Decision P26-01

# CANADIAN MENTAL HEALTH ASSOCIATION SHUSWAP/REVELSTOKE BRANCH

Alexander R. Lonergan
Adjudicator

November 10, 2026

CanLII Cite: 2026 BCIPC 124
Quicklaw Cite: [2026] B.C.I.P.C.D. No. 124

**Summary:** An individual (applicant) requested access to her own personal information from Canadian Mental Health Association Shuswap/Revelstoke Branch (the organization) under the *Personal Information Protection Act* (PIPA). The applicant subsequently complained to the Office of the Information and Privacy Commissioner (OIPC) alleging that the organization had failed to respond within the timelines in s. 29(1) (time limit for response) of PIPA. At inquiry, the organization applied for authorization from the OIPC under ss. 27 and 37 of PIPA to disregard the applicant's request and sought permission to withhold the requested information under s. 23(3)(c). The adjudicator decided to consider the organization's s. 37 application but declined to consider the other new issues raised by the organization. The adjudicator also decided the s. 29 issue will not be adjudicated until after a decision has been made about the organization's s. 37 application.

**Statutes Considered:** *Personal Information Protection Act,* SBC 2003, c 63, ss. 23(3)(c), 27, 29(1), 29(2), and 37.

## INTRODUCTION

[1] Under the *Personal Information Protection Act* (PIPA), individuals have the right to access their personal information under the control of an organization. Section 29(1)[1] provides that an organization must respond to an access applicant not later than 30 days after receiving the applicant's request.

[2] An individual (applicant) requested access to her own personal information from Canadian Mental Health Association Shuswap/Revelstoke

[1] All sectional references refer to PIPA unless noted otherwise.

Branch (organization). Pursuant to s. 31(1), the organization extended its deadline to respond by an additional 30 days.

[3] The applicant complained to the OIPC that the organization had failed to respond to her access request by the deadline required under s. 29.

[4] After discussing her request with the organization, the applicant agreed to narrow the scope of her request. However, mediation failed to resolve the outstanding issues between the parties and the matter proceeded to this inquiry.

## ISSUES

[5] In this matter, the Notice of Inquiry (the "Notice") lists the following issues to be decided:

1. Did the organization respond to the applicant's request within the time limits in s. 29 of PIPA?
2. If not, what is the appropriate remedy?

[6] The organization's submissions raise several new, intertwined issues. Specifically, the organization asks for decisions about the application of ss. 23(3)(c), 27, and 37, none of which were listed in the Notice. In response, the applicant asks that I limit the inquiry to the two issues stated in the Notice.[2]

[7] The OIPC's *Instructions for Written Inquiries* clearly explains that parties may not add new issues without the OIPC's prior consent.[3] Past orders and decisions of the OIPC have consistently said the same thing.[4]

[8] Allowing a party to add a new inquiry issue at a late stage of the proceeding, absent exceptional circumstances, undermines the effectiveness of the OIPC's mediation process. That process exists, in part, to assist the parties in identifying, defining, and crystallizing the issues prior to inquiry.[5]

[9] Before deciding the issues listed in the Notice, I must consider whether to add ss. 23(3)(c), 27, or 37 as new issues in this inquiry.

---

[2] Applicant's submission at paras 2-3.
[3] Available online: https://www.oipc.bc.ca/documents/guidance-documents/1658. [*Instructions*] at pp 3-4. An earlier version of these instructions was provided to the parties that differs from the current version available online, however, the relevant passages are identical in both versions.
[4] Order F12-07, 2012 BCIPC 10 at para 6; Order F10-37, 2010 BCIPC 55 at para 10.
[5] Order F15-15, 2015 BCIPC 16 at para 10; Decision F08-02, 2008 CanLII 1647 (BC IPC) at paras 28-30.

## DISCUSSION

### *Background*[6]

[10] The applicant is an employee of the organization.

[11] After previously submitting two requests to the organization for access to certain information, on March 31, 2026, the applicant submitted a third request for access to her personal information under s. 23(1). That third request is the subject of this inquiry.

[12] The parties discussed the parameters of the applicant's request and the organization extended its deadline to respond by an additional 30 days under s. 31(1). Ultimately, the applicant complained to the OIPC that the organization failed to respond within the time limits required under s. 29.

