



No. SE262807
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**In the Matter of the decision of the Office of Information and Privacy
Commissioner dated February 26, 2026, in OIPC File No. F23-93986, and in the
matter of the *Judicial Review Procedure Act*, RSBC 1996, c 241.**

BETWEEN

ATTORNEY GENERAL OF BRITISH COLUMBIA

PETITIONER

AND

INFORMATION AND PRIVACY COMMISSIONER FOR BRITISH COLUMBIA and
ROBERT NEW

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO:

Information and Privacy Commissioner of British Columbia
4th Floor - 947 Fort Street
Victoria, BC V8V 3K3

Robert New
c/o Josh Oppal, Myers & Company
1350-1140 W Pender St
Vancouver, BC V6E 4G1

The address of the registry is: 800 Smithe Street, Vancouver, BC

The petitioner estimates that the hearing of the petition will take one day.

[X] This matter is an application for judicial review.

This proceeding has been started by the petitioner for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioners
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioners,

- (a) if you were served the petition anywhere in Canada, within 21 days after that services,
- (b) if you were served the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The ADDRESS FOR SERVICE of the Petitioner is: Ministry of Attorney General Legal Services Branch 1301 – 865 Hornby Street Vancouver, BC V6Z 2G3 Fax number address for service (if any) of the petitioner: N/A E-mail address for service of the petitioner: meera.bennett@gov.bc.ca ; marina.goodwin@gov.bc.ca
(2)	The name and office address of the petitioner's lawyer is: Meera Bennett and Marina Goodwin Ministry of Attorney General Legal Services Branch 1301 – 865 Hornby Street Vancouver, BC V6Z 2G3

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. An order in the nature of *certiorari* under section 2(2)(a) of the *Judicial Review Procedure Act*, RSBC 1996, c 241 ("**JRPA**"), quashing the portions of the Order of the Information and Privacy Commissioner for British Columbia (the "**Commissioner**"), OIPC File No.: F23-93986, Order F26-13 (the "**Order**"), in which the Commissioner concluded that:
 - a. section 15(4) of the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165 ("**FOIPPA**") required the Ministry of Attorney General (the "**Ministry**") to disclose portions of record relating to a decision to enter a stay of proceedings in a criminal prosecution; and
 - b. section 22 of *FOIPPA* did not require the Ministry to withhold portions of the same record.
2. Alternatively, an order pursuant to section 5 of the *JRPA* setting aside the Order and remitting the matter back to the Commissioner for a reconsideration in light of this Court's reasons.
3. Such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

The parties

4. The Ministry is a "public body" as defined in Schedule 1 of *FOIPPA*. The petitioner, the Attorney General of British Columbia, is its Minister.
5. The Assistant Deputy Attorney General of the Criminal Justice Branch of the Ministry designates or appoints Crown counsel, ad hoc legal counsel, and special prosecutors to approve and conduct prosecutions and appeals on behalf of the Crown. The British Columbia Prosecution Service ("**BCPS**") is another name for the Criminal Justice Branch.

6. The Commissioner is an independent Officer of the Legislature who oversees the information and privacy practices of public bodies and private organizations. The Commissioner is responsible for the administration of *FOIPPA*.
7. The applicant in OIPC File No. F23-93986 (the "**applicant**") is an individual who requested access under *FOIPPA* to records relating to a criminal matter.

Role of Crown counsel and the exercise of prosecutorial discretion

8. Pursuant to the *Crown Counsel Act*, RSBC 1996 c. 87, Crown counsel, on behalf of His Majesty the King in Right of the Province of British Columbia, have the authority and responsibility to approve and conduct all prosecutions of criminal and provincial offences in British Columbia.
9. In British Columbia, police agencies investigate contraventions of the *Criminal Code*, RSC 1985 c. C-46, and prepare and submit a Report to Crown Counsel (a "**RCC**") to BCPS. A RCC provides a complete description of the available evidence, including interviews of witnesses, photographs, videos, and police notes in support of the offence charges recommended to BCPS by the police agency.
10. Under paragraph 4(3)(a) of the *Crown Counsel Act*, Crown counsel are responsible for examining the information contained in a RCC and determining whether to approve a prosecution that meets the charge assessment standard. When Crown counsel does not approve a prosecution or enters a stay of proceedings, the decision may be communicated to the police agency in a confidential charge assessment memorandum. Crown counsel may also draft a confidential note or memo to file with a legal analysis explaining their decision.

Background: Criminal Proceedings and 2015-17 Access Requests

11. In 2007, the applicant was charged in British Columbia with several sexual offences under the *Criminal Code*. In 2008, all charges were stayed by Crown counsel, meaning there was no longer a criminal prosecution against the applicant for those offences.

