

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 Diana Low on December 16, 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:

Diana Low

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

February 27, 2025

Introduction

[1] On October 4, 2024, the applicant submitted an access request to the Office of the Information and Privacy Commissioner for British Columbia (“OIPC”) for the “complete files” for two OIPC files: F22-90183 and F22-91576.

[2] OIPC file number F22-90183 involved a request for a review of a response provided by the British Columbia College of Nurses and Midwives (the “College”) to a freedom of information request submitted by the applicant pursuant to the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165 [*FIPPA*].

[3] The access request was for the College’s entire file concerning a complaint the applicant had filed against a former nursing student. In response to the request, the College provide some records, but withheld other records pursuant to ss. 12(3)(b) (local public body confidences), 13(1) (advice or recommendations), 14 (solicitor client privilege), and 22(1) (unreasonable invasion of third party personal privacy) of the *FIPPA*.

[4] The applicant sought a review of the College’s decision by OIPC. During the course of the review, the College decided to release some additional records and it abandoned its reliance on ss. 12(3)(b). However, OIPC confirmed the College’s decision to refuse to disclose records pursuant to ss. 13, 14 and 22(1). OIPC’s decision, set out in Order F24-95, is indexed at 2024 BCIPC 108.

[5] OIPC file number F22-91576 involved a request for review by OIPC of a “deemed refusal” by the College to a different access request submitted by the applicant. The file was closed through mediation after OIPC substantiated the applicant’s complaint and the College responded to her access request.

[6] As noted at the outset, the applicant subsequently submitted a request for OIPC’s “complete files” in the two noted matters.

[7] On October 11, 2024, legal counsel to OIPC wrote the applicant denying her request (the “OIPC Decision”).

[8] On December 16, 2024, the applicant submitted a request for a review of OIPC Decision pursuant to s. 62 of the *FIPPA*. That section entitles a person to ask for a review by an adjudicator of a decision of the Commissioner. Reviews of this nature are conducted by justices of the Supreme Court of British Columbia, appointed pursuant to s. 60.

[9] I was appointed as the adjudicator on or about June 4, 2025. On that date, I wrote to the applicant advising of my appointment and indicating that if she wished to respond to OIPC's application, she should provide a written submission within 30 days. The applicant has not provided a submission or otherwise responded.

The OIPC Decision

[10] In its decision, OIPC cited s. 3(3)(f) of the *FIPPA*, which states:

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] Relying on this section, OIPC stated:

The records that you requested were created by or for the Commissioner and relate to the Commissioner's functions under *FIPPA*. As Operational records they fall within s. 3(3)(f) of *FIPPA*. As a result, *FIPPA* does not apply to these records and the OIPC is not required to disclose them to you.

[12] Additionally, OIPC noted that the Commissioner has no discretion to disclose such records given s. 47 of the *FIPPA* which prevents the Commissioner or delegates from disclosing any information collected in carrying out the duties, powers and functions.

OIPC's Application

[13] In response to the applicant's request for a review, OIPC submits that, as the designated adjudicator, I should exercise my discretion to decline to conduct an inquiry.

[14] 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.

[15] OIPC submits further 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...

[16] In support of this position, OIPC relies on the affidavit of Ethan Plato, legal counsel to OIPC, who deposes that the records requested by the applicant in both of the referenced files were all received or created by the Commissioner for the purpose of considering the applicant’s request for a review of her underlying requests.

[17] The applicant has not submitted any evidence or argument to the contrary. Regardless, in my view, there can be no issue that the records contained in OIPC’s “complete files” are records that were created by or for, or are in the custody of the Commissioner in connection with their investigative and adjudicative functions and are therefore excluded pursuant to s. 3(3)(f). Such records fall within the description provided by Justice Grauer in *B.F.* as case-specific records received or created by the Commissioner’s office in the course of investigating, inquiring into, considering or deciding a case.

[18] OIPC cites numerous adjudication decisions rendered by justices of this Court, sitting as s. 60 adjudicators, in which it has been found that documents of the type sought by the applicant are operational records exempt from disclosure. These decisions include Justice Grauer's decision in *B.F.*, referred to above at para. 15, as well as *Adjudication (S.V.)*, (12 April 2024) Adjudication Order No. 31 (Weatherill J.); *Adjudication (R.M.)*, (17 January 2024) Adjudication Order No. 30 (Mayer J.) and numerous others.

[19] I note that past adjudication decisions are not binding on me and each adjudication must be considered and determined on its own unique facts and circumstances. Nonetheless, these prior adjudication decisions are useful in terms of identifying the relevant principles and informing the applicable analysis. Of particular note is the consistent treatment of “operational records” and the findings that such records are excluded from disclosure pursuant to s. 3(3)(f) of the *FIPPA*.

Conclusion

[20] For the reasons set out above, OIPC has established that the records sought by the applicant are excluded from disclosure pursuant to s. 3(3)(f) of the *FIPPA*. The applicant's request for a review of the OIPC Decision is therefore denied.

“The Honourable Chief Justice Skolrood”