cases cited therein.

## DISCUSSION

### Background

[18] Fraser Health is a regional health authority with responsibility for the design, delivery and administration of publicly funded health care services to patients in BC.<sup>11</sup> The JPOSC, located in the vicinity of Surrey Memorial Hospital, provides outpatient services such as day surgery, diagnostic services and other specialized treatments that do not require an overnight stay at the Surrey Memorial Hospital or other local hospitals. Both Surrey Memorial Hospital and the JPOSC are designated hospitals under the *Hospital Act*<sup>12</sup> that are operated and administered by Fraser Health.

[19] Fraser Health has policies, protocols and systems in place for reporting, managing and reviewing patient safety incidents and adverse drug reactions arising from medical care that is delivered to its patients. It uses PSLs to receive, manage and evaluate information related to patient safety incidents for the purpose of learning and improvement. Once an incident is reported in PSLs, an appropriate person or “handler” is assigned to review the incident, categorize it based on the degree of harm to patients and determine appropriate next steps and the nature of any review and follow up that may be required by staff or by a committee.

### Information and records at issue

[20] The information at issue relates to adverse medication reactions from iron infusion treatments administered at the JPOSC in a specified timeframe. The records consist of patient safety event reports that are stored in PSLs. Fraser Health withheld the entirety of these records from the applicant under s. 51 of the *Evidence Act*.

### Evidence Act – s. 51

[21] Section 51 of the *Evidence Act* prohibits a committee or any person on a committee from disclosing or publishing information or a record provided to a committee within the scope of the section, with limited exceptions. The purpose of s. 51 of the *Evidence Act* is to protect hospitals’ efforts to ensure that high standards of patient care and professional competency and ethics are maintained, by ensuring confidentiality for documents and proceedings of committees entrusted with this task.<sup>13</sup>

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<sup>11</sup> Pursuant to the *Health Authorities Act*, [RSBC 1996], c 180.

<sup>12</sup> [RSBC 1996], c 200.

<sup>13</sup> *Lew v Mount St Joseph Hospital Society*, [1995 CanLII 1291 \(BC SC\)](#), para 18, endorsed by the BC Court of Appeal in *Sinclair v March*, [2000 BCCA 459 \[March\]](#), para 23.

[22] Section 51(5) of the *Evidence Act* restricts the disclosure of information received by committees as follows:

51(5) A committee or any person on a committee must not disclose or publish information or a record provided to a 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.

[23] Section 51(7) of the *Evidence Act* expressly provides that subsection (5) applies despite any provision of FIPPA, with limited exceptions. As such, if I find that s. 51(5) of the *Evidence Act* applies to the records, the applicant has no right of access to them under FIPPA.

#### *Parties' submissions*

[24] Fraser Health submits it is required by s. 51(5) of the *Evidence Act* to refuse to disclose the records at issue to the applicant, as all the requirements of that section are applicable. Fraser Health says:

- it has established several patient safety quality committees for the purposes of studying, investigating and evaluating medical and hospital practices and the care provided to patients;
- its policies require employees with knowledge of adverse drug reactions or patient safety incidents to complete a report in PSLS as soon as possible;
- where a critical incident occurs giving rise to significant patient harm, the incident is presented to the appropriate committee for additional investigation and a determination as to whether a detailed review is required;
- where a patient safety report does not result in such a review, the data contained in PSLS reports is collected, used and retained for the purposes of studying, evaluating and improving hospital and patient

care;

- the data is used to prepare monthly reports to the appropriate committee for purposes such as identifying emerging trends and monitoring the volume, nature and seriousness of incidents; and
- committees may make specific requests for PSLS data or reports to evaluate patient safety issues under consideration.

[25] In response, the applicant says that s. 51 of the *Evidence Act* does not apply to factual information or raw data, and he is therefore entitled to that information. He says that medical facts and records, including anything contained in patient charts, are not created for a committee, and they are therefore not subject to s. 51 of the *Evidence Act*. He submits this is raw data that simply exists, not that was created for a committee. He specifically refers to “Code Blues” as raw data to which he is entitled. The applicant cites various guidance documents which say that medical records and factual information that is, or should be, included in a patient’s chart is shareable, because it was not created for a committee and is therefore not covered by s. 51 of the *Evidence Act*. While he acknowledges that a committee’s report or interpretation of factual information could not be disclosed, he says the facts themselves must be.

[26] The applicant also submits that s. 51 of the *Evidence Act* does not offer a blanket protection, and the mere fact that certain information went before a committee does not make it privileged.