12. In 2008, the applicant was charged in the United States with similar criminal offences involving the same victim. He was arrested in Canada on an extradition warrant in 2015 and was formally surrendered to the United States in 2018. In 2019, he was convicted of the charges and sentenced to four life sentences in the United States.
13. Between 2015 and 2017 the applicant made an access request related to the records at issue in this proceeding and corresponded with the Ministry about his request. He did not request a review from the Office of the Information and Privacy Commissioner (the "OIPC").

2022 Request for Review and Repeated Access Request

14. On December 14, 2022, the applicant requested that the OIPC review the Ministry's August 18, 2015, decision to withhold a Crown memorandum to file (the "**Crown Memo**") that was responsive to his request. The OIPC informed the applicant that it could not review the 2015 request, but that he could make a new access request.
15. On December 29, 2022, the applicant made a new access request to the Ministry for the Crown Memo.
16. On January 31, 2023, the Ministry responded to the applicant advising that it had "already responded in the fullest way possible and [has] nothing further to add." It attached copies of its previous response letters.
17. On May 17, 2023, the applicant again requested that the Ministry provide the applicant with a copy of the Crown Memo.
18. On June 12, 2023, the Ministry responded, reiterating that it was continuing to withhold the Crown Memo in its entirety under ss. 14, 15(1)(g), 16, and 22 of FOIPPA and that it had previously provided reasons for the stay of proceedings as required under s. 15(4) of FOIPPA. It again summarized those reasons.
19. On July 13, 2023, the applicant asked the OIPC to review the Ministry's decision not to disclose the responsive record.
20. The matter was not resolved during mediation by the OIPC and the applicant requested that it proceed to inquiry.

The Inquiry

21. On January 20, 2025, the Commissioner issued a Notice of Inquiry (the “**Inquiry**”).
22. On February 24, 2025, the Ministry provided the OIPC with its initial submissions. The Crown Memo was not provided to the OIPC. Instead, the Ministry provided an affidavit from BCPS legal counsel, in which she described the basis of the prosecutorial privilege claim over the withheld information, the fact that the Crown Memo contains only information used in the exercise of prosecutorial discretion, and the Crown Memo embodies the exercise of core prosecutorial discretion. The Ministry relied on the exceptions in ss. 15(1)(g), 16(1)(b) and 22(1) of FOIPPA.
23. On March 17, 2025, the applicant’s legal counsel provided responding submissions. Their argument was that:
 - a) sections 15(1)(g), 16 and 22 of FOIPPA are not absolute and have to be balanced against other considerations such as the applicant’s interests; and
 - b) for s. 15(4) of FOIPPA to have any meaningful effect, there must be a standard for what constitutes actual compliance with the section and what has been provided to the applicant falls short of what should be considered acceptable compliance.
24. The Ministry provided reply submissions on April 7, 2025. The Ministry argued (1) that s. 15(4) does not override the discretionary exemption under s. 15(1)(g); and (2) that the OIPC does not have the jurisdiction to determine under s. 15(4) whether the “reasons” provided to the applicant are “adequate”.
25. On June 30, 2025, Adjudicator Pakkala issued Order F25-53 which found that the Ministry’s affidavit evidence alone was insufficient to decide whether ss. 15(1)(g), 16(1)(b), or 22(1) applied and ordered the Ministry pursuant to s. 44(1)(b) of FOIPPA to produce the Crown Memo to the OIPC by July 15, 2025.
26. On July 15, 2025, the head of BCPS requested pursuant to s. 49(1.1) of FOIPPA that the Commissioner not delegate his power to examine the records ordered produced in Order F25-53 and hand delivered to the Commissioner’s Office in a

sealed envelope a copy of the Crown Memo. The head of BCPS is the delegated authority for the Attorney General under ss. 66 and 49(1.3) of FOIPPA.

27. The Commissioner granted the parties permission to file additional submissions to address Order F25-62. Order F25-62 considered the meaning and effect of ss. 15(1)(g), 15(4), 16(1)(b), and 22 in the context of prosecutorial discretion.

The Commissioner's Order F26-13

28. On February 26, 2026, the Commissioner issued the Order, ordering disclosure of portions of the Crown Memo. The portions of the Commissioner's decision relevant to this proceeding are summarized below.
29. **Section 15 of FOIPPA (disclosure reveals information relating to prosecutorial discretion):** The Commissioner decided that the language of s. 15(1)(g) only requires that disclosure could reasonably be expected to *reveal* information relating to or used in the exercise of prosecutorial discretion. The Commissioner applied s. 15(1)(g) to the entire Crown Memo. However, s. 15(4) is an exception to the application of s. 15(1)(g) and certain content of the Crown Memo constitutes the reasons for Crown counsel's decision to enter a stay. The reputational harm of the applicant's arrest and subsequent criminal charges established a sufficient interest to meet the requirements of s. 15(4).
30. **Section 16(1)(b) of FOIPPA (disclosure harmful to intergovernmental relations):** The Commissioner found that s. 16(1)(b) of FOIPPA applied to some of the information in the Crown Memo. While the Commissioner determined that some of the information was provided to the Ministry by the Surrey RCMP, he concluded a portion was not received in confidence and ordered the release of that information. This information relates to the initial reporting of the alleged offence and an inculpatory statement provided by a third-party witness, which is presumptively the type of information that would be provided in confidence.
31. **Section 22 of FOIPPA (unreasonable invasion of third party privacy):** Regarding the residual information in the Crown Memo that could not be withheld

