

Date: 20260615
Place: Victoria

In the Matter of:

**The *Freedom of Information and Protection of Privacy Act*,
R.S.B.C. 1996, c. 165 (the "Act")**

And in the Matter of:

An Adjudication under Section 62 of the *Act*

Requested by M.R. on January 28, 2026

Reasons for Decision

of the

Honourable Justice Jackson

(Sitting as an adjudicator appointed under Section 60 of the *Act*)

Requesting Party on their own behalf:

M.R.

Counsel for the Commissioner:

K.R. Phipps

Written Submissions of the Requesting Party:

April 27, 2026

Written Submissions of the Commissioner:

May 22, 2026

Introduction

[1] Generally, a person who submits a request to the head of a public body for access to a record or for correction of personal information, and is dissatisfied with the outcome, can ask the Information and Privacy Commissioner (the “Commissioner”) to review any decision, act or failure to act: *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 [*FIPPA*], s. 52(1). However, that review process does not apply where the request for access to a record or for correction of personal information is submitted to the Office of Information and Privacy Commissioner (the “OIPC”), which is also a “public body” as defined under *FIPPA*, and the initial decision is made by the Commissioner or their delegate: ss. 2, 52(1), Schedules 1 and 2. Instead, in such circumstances, a person who is dissatisfied with the outcome or process can ask that an adjudicator review the Commissioner’s decision, act or failure to act: *FIPPA*, s. 62(1). An adjudicator has the powers, duties and functions given to the Commissioner by ss. 42(2)(a)–(d), 43–44.2, and 47(1), (2)(a) and (3)–(5) of *FIPPA*: *FIPPA*, s. 61.

[2] Pursuant to s. 62(1) of *FIPPA*, M.R.¹ has asked that an adjudicator review the decision of a delegate of the Commissioner refusing their request for access to records of the OIPC.

[3] On April 8, 2026, I was designated to act as the adjudicator of this matter pursuant to s. 60 of *FIPPA*, to rule on an application for review and asked for and subsequently received written submissions from M.R. and the OIPC.

[4] The OIPC provided a Book of Documents on April 20, 2026.

[5] The written submissions of the M.R. were received on April 27, 2026.

¹ To conform with the general practice on adjudications under s. 62 of *FIPPA*, I have anonymized references to the applicant throughout these Reasons.

[6] The written submissions of the OIPC were received on May 22, 2026, along with an affidavit of Ethan Plato, affirmed on May 22, 2026, which attached three exhibits (the “Plato Affidavit”).

[7] M.R. did not submit a reply.

[8] This is my adjudication decision.

Contextual Background to the Adjudication Request

[9] Under *FIPPA*, an individual who believes there is an error or omission in personal information about the individual that is in the custody or under the control of a public body may request the head of that public body to correct the information: s. 29. M.R. requested that BC Assessment make a correction of personal information (the “Correction Complaint”).

[10] On July 31, 2025, M.R. submitted a complaint to the OIPC that BC Assessment had failed to correct inaccurate personal information as required under *FIPPA*, s. 29 (the “OIPC Correction Complaint”).

[11] On December 9, 2025, following an initial investigation, a delegate of the Commissioner (also the “Commissioner”) advised M.R. the OIPC declined to further investigate the complaint on the basis that “the information involved in the Correction Request is about property and [was] not [M.R.’s] personal information”, and because in the Commissioner’s view there was a more appropriate avenue for redress, being the Property Assessment Appeal Board process (the “OIPC Correction Decision”).

OIPC Access Request and Request for Adjudication

[12] On December 11, 2025, M.R. submitted a request to the OIPC for access to certain records relating to the OIPC Correction Complaint and OIPC Correction Decision (the “OIPC Access Request”).

[13] On or about December 12, 2025, the Commissioner responded to M.R.’s OIPC Access Request refusing access to the records on the basis that “the records [M.R.] requested were created by or for the Commissioner and relate to the

Commissioner's functions under *FIPPA*", and "as operational records they fall within s. 3(3)(f) of *FIPPA*", and "as a result, *FIPPA* does not apply to these records and the OIPC is not required to disclose them to you" (the "OIPC Access Decision").

[14] In the OIPC Access Decision, the Commissioner went on to advise M.R.:

In addition, the Commissioner would not have the legal discretion to disclose such records outside the formal FOI request process ... because s. 47 of *FIPPA* prevents the Commissioner or delegates from disclosing any information collected in carrying out the duties, powers and functions under the *Act*, except in limited circumstances.

[15] On December 16, 2026, M.R. wrote to the Honourable Diana Gibson, Minister of Citizens' Services, requesting "review and oversight regarding the [OIPC's] refusal to provide access to records responsive to my access request, *FOIPPA* File GEN-F-25-00745, which related to OIPC File INV-F-25-01457".

[16] On January 28, 2026, a representative of the Minister advised M.R. that "the Ministry of Citizens' Services has no authority to review OIPC decisions" and that M.R. could "request that a justice of the Supreme Court, acting as an adjudicator, be assigned to review the OIPC's response to [their] request".