[27] Finally, the applicant says there is a legal, moral and ethical positive duty on health authorities to inform patients of any potential harms. He makes clear that he is particularly concerned with Code Blue information being shared publicly.

[28] In its reply submissions, Fraser Health says there is no language in s. 51 of the *Evidence Act* which supports the exclusion of factual or clinical information, and such an interpretation would defeat the clear meaning and purpose of the section. Fraser Health says it agrees that just because a medical event has been reviewed by a committee under s. 51 of the *Evidence Act* does not mean all documents and evidence related to that incident are cloaked, and it does not take the position that the section applies on a blanket basis to a patient’s own medical chart and records created in the course of providing medical services. It says this does not mean, however, that factual information or “raw data” is excluded where it has been properly provided to a committee under s. 51 of the *Evidence Act*. Rather, it says that the section does not apply to materials existing independently of the information that is protected.

[29] Fraser Health submits that all of the records at issue pertain directly to patient safety events, and they were compiled for a committee under s. 51 of the *Evidence Act*. Fraser Health submits the records are therefore clearly captured

by this section, and there is no exclusion for the factual information contained within them. Further, it says there is no method by which the “raw” patient data of adverse medical events can be identified, summarized or disclosed that does not, itself, rely on and reveal information protected by s. 51 of the *Evidence Act*.

[30] In response to the applicant’s arguments regarding public interest, Fraser Health submits that the jurisprudence interpreting and applying s. 51 of the *Evidence Act* has clearly established that it is an outright prohibition on disclosure and its application does not invite or permit the weighing or balancing of competing public interest arguments.<sup>14</sup> It also says that s. 25 of FIPPA, which requires public bodies to disclose information in the public interest without delay, is not at issue in this inquiry.<sup>15</sup>

### *Analysis and findings*

[31] To determine whether s. 51(5) of the *Evidence Act* applies to the records at issue, the first step is to determine the relevant committee. Fraser Health’s evidence is that:

- the Surrey Memorial Hospital Quality Operations Management Committee (Committee) was established to review patient safety and quality of care issues for Surrey Memorial Hospital and the surrounding services areas;
- the Committee had responsibility for reviewing patient safety events at Surrey Memorial Hospital and the JPOSC in the relevant timeframe; and
- the Committee established subcommittees including the Surrey Memorial Hospital & Jim Pattison Outpatient Care and Surgical Centre Patient Safety Quality Review Committee (Subcommittee), with responsibility for studying, investigating and evaluating the medical and hospital practice and care provided to patients at Surrey Memorial Hospital and the JPOSC.

[32] I accept Fraser Health’s evidence that the relevant committees are the Committee and the Subcommittee. I must next consider whether the Committee and the Subcommittee are properly constituted committees under s. 51(1) of the *Evidence Act*.

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<sup>14</sup> Fraser Health cites *March, ibid*, para 26.

<sup>15</sup> Although s. 25 was not explicitly argued by the applicant, I note that, pursuant to s. 51(7) of the *Evidence Act*, s. 25 would not apply to any information that I find is prohibited from disclosure under s. 51(5) of the *Evidence Act*.

Are the Committee and Subcommittee “committees” within the meaning of s. 51(1) of the Evidence Act?

[33] The relevant parts of s. 51(1) of the *Evidence Act* say:

“committee” means any of the following:

...

(b.1) a committee that is established or approved by the boards of management of 2 or more hospitals, that includes health care professionals employed by or practising in any of those hospitals and that, for the purposes of improving medical or hospital practice or care in those hospitals, or during transportation to or from those hospitals

(i) carries out or is charged with the functions of studying, investigating or evaluating the medical or hospital practice of, or care provided by, health care professionals in those hospitals or during transportation to or from those hospitals, in relation to a matter of common interest among those hospitals, ...

[34] Accordingly, s. 51(1)(b.1) of the *Evidence Act* requires that a committee:

- 1) be established or approved by the boards of management of two or more hospitals;
- 2) include health care professionals employed by or practicing in any of the hospitals whose boards of management established or approved the committee; and
- 3) be for the purposes of improving medical practice of or care provided by health care professionals in the hospitals whose boards of management established or approved the committee, carries out or is charged with the functions of studying, investigating or evaluating the medical or hospital practice or care provided by health care professionals in those hospitals in relation to a matter of common interest among those hospitals.

**Were the committees established or approved by the boards of management of two or more hospitals?**

[35] In this case, the governing body of Fraser Health is its board of directors (Board), appointed under the *Health Authorities Act*. Prior OIPC orders have determined that the words “boards of management” should be read to include a single board of management responsible for multiple hospitals.<sup>16</sup> I adopt the same approach here and am satisfied that the Board is the board of management of two or more hospitals because it is the board of management for each of the public hospitals in Fraser Health’s control.

