



Order F26-59

Ministry of Health

Alexander R. Lonergan
Adjudicator

July 3, 2026

CanLII Cite: 2026 BCIPC 72

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Summary: An applicant requested that the Ministry of Health (the Ministry) provide her with access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to provincial policy records relating to ventilator allocation. The Ministry identified and disclosed responsive records but withheld information under multiple FIPPA exceptions to disclosure. Prior to inquiry, the Ministry reconsidered its severing decision and released additional information to the applicant. At the inquiry, the applicant confirmed she did not seek access to any information withheld under certain FIPPA exceptions to disclosure, leaving in dispute only the information withheld under s. 13(1) (advice or recommendations). The adjudicator confirmed that the Ministry is authorized to refuse to disclose most, but not all, of the information it withheld under s. 13(1). The adjudicator ordered the Ministry to disclose the information that it was not permitted to withhold under s. 13(1), being the information that would not reveal advice or recommendations and the information contained in records that have been in existence for 10 or more years.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 4(2), 13(1), 13(2)(a), and 13(3).

INTRODUCTION

[1] Under the Freedom of Information and Protection of Privacy Act (FIPPA), an individual (the applicant) acting on behalf of Disability Alliance BC (Alliance) requested that the Ministry of Health (the Ministry) provide her with a copy of the following records for the period of May 19, 2020 to March 22, 2023:

1. The current provincial ventilator allocation framework; and
2. Any other current policy related to how ventilators and other life-saving and-sustaining medical resources may be allocated in the event that demand for those resources exceeds supply.

[2] The Ministry identified responsive records and provided the applicant with access to them. However, the Ministry withheld some of the requested information under multiple FIPPA exceptions to disclosure and on the basis that some of the information was not responsive to the applicant's request.¹ The applicant subsequently asked the Office of the Information and Privacy Commissioner (OIPC) for a review of the Ministry's severing decision.

[3] The Ministry reconsidered its severing decisions and released additional information to the applicant.² Mediation by the OIPC did not resolve the remaining issues in dispute and the matter proceeded to inquiry.

[4] At inquiry, the applicant indicates that she does not challenge the Ministry's severing decisions made under any of the exceptions to disclosure other than s. 13.³ In light of the parties' positions at inquiry, the only information in dispute is the information that the Ministry withholds under s. 13.⁴

DISCUSSION

Background⁵

[5] During the COVID-19 pandemic, concerns grew among public healthcare entities, advocacy groups, and the broader public that health emergencies may suddenly require difficult decisions about the allocation of scarce medical equipment, including ventilators.

[6] Under these circumstances, the Alliance became concerned that a provincial triage protocol for the allocation of scarce life-saving and life-sustaining medical equipment may result in people being denied medical care based on their disabilities. The Alliance asked the then-Minister of Health of BC to publicly disclose such a triage protocol if it were finalized, and offered recommendations for the provincial government to consider in the development of such a protocol. The provincial government did not publicly disclose a triage protocol for life-saving or life-sustaining medical equipment.

¹ The Ministry initially withheld information under ss. 12, 13, 14, and 17. At inquiry, the Ministry additionally applied ss. 15 and 22(1) to a small amount of information.

² The Ministry withdrew its reliance on ss. 12, 14, and 17, as well as its position that some information may be withheld as non-responsive.

³ Specifically, the applicant does not challenge the Ministry's severing decisions made under ss. 15 or 22(1): Applicant's submission at para 2.

⁴ For clarity, the Ministry's index that accompanies its submission indicates that the information at p 445 of the records is severed under s. 13. However, the records themselves indicate that this information is actually severed under s. 22. Consequently, this information is not in dispute.

⁵ The information in this background section is based on information provided in the parties' submissions and evidence. It is not information that is in dispute.

[7] The applicant, who is a representative of the Alliance, then asked the Ministry to provide her with access, under FIPPA, to a copy of the current provincial ventilator allocation framework and any other current policy related to how ventilators and other life-saving and-sustaining medical resources may be allocated in the event that demand for those resources exceeds supply.⁶

Records and Information at Issue

[8] The responsive records consist of 567 pages. The information in dispute under s. 13(1) is found on 511 pages of the records and includes the following:

- Multiple versions of a draft ventilator allocation framework (the “Draft Frameworks”).
- Miscellaneous records relating to the Draft Frameworks and their development, such as:
 - Briefing notes;
 - Presentation materials; and
 - Records of electronic communications.