under either ss. 15(1)(g) or 16(1)(b) (referred to by the Commissioner as the “**Residual Information**”), the Commissioner held that all of the Residual Information is personal information identifiable as part of an investigation into a possible violation of law pursuant to ss. 22(1) and (3), and disclosure was therefore presumptively unreasonable. However, he also held that this presumption was rebutted with respect to some portions of the Residual Information, which he found could not be withheld.

32. Some of the Residual Information was supplied under a reasonable expectation of confidentiality, which weighs against disclosure. The Commissioner determined that the personal information was moderately sensitive, which weighs against disclosure.
33. Weighing in favour of disclosure was the applicant's knowledge of some of the personal information and that some of it is relevant to a fair determination of his rights. That some of the Residual Information is also the personal information of the applicant also weighed in favor of disclosure, however this factor was of less weight because the Residual Information is also the personal information of third parties.
34. **Highlighted copy of Crown Memo:** Along with the Order, the Commissioner provided the Ministry with a copy of the Crown Memo where he highlighted the content that the Ministry could not withhold under ss. 15(1)(g), 16(1)(b), or 22 and therefore was required to disclose to the applicant.

Part 3: LEGAL BASIS

Overview

35. This is a judicial review about a decision of the Commissioner requiring the Ministry to disclose extremely sensitive information contained in the Crown Memo to the applicant. The Commissioner's decision is unreasonable for two primary reasons:
 - a. It fails to give adequate weight to the protection of prosecutorial discretion, which underpins the independence of a prosecution service. Prosecutorial

independence is a constitutionally entrenched principle, now recognized as a principle of fundamental justice under s. 7 of the *Charter*.

R v Cawthorne, 2016 SCC 32, para. 26

- b. It fails to adequately account for the sensitive context, including the nature of the offence and the vulnerability of a third party whose personal information would be disclosed.

Statutory scheme

36. *FOIPPA* establishes that the public has a right of access to information held by “public bodies,” including the Ministry.
37. Sections 3 to 11 of *FOIPPA* describe the kinds of records available through the *FOIPPA* process, provide the mechanism by which a person may make a request to access information, and outline the duties owed to an applicant by the public body.
38. Sections 12 to 22.1 of *FOIPPA* set out mandatory and discretionary exceptions to the public’s right of access to information, under which the public body may refuse to disclose information.
39. Section 15 is a discretionary exemption, under which a public body may withhold information harmful to law enforcement. Relevant here, s. 15(1)(g) authorizes the public body to refuse disclosure that could reasonably be expected to reveal any information relating to or used in the exercise of prosecutorial discretion.
40. Section 16 is a discretionary exemption, under which a public body may refuse to disclose information the Government of British Columbia has received in confidence (s. 16(1)(b)) from the Government of Canada (s. 16(1)(a)(i)) or a government of a foreign state (s. 16(1)(a)(iv)).
41. Section 22 is a mandatory exemption. A public body must withhold personal information if disclosure would be an unreasonable invasion of a third party’s personal privacy (s. 22(1)). In deciding whether disclosure constitutes an unreasonable invasion of privacy, the public body (and the Commissioner) must consider all the relevant circumstances, including whether the personal information

is relevant to a fair determination of the applicant's rights and whether the personal information has been supplied in confidence (s. 22(2)(c) and (f)). A rebuttable presumption that disclosure is unreasonable arises where the personal information was compiled and is identifiable as part of an investigation into a possible violation of law (s. 22(3)(b)).

42. A person who requests records from a public body under *FOIPPA* may request that the Commissioner review the public body's response to that request. Sections 52 to 59.01 of *FOIPPA* set out the procedure for seeking such a review, including, at section 56, that the Commissioner may conduct an inquiry in certain circumstances.
43. Section 58 of *FOIPPA* authorizes the Commissioner to make orders following an inquiry, including orders requiring the public body to give an applicant access to all or part of the record, if the Commissioner determines that the public body is not authorized or required to refuse access.

Standard of review

44. The Commissioner's application of sections 15 and 22 of *FOIPPA* is reviewable on a reasonableness standard. A reasonable decision is one "based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision maker."