[36] In her affidavit, the Employee says that:

<sup>16</sup> Order F24-08, [2024 BCIPC 11](#), para 68; Order F23-21, [2023 BCIPC 24](#), para 44.

- the Committee was established by its Terms of Reference (Terms);
- the Committee's Terms were approved by the Board;
- the Committee was granted authority to create and delegate its work to specific subcommittees in order to facilitate specialized reviews into site specific or other particular categories of patient safety events; and
- the Committee established the Subcommittee to review all PSLS events classified as having a high degree of harm to patients.

[37] As the Terms expressly permitted the Committee to establish subcommittees to consider specific topics, the Terms were approved by the Board, and the Committee did establish the Subcommittee to consider a specific topic, I am satisfied that the Subcommittee was similarly approved by the Board. This is in line with previous OIPC orders which have said it is sufficient that the committee is part of a structure approved by the relevant board.<sup>17</sup>

[38] I find, therefore, that the Committee and the Subcommittee meet the first requirement of s. 51(1)(b.1) of the *Evidence Act*.

**Did the committees include health care professionals employed by or practicing in any of those hospitals?**

[39] In her affidavit, the Employee attests to the Committee and the Subcommittee including health care professionals employed or practicing at Surrey Memorial Hospital or the JPOSC. She says both committees had at least one member who was a physician at all times. The Terms of the Committee and the Subcommittee are attached to the Employee's affidavit, and both reflect the requirement to have health care professionals as members.

[40] For these reasons, I am satisfied that the Committee and the Subcommittee included a health care professional practicing at Surrey Memorial Hospital or the JPOSC at all relevant times, and I find that the Committee and the Subcommittee meet the second requirement of s. 51(1)(b.1) of the *Evidence Act*.

**Were the committees engaged in the necessary activities for the prescribed purposes?**

[41] The final requirement of s. 51(1)(b.1) of the *Evidence Act* is that the committee be engaged in studying, investigating or evaluating the medical or hospital practice of, or care provided by, health care professionals in the subject hospitals. This must be in relation to a matter of common interest and for the purposes of improving such practices or care.

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<sup>17</sup> Order F06-15, [2006 BCIPC 25575](#), para 42.

[42] Fraser Health's evidence is that the Committee was approved to review patient safety events and quality of care issues for Surrey Memorial Hospital and the surrounding services areas. The Committee's Terms expressly state that the Committee was established pursuant to s. 51 of the *Evidence Act* and its responsibilities include: (1) receiving, monitoring and taking action as required to address quality issues related to clinical care; and (2) studying, investigating and evaluating the provision of health care with a view to evaluating, controlling and reporting on hospital practices in order to continually maintain and improve the safety and quality of patient care.

[43] As for the Subcommittee, Fraser Health's evidence is that it was vested with responsibility for studying, investigating and evaluating the medical and hospital practice and care provided to patients at Surrey Memorial Hospital and the JPOSC. The Subcommittee's Terms state it is a subcommittee of the Committee that is engaged in carrying out work pursuant to s. 51 of the *Evidence Act*, and it is accountable for ensuring that the care and services delivered at Surrey Memorial Hospital and the JPOSC are of high quality, meet patient needs and fulfill Fraser Health's strategic imperatives.

[44] The Terms provide that the Subcommittee is responsible for: (1) receiving, trending and reporting findings; (2) making recommendations for improvements of patient safety events to the Committee for decision making and implementation planning; and (3) overseeing the patient safety review process and ensuring appropriate recommendations for improvements are developed and reported to the Committee.

[45] I am satisfied that the Committee and the Subcommittee's duties and responsibilities included studying, investigating and evaluating health care within Fraser Health hospitals. I am also satisfied that the quality assurance processes related to patient safety are matters of common interest among those hospitals for the purposes of improving their practices and care.

[46] The applicant says Fraser Health's evidence is deficient because it did not specifically address: (1) when the Committee and Subcommittee were formed; (2) the date of the relevant reports; or (3) the time period they were examining. I disagree, as these are not requirements set out in the *Evidence Act*. I accept the sworn evidence provided by Fraser Health and am satisfied that the Committee and Subcommittee were properly formed and operational during the time period applicable to the access request.

[47] In conclusion, I find that the Committee and the Subcommittee are valid committees for the purposes of s. 51(1)(b.1) of the *Evidence Act*.

Was the disputed information provided to the Committee and Subcommittee within the scope of s. 51(5) of the Evidence Act?