Issues and Burden of Proof

[9] The issue I must decide in this matter is whether the Ministry is authorized under s. 13(1) to refuse to disclose any of the information it withholds under that provision.

[10] Section 57(1) places the burden on the Ministry, which is a public body, to prove that it is authorized or required to refuse access to the information and records withheld under s. 13(1).

ADVICE OR RECOMMENDATIONS – s. 13

[11] The Ministry argues that disclosing the information it withholds under s. 13(1) would allow its advice and recommendations to be inferred. The Ministry explains that the Draft Frameworks and related documentation consist of advice and recommendations in relation to a significant policy decision for the health sector.⁷

[12] Section 13(1) authorizes the head of a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body or minister.

⁶ The applicant previously requested the Ministry provide her with access to similar but not identical records. The Ministry’s response to that earlier request and the OIPC’s review of that response ultimately resulted in Order F24-99, 2024 BCIPC 113 (CanLII).

⁷ Ministry’s initial submission at para 19; Ministry’s reply submission at para 5.

[13] Section 13 protects a public body’s internal decision-making and policy-making processes, in particular while the public body is considering a given issue, by encouraging the free and frank flow of advice and recommendations.⁸

[14] There are two steps in the analytical approach to s. 13(1). First, I must determine whether disclosing the withheld information would reveal advice or recommendations developed by or for a public body. If so, the second step is to determine whether any of the circumstances in ss. 13(2) or (3) apply. If either ss. 13(2) or 13(3) apply to the withheld information, the Ministry may not refuse to disclose it under s. 13(1).

Would Disclosure Reveal Advice or Recommendations?

[15] A public body may refuse access to information under s. 13(1) if the disputed information directly reveals advice or recommendations or if disclosure would permit accurate inferences about the advice or recommendations.⁹

[16] The word “recommendations” includes material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised and can be express or inferred.¹⁰ The word “advice” has a broader meaning than “recommendations” and includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact on which a public body must make a decision.¹¹

[17] Past orders have repeatedly said that s. 13(1) does not automatically apply to a document merely because it is a draft. A public body may only withhold the parts of a draft that would reveal, or allow accurate inferences to be made about, advice or recommendations.¹²

[18] As I explained above, the information in dispute under s. 13(1) consists of the entirety of the Draft Frameworks and information in various documents relating to them.

[19] I will first evaluate the related documentation before turning to the Draft Frameworks themselves.

Briefing notes, presentation materials and records of communications

⁸ Order 01-15, 2001 CanLII 21569 at para 22.

⁹ Order 02-38, 2002 CanLII 42472 at para 135. See also Order F17-19, 2017 BCIPC 20 (CanLII) at para 19.

¹⁰ *John Doe v Ontario (Finance)*, 2014 SCC 36 at paras 23-24.

¹¹ *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 113.

¹² Order 00-27, 2000 CanLII 14392 at p 6; Order 03-37, 2003 CanLII 49216 at para 60; Order F23-82, 2023 BCIPC 98 (CanLII) at para 17.

[20] I can see that some of this information contains discrete recommendations that certain Ministry staff prepared for other Ministry staff. Elsewhere, this information contains advice that explains why a particular recommendation was made. In light of the advice and recommendations that plainly comprise these paragraphs, I find that s. 13(1) applies to them.¹³

[21] However, the Ministry withholds a small amount of information that does not clearly contain advice or recommendations. In addition, I do not see how disclosing this information would reveal the substance of any advice that was ultimately provided. This information includes:

- Requests for information about existing administrative processes;
- An update about the status and amount of equipment that a health care facility received; and
- Part of a paragraph which reveals the fact a working group was established to provide guidance and recommendations, but which does not reveal anything about the guidance, if any, that was ultimately provided.¹⁴

[22] I find that s. 13(1) does not apply to this information.

The Draft Frameworks

[23] The Draft Frameworks comprise the rest of the information in dispute and the majority of the information that the Ministry withholds under s. 13(1).

[24] The Ministry says that there is no final or “current” approved version of the Draft Frameworks or any other approved emergency triage framework for medical resources. Furthermore, the Ministry explains that the provincial government has not approved the use of such a framework in principle, so the use of such a framework is not even a current health policy.¹⁵

[25] The Ministry explains that the provincial government considered the adoption of critical care equipment allocation frameworks in response to emerging and re-emerging infectious diseases. It says that this work included the participation of clinicians, ethicists, legal counsel, Ministry staff, health authority staff, and staff of the Provincial Health Officer. However, the Ministry notes that the most recent drafts have not taken into account the role of Cabinet, health care consent laws or civil or criminal liability issues, meaningful consideration of

¹³ The records, at pp 525, 526, 528, 529, 531 (in part), 533, and 535 (in part).