[13] The applicant's request is for access to all records containing her personal information, regardless of format or storage location. As a result of mediation and discussions between the parties, the applicant narrowed the scope of her request as follows:

1. The applicant seeks records dated between January 1, 2024 and March 31, 2026; and
2. The applicant excluded routine operational emails where she was simply participating in ordinary work duties. However, the applicant expressly preserved her request for records containing her personal information where she was the subject, topic, or affected individual in those records.

[14] Despite the narrowed scope of the request, the organization did not provide a response to the request, and the matter proceeded to this inquiry.

### *Preliminary Matter - Mediation Material*

[15] The organization's submissions include references to the parties' correspondence with OIPC staff. Some of this correspondence includes communications that are about attempts to resolve the parties' dispute during mediation led by an OIPC investigator. The applicant objects to this material being included in the organization's submissions on the basis that it is mediation material.[7]

---

[6] 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] Applicant's submission at paras 4-5.

[16] The OIPC's *Instructions for Written Inquiries*, a copy of which was provided to the parties with the Notice, states as follows:[8]

> "Mediation material" refers generally to communications that relate to offers or attempts to resolve the matter during mediation. The Commissioner will not consider mediation materials in reaching a decision and issuing an order. To preserve the integrity of the "without prejudice" nature of the mediation process, a party may not, without the written consent of the other parties, refer to or include in its submissions any mediation materials, including any opinions or recommendations an investigator expressed during mediation. However, it is permissible to refer to information which is not mediation material, for instance an investigator's decisions about the issues and the scope of the records that will proceed to inquiry, or an investigator's decision in complaints. Parties may include information about such factual outcomes in their submissions.

[17] I will not consider any communications in the parties' submissions that are opinions or recommendations of OIPC investigators. This material meets the definition of mediation material and will not inform my analysis in any way.

[18] However, I will consider the communications that discuss the final parameters of the applicant's request and whether certain issues would proceed to this inquiry. I will also consider the timing and existence of the parties' attempts to resolve the issues. These matters are directly relevant to my procedural decisions about the new issues raised by the organization and, despite their close proximity to mediation material, do not themselves constitute mediation material.

***New Issue #1 – Information Collected for Investigation Purposes, s. 23(3)(c)***

[19] The organization asks for authorization under s. 23(3)(c) to not disclose personal or other information relating to a bullying and harassment investigation because the investigation and its associated proceedings and appeals have not been completed.

[20] Section 23(3)(c) provides as follows:

> (3) An organization is not required to disclose personal information and other information under subsection (1) or (2) in the following circumstances:
>
> . . .
>
> (c) the information was collected or disclosed without consent, as allowed under section 12 or 18, for the purposes of an investigation and the investigation and associated proceedings and appeals have not been completed;

[8] *Instructions, supra* note #3 at pp 6-7.

[21] It is clear from the materials that the organization has not yet provided a response to the applicant's request.[9] In addition, the organization has not provided me with a copy of the disputed records indicating what information it seeks to withhold under s. 23(3)(c).

[22] Until and unless the organization decides to withhold information under s. 23(3)(c), communicates that decision in a response to the access request, and the applicant asks the OIPC to review that decision, it remains premature for me to consider whether s. 23(3)(c) applies.

[23] Given that it is premature to consider the organization's arguments about s. 23(3)(c), I will not address it any further at this time.

***New Issue #2 – Sufficient Detail to Identify the Information Sought, s. 27***

[24] Citing s. 27, the organization asks for authorization to disregard the applicant's request without leave to re-apply.

[25] Section 27 states as follows:

> For an individual to obtain access to his or her personal information or to request a correction of his or her personal information, the individual must make a written request that provides sufficient detail to enable the organization, with a reasonable effort, to identify the individual and the personal information or correction being sought.

[26] The organization says that the applicant has not submitted a written request that provides sufficient detail to enable the organization, with a reasonable effort, to identify the personal information being sought.[10]

[27] In response, the applicant says that the organization contradicts this position in its correspondence with the OIPC.[11] While I cannot consider the communications raised by the applicant because they are mediation material, I understand the applicant's argument to be that her request is sufficiently detailed and that the organization's arguments contradict its position on this issue.

[28] In my view, the organization's arguments relate to s. 37 instead of s. 27.