[17] On January 28, 2026, M.R. confirmed a request to proceed with a review under s. 62 of *FIPPA*.

Parties' Positions

Position of M.R.

[18] M.R.'s submissions addressed the response of BC Assessment to the Correction Complaint under s. 29 of *FIPPA* and the merits of the OIPC Correction Decision. In their submissions, M.R. seeks the following findings:

I respectfully request that the Adjudicator find:

1. BC Assessment failed to respond properly to the correction request under *FOIPPA* s.29
2. The 2025 Property Record, as disclosed, was incomplete and did not include existing Notes and Workflow entries present prior to December 2025

3. Subsequent changes confirm that corrections were warranted
4. BC Assessment failed to meet its evidentiary burden
5. The conclusions reached by the OIPC were based on an incomplete or insufficiently addressed record

[19] In their submissions, M.R. seeks the following remedies:

That the Adjudicator direct:

A proper, reasoned decision on the correction request

Full disclosure of all Notes, Workflow, and records relied upon

Correction or annotation of inaccurate personal information

Removal or review of improper personal commentary

Position of the OIPC

[20] The OIPC opposes M.R.'s request for adjudication. The OIPC submits that the records in its possession relate to the exercise of its functions under *FIPPA*, specifically the consideration and initial investigation of M.R.'s Correction Complaint and the OIPC Correction Decision, which makes those records "operational records" which are exempt from disclosure under s. 3(3)(f) of *FIPPA*.

[21] The OIPC also submits that as a s. 60 adjudicator, I have no jurisdiction to consider any alleged errors or frailties associated with its handling of M.R.'s Correction Complaint including the OIPC Correction Decision.

Legislative Framework and Applicable Legal Principles

[22] The dual purposes of *FIPPA* are to make public bodies accountable to the public and protect the personal privacy of individuals: s. 2.

[23] The Commissioner is responsible for monitoring how *FIPPA* is administered and ensuring that its purposes are achieved: *FIPPA*, s. 42. The means by which the Commissioner does so includes conducting reviews (on request) of decisions, acts, or failures to act by public bodies in relation to requests for access to records: s. 52; see also ss. 53–59.01.

[24] Generally speaking, following an adjudicator's review of the OIPC's decision to refuse access to all or part of a record (as occurred here), the adjudicator must either: (a) require the OIPC to give the applicant access to all or part of the record; (b) confirm the decision of the OIPC to refuse access; or (c) require the OIPC to reconsider its decision; see *FIPPA*, ss. 58(2) and 65(2).

Analysis

Issue 1: Is the OIPC Correction Decision properly the subject of this review adjudication?

[25] M.R.'s written submissions focus on the OIPC Correction Decision, rather than the OIPC Access Decision. However, only the latter is properly the subject of this adjudication.

[26] As Justice Kelleher noted in *Adjudication (F.T.)*, (7 February 2019) Adjudication Order No. 28, at para. 8 [FT 2019]:

As the adjudicator, I am essentially carrying out the role that the OIPC would perform if the complaint were made against a different public body. This is different from the role of the Supreme Court of British Columbia in judicial review. In a judicial review, the Court oversees the OIPC's discharge of its responsibilities as a statutory decision-maker under *FIPPA* and the *Personal Information Protection Act*, S.B.C. 2003, c. 63. By contrast, in a s. 62 adjudication, the adjudicator reviews the OIPC's compliance with its obligations as a public body under *FIPPA*.

[27] The jurisdiction of a Supreme Court judge appointed as an adjudicator under s. 60 of *FIPPA* is confined to reviewing a decision of the OIPC in its role as a public body, in relation to a request of the OIPC for access to records and determining whether the decision was made in accordance with *FIPPA*. The jurisdiction of an adjudicator under s. 60 of *FIPPA* does not extend to reviewing the adequacy of the OIPC's investigation into a *FIPPA* complaint about another public body (here BC Assessment): *Adjudication (Jane Doe)*, (6 January 2015), Adjudication Order No. 26, paras. 17 and 19 [JD 2015]. Insofar as M.R. is dissatisfied with the OIPC Correction Decision, the only avenue available is to litigate that issue by way of a petition for

judicial review under the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241: *FT 2019* at paras. 13, 55, 71.

[28] The distinction between, on the one hand, reviewing decisions made by the OIPC in its role as a public body (as in this case, for example, when it decides requests for access to records in its possession and control), and on the other hand, reviewing the OIPC's decision-making as a reviewer of the decisions of other public bodies, may appear overly formalistic. However, that distinction is determinative in this case because my jurisdiction as an adjudicator under s. 62 of *FIPPA* is constrained. I am only to review the OIPC's decision-making as a public body, which is subject to access requests.

Issue 2: did the Commissioner err in refusing access to the requested records?

[29] In an adjudication under s. 62 of *FIPPA*, the burden is on the Commissioner, as the "public body" that made the OIPC Access Decision, to prove M.R. has no right of access to the records sought: *FIPPA*, s. 57.

[30] The parties did not expressly address standard of review in their submissions. Without deciding the point, I will assume the correctness standard of review applies, given it is the least deferential standard of review (which favours M.R.), and because the OIPC used that term in its written submissions in framing the issue and because Justice Fitch did likewise at para. 20 of *JD 2015*.