¹⁴ The records, at pp 206, 531 (in part), and 535 (in part).

¹⁵ Ministry’s initial submission at para 13; Affidavit #1 of Senior Advisor, Public Health Policy at paras 11, 15-20, and 26.

gender, equity, Indigenous rights, or trauma-informed care. Consequently, the Ministry says that additional consultation with the public and advocacy groups would be necessary before a draft is presented to Cabinet for consideration or approval.¹⁶

[26] The Ministry argues that these records contain advice and recommendations to the Provincial Health Officer and Cabinet, who are the entities that are ultimately responsible for making the policy choice to adopt a critical care equipment allocation framework at all. The Ministry also notes that the advice and recommendations in the Draft Frameworks are not limited to the tracked changes and margin comments, but that the Draft Frameworks themselves consist of advice and recommendations. Moreover, the Ministry says that comparing the different iterations of the Draft Frameworks would allow inferences to be drawn about the editing and advice from third parties and Ministry staff.¹⁷

[27] Ultimately, the Ministry argues that regardless of the format of the records, “a zone of privacy must be provided around [the Ministry’s] deliberative process for policymaking” because the withheld information in this case consists of factual and background information that is a necessary and integrated part of the advice and recommendations.¹⁸

[28] In response, the applicant argues that any of the withheld information which would not reveal policy advice or recommendations, either directly or by inference, cannot be withheld under s. 13(1).¹⁹ The applicant also suggests that the Ministry disclose only the most recent version of the draft, with comments and track changes removed. The applicant says that by doing so, she would not be able to compare the various versions of the draft framework and therefore would not be able to infer the advice or recommendations contained in the records.²⁰

[29] Beginning with the title pages, the only information in dispute is a set of comments in the margin about possible changes to the draft policy.²¹ In my view, this information is advice within the meaning of s. 13(1). This information also establishes on its face that this advice was developed by the Ministry. Therefore, I find that disclosing this information would reveal advice or recommendations developed by the Ministry.

¹⁶ Ministry’s initial submission at paras 27, 28, 32, and 33.

¹⁷ *Ibid* at paras 43 and 44.

¹⁸ *Ibid* at paras 38 and 39.

¹⁹ Applicant’s submission at paras 20-22.

²⁰ *Ibid* at para 37.

²¹ The records, at pp 7, 35, 61, 89, 117, and 142.

[30] Turning to the content of the Draft Frameworks, I can see that they consist of written administrative guidelines and explanatory diagrams that Ministry staff produced for the Provincial Health Officer and Cabinet to consider. Disclosing this information would clearly reveal the substance of the advice the Ministry received from its own staff and third-party experts because the information is a compilation and synthesis of that advice. Therefore, I find that the content of the Draft Frameworks is information that would reveal advice prepared both for and by the Ministry.

[31] When considered as whole documents, I also find that each of the Draft Frameworks are single, comprehensive recommendations to Cabinet and the Provincial Health Officer that those entities respond to future critical care equipment shortages in a particular way. I do not think that the length and detailed nature of the Draft Frameworks, nor the Ministry's stated need for additional input before finalization, change the fact that the drafts are the Ministry's recommendation to deal with a specific problem by using a specific policy.

[32] Finally, I can see that in some of the Draft Frameworks there are many tracked changes and comments in the margins. Based on my own review of this information, I find that disclosure would directly reveal recommendations made by and for Ministry staff while they were preparing the drafts.

[33] For the reasons above, I reject the applicant's suggestion that the most recent version of the Draft Framework, with the comments and tracked changes removed, could be disclosed without revealing advice or recommendations. Disclosing any version of the Draft Frameworks, even in isolation, would reveal advice or recommendations developed by or for a public body.

[34] In conclusion, I find that all the information withheld from the Draft Frameworks reveals advice or recommendations within the meaning of s. 13(1).

Do any of the exceptions in s. 13(2) apply?

[35] Next, I must determine whether s. 13(2) applies to the information that I found would reveal advice or recommendations. If so, then the Ministry may not withhold it under s. 13(1).