[29] The organization says that it has created a workflow process to identify the requested information among the records, identify and redact any severable

---

[9] The organization's position is entirely predicated on its argument that it cannot provide a response that meets the requirements of a response under s. 30.
[10] Organization's initial submission at p 1.
[11] Applicant's submission at para 11.

information, and prepare the relevant records for disclosure to the applicant.[12] Aside from explaining the substantial time and resources required to complete these steps, the organization does not clearly explain how a *more detailed request* would better enable it to *identify* the requested personal information.

[30] Despite referring to s. 27, the organization clearly understands what information the applicant wants and it knows how to identify that information among its records. In substance, the organization is arguing that processing this request would unreasonably interfere with its operations.

[31] I find that these arguments are properly considered under s. 37. I am not satisfied that s. 27 is relevant in the sense the organization argues and there are no exceptional circumstances that warrant its addition to the inquiry at this late stage. Therefore, I decline to add s. 27 as a new issue.

***New Issue #3 – Application to Disregard the Applicant's Request, s. 37***

[32] Under ss. 37(a) and (b), the organization asks that I authorize it to disregard the applicant's current request and any similar requests for a period of two years. The organization argues that the current request is vexatious and frivolous, and that responding to it would unreasonably interfere with the operations of the organization.[13]

[33] The applicant asks that the inquiry remain focused on s. 29 and the appropriate remedy, which are the only two issues listed in the Notice. However, the applicant asks for "an express procedural decision" and a fair opportunity to respond if the inquiry is expanded to include s. 37.[14]

*Should I consider the organization's s. 37 application?*

[34] Section 29(2) says that an organization's time limit to respond to an access request does not include the period from when an organization requests relief under s. 37 until the Commissioner decides that application.

[35] Section 37 states as follows:

> If asked by an organization, the commissioner may authorize the organization to disregard [requests for personal information] that
>
> (a) would unreasonably interfere with the operations of the organization because of the repetitious or systematic nature of the requests, or
>
> (b) are frivolous or vexatious.

[12] Organization's initial submission at pp 2-3.
[13] Organization's initial submission at p 1.
[14] Applicant's submission at paras 2-3.

[36] Section 37 gives the OIPC a broad discretion to consider an application for authorization to disregard a request for personal information. However, the OIPC has repeatedly made clear that authorization to disregard a request is an "extraordinary remedy" that should only be granted after careful consideration and in exceptional cases.[15]

[37] The OIPC uses its discretion under s. 37 judiciously and after considering the facts of each case, particularly when the organization asks to disregard a request after its deadline to respond to that same request has already passed.[16]

[38] When deciding whether to consider a s. 37 application in respect of an overdue request, past OIPC adjudicators have referred to decisions made under s. 43 of the *Freedom of Information and Protection of Privacy Act* (FIPPA). Section 43 of FIPPA is a similar provision to s. 37 as it also deals with applications to disregard requests.

[39] Building on the jurisprudence of s. 43 of FIPPA, OIPC adjudicators have considered the following circumstances when deciding whether to consider a s. 37 application for an overdue access request:[17]

- Whether the organization justifies why it did not respond to the request within the legislated timeline;
- Whether there is evidence that the organization had deliberately neglected the overdue request; and
- Whether the access applicant was responsible for contributing to the organization's inability to respond in time, for instance by overwhelming the organization with other access requests or follow-up questions.

[40] I will consider these and other relevant circumstances to determine whether it is fair in the circumstances to add s. 37 as a new issue in this inquiry.

*Analysis and Findings, New Issue, s. 37*

[41] In this matter, the organization's reasons for not responding to the access request are the same reasons it provides for why it asks for relief under s. 37. The organization says that the applicant's request is so broad that it cannot respond without suffering unreasonable interference with its operations. I find that this explanation is logical and weighs in favor of considering the s. 37

---

[15] Order P25-02, 2025 BCIPC 16 (CanLII) at para 16; Order F23-37, 2023 BCIPC 44 at para 14.
[16] Order P24-12, 2024 BCIPC 109 at para 27; Order P24-04, 2024 BCIPC 18 at para 23, citing Order F23-90, 2023 BCIPC 106 at para 19.
[17] P24-04, 2024 BCIPC 18 (CanLII) at paras 23-26; P26-02, 2026 BCIPC 16 (CanLII), at paras23-25; See also: Decision F06-03, 2006 CanLII 13535 (BC IPC) at para 30; Decision F06-12, 2006 CanLII 42644 (BC IPC) at paras 25-26; Order F20-15 2020 BCIPC 17 (CanLII) at para 10.

application, particularly given that the organization has consistently maintained this position throughout its interactions with the applicant regarding her request.