Airbnb Ireland UC v Vancouver (City), 2023 BCSC 1137, para. 44

British Columbia (Attorney General) v British Columbia (Information and Privacy Commissioner) ["**OIPC 2025**"], 2025 BCSC 2497, para. 48

Vavilov v Canada (Minister of Citizenship and Immigration), 2019 SCC 65, paras. 82, 85

The Commissioner failed to give adequate weight to the critical importance prosecutorial independence

45. Courts have recognized that prosecutorial discretion is an "indispensable device" necessary to ensure a properly functioning criminal justice system, and that prosecutorial independence is a constitutionally protected value. The

Commissioner's decision is unreasonable because it fails to give adequate weight to the constitutionally protected value of prosecutorial independence.

OIPC 2025, para. 50, citing *R v Anderson*, 2014 SCC 41 and *British Columbia (Attorney General) v Davies*, 2009 BCCA 337

46. In *OIPC 2025* at para. 70, Justice Forth declined to find that s. 15(4) requires the BCPS to disclose a Crown charge assessment memorandum to an applicant. She found that a nuanced approach should be taken. Records should be assessed to determine whether they can “reasonably be expected to reveal information relating to or used in the exercise of prosecutorial discretion.” Such an approach is consistent with the critical importance of prosecutorial independence.
47. The Commissioner did not take a nuanced approach—he did not assess whether the records in question could reasonably be expected to reveal information relating to or used in the exercise of prosecutorial discretion. Instead, the Commissioner interpreted s. 15 as requiring a rules and exceptions approach and treated s. 15(4) as an “exception to the exception”. His interpretation of s. 15 is unreasonable.
48. In addition to the legal error identified above, the Commissioner's directions to the Ministry about what must be disclosed are internally inconsistent. These directions are contained in a highlighted Crown Memo provided to the Ministry as part of the Order. The Commissioner's directions, read in context of his reasoning, are internally inconsistent and therefore unreasonable. Two examples of this internal inconsistency are:
 - a. The highlighted sections require disclosure of some but not all names of officials involved in the decision-making process, without explanation for the discrepancy.
 - b. Some of information ordered to be disclosed in one paragraph is virtually identical to information ordered withheld in a subsequent paragraph.

The Commissioner's decision on section 22 was unreasonable

49. The Commissioner concluded that, in the circumstances, disclosure of some of the residual information in the Crown Memo would not be an unreasonable invasion of

a third party's privacy so that the Ministry may not withhold it under s. 22(1). The Ministry says the Order is unreasonable in light of the surrounding factual circumstances, in two ways.

50. First, the Commissioner based his conclusion regarding whether the circumstances militated towards requiring access in part on the fact that the applicant already knew "some" of the personal information, including the identity of the third party. However, disclosure of personal information in an access request is disclosure to the world. The Commissioner failed to consider whether disclosure would allow others to discern the identity of the third party in a highly sensitive context.
51. A publication ban issued August 7, 2007 pursuant to s. 486.4(1) of the *Criminal Code* provided that information that could identify the third party "shall not be published in any document or broadcast or transmitted in any way." A publication ban issued under s.486.4 of the *Criminal Code* remains in place in a criminal proceeding despite the end of the prosecution, including cases where there is a stay of proceedings.
52. Second, the Commissioner characterized information regarding the identity of the third party and the nature of the offence to be "moderately sensitive." The Commissioner's reasoning on this point is minimal: "[a]fter considering the nature of the Residual Information and what it reveals about third parties, I find that it is moderately sensitive and that weighs against disclosure".

Order F26-13, para. 141

53. This characterization of the sensitivity of the personal information is unreasonable, given the identity and vulnerabilities of the third party and the nature of the offence.
54. These findings regarding the circumstances weighing for and against disclosure were critical components to the Commissioner's reasoning on s. 22. His decision on this point is therefore also unreasonable.

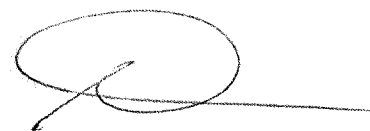
Remedy

55. The Court should issue an order in the nature of *certiorari* under section 2(2)(a) of the *JRPA* quashing the portions of the Order in which Commissioner concluded that:
- a. section 15(4) of *FOIPPA* required the Ministry to disclose portions of the Crown Memo; and
 - b. section 22 of *FOIPPA* did not require the Ministry to withhold portions of the Crown Memo.
56. Alternatively, the Court should set the Order aside pursuant to section 5 of the *JRPA* and remit it to the Commissioner for reconsideration in light of this Court's reasons.
57. The Ministry does not seek its costs and asks that no costs be ordered against it.

Part 2: MATERIAL TO BE RELIED ON

- 1. Record of proceedings, to be filed.
- 2. Such further and other material as counsel may advise and this Honourable Court may accept.

Date: April 13, 2026



Meera Bennett
Marina Goodwin
Counsel for the Petitioner

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this petition

with the following variations and additional terms:

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Date:

Signature of Judge Associate Judge