[48] Section 51(5) of the *Evidence Act* 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 the section, or any resulting findings or conclusions of the committee.

[49] In her affidavit, the Employee says that:

- any incidents of adverse reactions at the JPOSC in 2021 in relation to iron infusion treatments were mandatorily reported as patient safety events within PSLS (Incident Reports);
- Incident Reports and the details surrounding them are contained solely within PSLS;
- Incident Reports were used to prepare monthly medication reports (Monthly Reports);
- Monthly Reports were prepared solely for submission to the Committee and the Subcommittee;
- Monthly Reports included combined information about all reported incidents rather than identifiable patient data, including information such as medication category, degree of harm, specific location and trend for similar events over time;
- Monthly Reports were submitted to the Chairs of the Committee and the Subcommittee; and
- the Chair of the Subcommittee was responsible for distributing Monthly Reports to the members of that committee, who would review and consider them and report any quality or safety issues or recommendations to the Committee.

[50] Based on Fraser Health's evidence, I find that the disputed information consists of Incident Reports and Monthly Reports stored solely in PSLS. In my view, it is clear the Monthly Reports were provided to the Subcommittee within the scope of s. 51(5) of the *Evidence Act*.

[51] The applicant says that mere submission of the Incident Reports into PSLS does not make them prohibited from disclosure, as they must have been studied or evaluated by the relevant committee. He says Fraser Health has provided no evidence of this.

[52] Fraser Health says the submission of all Incident Reports directly to the Committee and the Subcommittee is not necessary in order for s. 51(5) of the *Evidence Act* to apply, as the section applies to both “records” and “information”. It says the Incident Reports comprise “information” used to generate Monthly Reports provided to a committee, and disclosure of the individual Incident Reports would therefore reveal “information” covered by s. 51(5) of the *Evidence Act*.

[53] The OIPC has previously held that such monthly reports and the underlying reports from which they were generated meet the requirements of s. 51(5) of the *Evidence Act*, regardless of whether the underlying documents were presented to a committee in individual form, because an interpretation of “provided” that would exclude underlying reports from the protection of s. 51 would be unduly restrictive and contrary to the purpose of that section.<sup>18</sup> I agree and apply the same reasoning here.

[54] In short, even where a certain Incident Report was not individually studied or evaluated by the Committee or Subcommittee, the information contained in that Incident Report was categorized, aggregated and summarized in a Monthly Report for the Subcommittee’s review. I therefore find that the Incident Reports were provided to the Subcommittee within the scope of s. 51(5) of the *Evidence Act*.

[55] In sum, I find that: (1) the Committee and the Subcommittee are committees for the purposes of s. 51(1)(b.1) of the *Evidence Act*; and (2) the disputed information was provided to the Committee and Subcommittee within the scope of s. 51(5) of the *Evidence Act*.

[56] In line with the jurisprudence, I find that the effect of s. 51(5) of the *Evidence Act* is a complete prohibition on disclosure. I note that, while s. 51(5)(c) of the *Evidence Act* permits disclosure for the purpose of advancing medical research or education, provided there is no identifying personal information, such disclosure is discretionary and not mandatory. I am not persuaded by the applicant that s. 51(5) excludes factual data or raw information or that there are any reasons or circumstances that could properly overrule the statutory prohibition on disclosure. As such, I find the records were properly withheld by Fraser Health pursuant to s. 51(5) of the *Evidence Act*, and Fraser Health is required to refuse to disclose this information.

[57] Lastly, I note that Fraser Health introduced new documents in support of its reply submissions. Where a public body introduces new evidence or arguments in their reply submissions, it may be fair to allow the other party to respond. In this case, Fraser Health appended two academic articles regarding

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<sup>18</sup> Order F23-21, *supra* note 16, para 63.

adverse effects in the medical field. It did so in response to the applicant's argument that raw data is not covered by of s. 51(5) of the *Evidence Act*.

[58] To the limited extent it is relevant to this inquiry, I find there is already sufficient evidence before me on such adverse effects. In my view, regardless, this evidence speaks more to the scope of the request and the broader duty to assist than it does the applicability of s. 51(5) of the *Evidence Act*. As such, I find that the applicant does not need to respond to Fraser Health's reply submissions for me to fairly decide the issue in dispute in this proceeding.

### **CONCLUSION**

[59] For the reasons given above, under s. 58 of FIPPA, I confirm Fraser Health's decision to refuse the applicant access to the records pursuant to s. 51(5) of the *Evidence Act*.

June 16, 2026

### **ORIGINAL SIGNED BY**

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Amy O'Connor, Adjudicator

OIPC File No.: F23-92903