[36] The Ministry argues that no s. 13(2) circumstances apply. The applicant submits that under s. 13(2)(a), the Ministry may not withhold any factual material from the records.²²

[37] Section 13(2)(a) says that the head of a public body must not refuse to disclose any factual material under s. 13(1). The term "factual material" refers to

²² Applicant's submission at para 24; Ministry's initial submission at para 51.

source materials or background facts that are not necessary to an expert's advice or to the deliberative process. On the other hand, s. 13(2)(a) does not apply to "factual information [that] is compiled and selected by an expert, using his or her expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body".²³

[38] The Ministry argues that all of the background facts contained in the Draft Frameworks are integral to the advice and recommendations, so none of those facts should be considered "factual material".²⁴

[39] Having reviewed the information that I determined would reveal advice or recommendations, it is not apparent to me that any of it includes background facts that are unnecessary to the relevant advice or recommendations. These background facts include specific figures, statistics, and descriptions of circumstances which appear in close proximity to the advice and recommendations that they are clearly intended to support. There are also sections of the Draft Frameworks which explain the draft's development process which I can see is information that is deeply integrated with advice and recommendations about that development process and the approach that should be taken moving forward.

[40] In summary, I am satisfied that the background facts are, just as the Ministry claims, integral to the advice and recommendations which they are presented alongside. Therefore, I find that s. 13(2)(a) does not apply to any of the information that I determined would reveal advice or recommendations.

[41] I have additionally considered whether any of the other circumstances set out at s. 13(2) apply to the information I am considering, and I find that they do not.

Does s. 13(3) apply?

[42] Section 13(3) says that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years.

[43] FIPPA does not state whether s. 13(3) should be assessed based on the date the public body responds to an access request or the date on which a request for review is decided at inquiry. Past orders have said that the appropriate date is the date at which the inquiry is decided because it would not be practical or reasonable to require an applicant to repeat the FIPPA access

²³ *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at paras 91-94.

²⁴ Ministry's initial submission at para 51.

request process when the passage of time clearly bars the public body from relying on s. 13(1).²⁵ I agree with this approach and will follow it in this matter.

[44] The Ministry acknowledges that some of the information in the records has been in existence for 10 or more years. However, the Ministry also says that disclosing early versions of the Draft Frameworks may allow accurate inferences about the advice and recommendations contained in more recent drafts that have not been in existence for 10 or more years.²⁶

[45] The Ministry submits that there must be some scope for severance under s. 13(1) where dated advice or recommendations are contained in a current record. If I determine that s. 13(3) applies to this information, the Ministry says that the protection of current advice and recommendations will be unduly limited while interfering with the stream of free and frank advice and recommendations from the public service.²⁷

[46] In response to the Ministry's argument, the applicant says that the Ministry must nonetheless disclose the information because s. 13(1) does not apply in the first place considering that it has been in existence for more than 10 years.²⁸ The applicant argues that the only relevant consideration under s. 13(3) is the age of the information in relation to the date at which the inquiry is decided.²⁹

[47] For the following reasons, I reject the Ministry's argued approach in this case.

[48] First, the language of s. 13(3) does not refer to the age of the advice or recommendations that the information would reveal, nor does it consider whether a public body continues to receive advice based on that information. Section 13(3) only states that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years. The Ministry does not point to any persuasive authority to establish that the s. 13(3) analysis requires consideration of the age of the purported advice and recommendations, nor am I aware of any.

[49] Furthermore, it seems to me that disclosing older versions of the Draft Frameworks can only reveal advice or recommendations contained in more recent drafts if the Ministry separately confirms that the two versions are substantially similar. Under such circumstances, it would actually be the Ministry's act of confirming similarity - not the disclosure of older drafts - that

²⁵ Order F25-48, 2025 BCIPC 56 (CanLII), at para 130, and Order F24-100, 2024 BCIPC 114 (CanLII), at paras 80-81.

²⁶ Ministry's initial submission at paras 52-54; Affidavit #1 of Senior Advisor, Public Health Policy at para 21.

²⁷ Ministry's reply submission at paras 4 and 5.

²⁸ Applicant's submission at paras 32-34.

²⁹ *Ibid* at paras 26 and 29-31.

reveals the substance of recent advice and recommendations. Without that confirmation, the applicant cannot know whether the advice and recommendations have changed during the intervening decade.

