

Date: 20250923
Place: Vancouver

In the Matter of:

The Freedom of Information and Protection of Privacy Act,
R.S.B.C. 1996, c. 165

And in the Matter of:

An Adjudication Under Section 62 of the Act

Requested by Adam Bens on December 17, 2024

Reasons for Decision

of the

Honourable Chief Justice Skolrood

Counsel for the Office of the Information and
Privacy Commissioner for BC:

K.R. Phipps

The Applicant:

Adam Bens

Written Submissions of the Office of the
Information and Privacy Commissioner for
BC:

February 27, 2025

Introduction

[1] On December 1, 2024 the applicant made an access request (the “Access Request”) to the Office of the Information and Privacy Commissioner of British Columbia (“OIPC”) for copies of all documents he had sent to OIPC in respect of OIPC files number P22-90109 and P23-92391.

[2] File P22-90109 involved a complaint by the applicant that a former landlord had improperly disclosed personal information in contravention of the *Personal Information Protection Act*, SBC 2023 c. 63 [*PIPA*]. The complaint was partially substantiated by OIPC and corrective measures were taken. The file was then closed.

[3] File P23-92391 involved a complaint by the applicant that his former landlord had improperly collected personal information by way of video surveillance cameras in contravention of the *PIPA*. The complaint was substantiated by OIPC on the basis that the landlord did not have the applicant's consent to collect personal information. However, given that the previous landlord had passed away, the building had been sold to a new owner and the applicant was no longer a tenant, OIPC was unable to order any remedial actions. The file was closed.

[4] After the files were closed, the applicant contacted OIPC several times asking for copies of the documents he had provided to OIPC. He said that he had lost copies of his documents and needed them for the purpose of a civil claim against his former landlord.

[5] According to the evidence filed by OIPC, the investigator who handled the applicant's complaint provided the requested document several times. Specifically, legal counsel to OIPC deposed:

... After both files were closed, [the applicant] continued to contact the investigator assigned to the files and repeatedly requested copies of documents. As a courtesy, the investigator disclosed copies of the same documents as requested multiple times but eventually told [the applicant] that no further copies would be forwarded.

[6] This is reflected in the following email exchange between the applicant and the investigator:

Applicant email-August 16, 2024

I am requesting official findings issued by you. I seek OIPC File No. P22-92391 dated October 10, 2023 and OIPC File No. P22-90109 dated March 16, 2023. Please post those to me at your earliest. The official ones with the blue font print.

...

Investigator email-August 19, 2024

As a courtesy, I am providing copies of these letters. However, please note that this will be the last time I provide copies of correspondence OIPC has previously sent to you.

For example, for the findings letter for P22-90109:

- the OIPC emailed you the letter on March 16, 2023
- the OIPC mailed you a copy of the letter on April 21, 2023
- the OIPC gave another copy to you in person on January 15, 2024
- the OIPC emailed another copy to you on June 25, 2024

No further action will be taken by me regarding your email, nor any other emails directed to me in the future.

[7] The applicant then submitted the Access Request on December 1, 2024.

[8] On December 16, 2024, OIPC responded to the applicant advising that his request was refused because the records requested were created by or for the Commissioner in connection with the Commissioner's functions under the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c.165 [*FIPPA*]

[9] On December 17, 2024, the applicant wrote to the Minister of Citizen's Services seeking to "appeal" OIPC's alleged refusal to return his documents. OIPC interpreted this request as a request for a review under s. 62 of the *FIPPA* and thus referred the request to an adjudicator appointed under s. 60 of the *FIPPA*.

[10] I was appointed as the adjudicator. Prior to my appointment, in February 2025, OIPC submitted an application seeking to have the appointed adjudicator exercise the discretion to decline to conduct an inquiry on the basis that it is plain and obvious that the records sought are exempt from production pursuant to s. 3(3)(f) of the *FIPPA*. That section provides:

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

...

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

[11] On June 4, 2025, I wrote to the applicant and provided a copy of OIPC's application materials. I advised the applicant that if they wished to respond, they could do so within 30 days. The applicant has not provided any responsive materials.

Discussion

[12] As noted, OIPC submits that, as the designated adjudicator, I should exercise my discretion to decline to conduct an inquiry.

[13] OIPC notes that an adjudicator appointed to conduct a s. 62 review has the same powers afforded to the Commissioner as conducting a review under s. 65 of the *FIPPA*, including the discretion to decide whether or not to hold an inquiry (see s. 56(1) of the *FIPPA*). OIPC submits that an adjudicator may decline to hold an inquiry where it is "plain and obvious that the records fall under a particular exception or outside the scope of *FIPPA*": citing *Law Society of British Columbia (RE)*, 2008 CanLii 65714 (BCIPC) (Decision F08-11) at para. 8.

[14] At the outset, I will note that it is not entirely clear what it is that the applicant is seeking to review. In his letter to the Minister, he says that he is seeking the assistance of the Minister to "obtain a copy of the documents and evidence I mailed to the OIPC".

[15] However, it appears from the email exchange set out above, OIPC in fact provided the requested documents on more than one occasion. I say "appears" because the evidentiary record is less than clear about what specifically was provided to the applicant. In his email, the applicant asked for OIPC Files No. P22-92391 and P2290109, but in his response, the investigator only refers, by way of example, to correspondence produced in File No. P22-90109.

[16] The affidavit filed in support of OIPC's application is also somewhat unclear. As set out above at para. 5, the affidavit states that the investigator "disclosed" copies of the same requested documents multiple times. Frankly, it is unclear from this evidence

what documents are referred to and whether they were in fact actually provided to the applicant, as opposed to merely being disclosed.

[17] As noted, the applicant has not responded to OIPC's application. Absent a response and any evidence that OIPC in fact denied the applicant access to the documents he requested, I am unable to find that there is a "decision, act or failure to act of the Commissioner" within the meaning of s. 62 that is reviewable by an adjudicator.

[18] OIPC does not ground its application on this point however. Rather, it submits that the documents sought are exempt from production by virtue of s. 3(3)(f) of the *FIPPA*.

[19] Specifically, OIPC argues that it is plain and obvious that the records sought by the applicant are operational records that are excluded from the scope of the *FIPPA*. OIPC cites the decision of Justice Grauer, then of this Court, sitting as an adjudicator in *Adjudication (B.F.)* (30 August 2018) Adjudication Order No. 27 who said (at para. 27):

Operational records have been held to include any record specific to a case file, such as case management or tracking sheets and lists, notes and working papers (including draft documents) of the Commissioner or his/her staff, or any other case-specific records received or created by the Commissioner's office in the course of opening, processing, investigating, mediating, settling, inquiring into, considering, taking action on, or deciding a case ...

[20] In my view, and again in the absence of any arguments to the contrary by the applicant, if there are any records in either of the two referenced OIPC files, it is clear that they would fall within the scope of s. 3(3)(f), being records that were created by or for, or which are in the custody of the Commissioner.

[21] In the circumstances, this is an appropriate case in which to exercise my discretion to decline to conduct an inquiry and to dismiss the applicant's request for a review.

Conclusion

[22] The applicant's request for a review is therefore dismissed.

"The Honourable Chief Justice Skolrood"