[42] I turn next to the organization's lateness in raising its request for authorization to disregard the applicant's request. The organization raises s. 37 for the first time in its inquiry submission which the OIPC received on September 18, 2026, which is:

- 171 days after the applicant made her access request (March 31, 2026);
- 109 days after the organization's extended deadline to respond (June 1, 2026);
- 85 days after the applicant narrowed the scope of her request (June 25, 2026); and
- 15 days after the OIPC sent the Notice (September 3, 2026), which did not list s. 37 as an issue to be decided at the inquiry.

[43] The applicant correctly notes that the organization failed to raise s. 37 during its time limit to respond under s. 29.[18] By any measure, it is apparent to me that the organization raises s. 37 at a very late stage of this inquiry.

[44] On the other hand, I can see that the organization consistently raised its concerns about the applicant's request with the OIPC and asked for guidance about its options.[19] These communications and the responses that OIPC employees provided persuade me that the organization genuinely expected this inquiry to deal with its request for authorization to disregard the access request for same reasons enumerated under s. 37.

[45] More fundamentally, I can see that the parties' disagreement has always been about the organization's ability to realistically respond to the request with its available resources. The parties discussed this issue before the applicant complained to the OIPC under s. 29,[20] and it is the very reason why the parties attempted to narrow the scope of that request through negotiation and OIPC-led mediation.

[46] Both parties ultimately benefit from clarifying precisely what information the applicant wants, and consequently, which records the organization must find and review. The fact that some of the delay was caused by the parties attempting to resolve the issues between them, as opposed to the organization deliberately

[18] Applicant's submission at para 9.
[19] Organization's email to investigator, September 2, 2026; Organization's email to registrar of inquiries, September 4, 2026; Organization's initial submission at pp 34-37; Organization's reply submission at p 2.
[20] Organization's initial submission at pp 22-33.

ignoring its duty to respond to the request, weighs in favour of considering the s. 37 application.

[47] Finally, I must consider whether the applicant's conduct has contributed to the organization's delay in responding to her underlying access request.

[48] I can see that the applicant has, within a span of approximately 10 months, requested information from the organization under PIPA three times and filed three related complaints to the OIPC. I also see that the applicant has complained to a regulatory entity about the organization which resulted in proceedings that ran concurrently with the present matter.[21]

[49] Without drawing any conclusions about the applicant's motivations or the merits of the parties' positions in these proceedings, I find that the applicant's actions clearly contributed to the organization's delay in responding to the current request and its confusion about what this inquiry would consider. This circumstance weighs in favour of considering the organization's s. 37 application.

*Conclusion*

[50] Organizations are responsible for understanding their own obligations under PIPA and for promptly requesting any remedies available to them. However, the circumstances discussed above provide important context about the organization's failure to respond to the access request and its failure to raise s. 37 until the inquiry had already begun. Having considered these circumstances, I find that fairness requires me to consider the organization's s. 37 application.

[51] Taking the parties' submissions and all of the relevant circumstances into consideration, in the interest of fairness, I have decided to add ss. 37(a) and (b) as issues in this inquiry.

[52] I have also decided the s. 29 issue will not be adjudicated until after a decision has been made about the organization's s. 37 application. If I were to decide the s. 29 issue first and find the organization has not complied with s. 29, the usual remedy would be to order the organization to respond to the request.[22] Clearly, making such an order would defeat the purpose of adjudicating whether to authorize the organization to disregard the request under s. 37.

[53] Now that I have clarified for the parties that ss. 37(a) and (b) will be adjudicated in this inquiry, I find that fairness requires me to allow them to provide additional submissions and evidence about those issues. The OIPC

[21] Organization's initial submission at pp 2-4; Applicant's submission at paras 18-22.
[22] Order P25-06, 2025 BCIPC 37 at para 21; Order P23-11, 2023 BCIPC 88 at para 45; Order P14-02, 2014 BCIPC 10 (CanLII) at para 14.

registrar of inquiries will provide the parties an amended Notice of Inquiry and a new submission schedule in due course.

November 10, 2026

**ORIGINAL SIGNED BY**

Alexander R. Lonergan, Adjudicator

OIPC File No.: P26-00215