[31] Section 4 of *FIPPA* outlines an individual's right to access records, and provides that:

4 (1) Subject to subsections (2) and (3), an applicant who makes a request under section 5 has a right of access to a record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information that is excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

(3) The right of access to a record is subject to the payment of fees, if any, required under section 75.

[32] However, there are statutory exceptions to that right of access. Section 3 of *FIPPA* provides in part:

Application

3 (1) Subject to subsections (3) to (5), this Act applies to all records in the custody or under the control of a public body, including court administration records.

...

(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, an officer of the Legislature and that relates to the exercise of functions under an Act;

...

[33] The Commissioner is an officer of the Legislature: *FIPPA*, ss. 37(1) and (2).

[34] Nonetheless, not all records in the custody and control of OIPC are excluded by s. 3(f) of *FIPPA*. For the exclusion to apply, “the record must relate to the exercise of the [Commissioner’s] functions under [*FIPPA*]”: *Adjudication (B.F.)*, (30 August 2018) Adjudication Order No. 27 at para. 24 [*BF 2018*]. As Justice Grauer, then of this Court, summarized in *BF 2018* at para. 24, “past adjudication decisions under [*FIPPA*] have drawn a distinction between two classes of records that may be in the custody or control of the OIPC: operational records and administrative records”. Only operational records are excluded from the right of access under *FIPPA*.

[35] Operational records are those that relate to the Commissioner’s powers, duties and functions under *FIPPA* and 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.

BF 2018 at para. 27.

[36] The OIPC cites numerous other adjudications² where the same distinction has been drawn and the same conclusion reached:

- *Adjudication (R.M.)*, (17 January 2024) Adjudication Order No. 30 (Justice Mayer, then of this Court) at para. 17 [*RM 2024*];
- *FT 2019* (Kelleher J.) at para. 68;
- *JD 2015* (Justice Fitch, then of this Court) at paras. 41–42;
- *Adjudication (J.P.)*, (30 October 2014), Adjudication Order No. 25 (Pearlman J.) at paras. 21–23, 25–26;
- *Adjudication (VPD)*, (12 April 2013) Adjudication Order No. 23 (Justice Griffin, then of this Court) at paras. 20–22;
- *Adjudication (C.S.)*, (12 November 2009) Adjudication Order No. 22 (Justice Griffin, then of this Court) at paras. 25–33;
- *Adjudication (J. and D.S.)*, (5 December 2008) Adjudication Order No. 21 (Pearlman J.) at paras. 17–23; and
- *Adjudication (A.V.)*, (17 November 2008) Adjudication Order No. 20 (Gerow J.) at para. 16.

[37] In the OIPC Access Request, M.R. sought access to records described as follows:

...I am requesting access to all records in the custody or control of the OIPC relating to [M.R.'s] correction complaint INV-F-25-01457.

I request:

² Although several of these adjudication decisions consider s. 3(3)(c) of FIPPA, when FIPPA was amended in 2021, s. 3(1)(c) became s. 3(3)(f) but the language of the provision did not change. As a result, cases that interpreted this provision under its former numbering remain relevant and persuasive. See Bill 22, *Freedom of Information and Protection of Privacy Amendment Act, 2021*, 2nd Sess., 42nd Parl., 2021 (assented to 25 November 2021).

1. A complete copy of BC Assessment's submission to the OIPC, including its response letter and all attachments.
2. All internal OIPC correspondence, notes, emails, summaries, analyses, and decision-making materials relating to the review and discontinuance of INV-F-25 -01457.
3. Any records describing or documenting communications between OIPC staff and BC Assessment regarding this file.
4. Any records explaining the basis upon which the OIPC determined the matter fell outside FOIPPA.

(Collectively the "Requested Records")

[38] All of the Requested Records are operational records to which there is no right of access under *FIPPA*: *FIPPA*, s. 3(f).

[39] All of the Requested Records are case specific, in relation to M.R.'s OIPC Correction Complaint involving BC Assessment and the making of the OIPC Correction Decision. The Requested Records are case-specific records received or created by the OIPC, in the course of opening, processing, partially investigating, and considering of the OIPC Correction Complaint involving BC Assessment, and making the OIPC Correction Decision. Documents specific to a case file which are received by the Commissioner while investigating the case are operational records, regardless of whether they were created by the Commissioner or submitted during the investigation by someone else: *RM 2024* at paras. 13–15. Under s. 3(f), *FIPPA* "simply does not apply to records of the Commissioner which relate to the exercise of their investigative and adjudicative functions": *RM 2024* at para. 17.

[40] I am satisfied that the OIPC has discharged its onus to demonstrate that M.R. is not entitled to access the requested records.

Conclusion

[41] For the foregoing reasons, pursuant to ss. 58(2)(b) and 65(2) of *FIPPA*, I confirm the OIPC Access Decision to refuse M.R.'s OIPC Access Request.

A handwritten signature in blue ink, appearing to be 'V. Jackson J.', with a long horizontal line extending to the right.

V. Jackson J.