[50] Additionally, s. 13(3) does not include the precondition that the Ministry asks me to impose, that is, a requirement that the information must no longer reveal similar advice or recommendations contained in more recent records. To impose such a precondition would profoundly expand the protection that s. 13(1) provides while seriously restricting the application of s. 13(3), all without any express statutory basis for doing so.

[51] Finally, I am not persuaded that the statutory context and purpose of s. 13 support the Ministry's argued approach. As noted above, past orders have consistently held that s. 13 protects a public body's internal decision-making and policy-making processes while the public body is considering a given issue.³⁰ However, that protection is not absolute. The plain language and unambiguous effect of s. 13(3) satisfy me that the Legislature clearly intended to limit this protection so that public bodies could not withhold information under s. 13(1) simply because they continue to receive advice based on that information which is contained in ten-year-old records.

[52] Turning to the records in this matter, each of the Draft Frameworks and some of their accompanying records are labelled with the months and years that roughly correspond to when they were created or exchanged between the Ministry's staff. Consequently, I can see that some of these records were created earlier than the date that is ten years before the date I am deciding this inquiry.

[53] Considering that some of these records have been in existence for 10 or more years, I find that s. 13(3) applies to the information withheld from them.³¹ Therefore, s. 13(1) does not apply to this information and the Ministry may not withhold it on that basis.

[54] The rest of the information that I found would reveal advice or recommendations, is contained in records that have not been in existence for 10 or more years. Therefore, s. 13(3) does not apply to this information.

Conclusion, s. 13

[55] I determined that most, but not all of the withheld information would reveal advice or recommendations developed by or for the Ministry if disclosed.

[56] I determined that no s. 13(2) circumstances apply in this matter. However, some of the information that would reveal the Ministry's advice or

³⁰ See footnote #8 above.

³¹ The records, at pp 213-426, 427-430, and 485-514.

recommendations is contained in records that have been in existence for greater than 10 years. For this reason, s. 13(3) applies to that information and the Ministry cannot withhold it under s. 13(1).

Reasonable Severing, s. 4(2)

[57] Under s. 4(2), the applicant's right of access to a record does not extend to information that is excepted from disclosure. However, if that information can reasonably be severed from a record, then the applicant has a right of access to the remainder of the record.

[58] The term "reasonably be severed" means that after the excepted information is removed from a record, the remaining information is both intelligible and responsive to the request. If the remainder of a severed record consists of disconnected words or snippets of sentences that cannot reasonably be considered intelligible, then the excepted information is not reasonable to sever under s. 4(2).³²

[59] In this matter, I can see that the Ministry severed information on a line-by-line basis from the records that are not the Draft Frameworks while withholding entire pages of the Draft Frameworks (apart from some of their title pages). The Ministry argues that taking a line-by-line approach to its severing of the Draft Frameworks would result in records that are unintelligible and meaningless. In response, the applicant asks that any remaining information be disclosed after such severing.³³

[60] In my view, a more granular approach to severing information from the Draft Frameworks would result only in the disclosure of page numbers, borderlines, miscellaneous punctuation and single words without context. If these snippets of information were disclosed, they would not reveal anything about the information that the applicant seeks. I find this information is ultimately meaningless and unintelligible in isolation because its only purpose is to organize the information to which I determined s. 13(1) applies. Therefore, I find that the Ministry's approach of withholding entire pages of the Draft Frameworks is reasonable in the circumstances.

CONCLUSION

[61] For the reasons given above, I make the following order under s. 58 of FIPPA:

³² Order 03-16, 2003 CanLII 49186, at paras 53 and 54; Order F24-40, 2024 BCIPC 48 (CanLII), at para 58.

³³ Ministry's initial submission at paras 56-57; Applicant's submission at para 36.

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1. Subject to item #2 below, I confirm, in part, the Ministry's decision to withhold the disputed information under s. 13(1) of FIPPA.
 2. I require the Ministry to provide the applicant with the information that I have highlighted in yellow on pages 206, 531, and 535, and all of the information on pages 213-426, 427-430, and 485-514, in a copy of the records I am providing to the Ministry with this order.
 3. The Ministry must concurrently copy the OIPC registrar of inquiries on its cover letter and the records it provides to the applicant in compliance with item 2 above.

[62] Pursuant to s. 59(1) of FIPPA, the Ministry is required to comply with this order by August 17, 2026.

July 3, 2026

ORIGINAL SIGNED BY

Alexander R. Lonergan, Adjudicator

OIPC File No.: F24-95872