Order F23-21

VANCOUVER ISLAND HEALTH AUTHORITY

Elizabeth Vranjkovic
Adjudicator

March 24, 2023

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Summary: The applicants requested records relating to their child's medical treatment. Vancouver Island Health Authority (Island Health) disclosed most of the responsive records to the applicants but withheld some records pursuant to s. 51 of the *Evidence Act*. The adjudicator found that Island Health is required to refuse to disclose the records in dispute under s. 51 of the *Evidence Act*.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, s. 3(7); *Evidence Act*, RSBC 1996, c 165, ss. 51(1), 51(1)(b), 51(1)(b.1), 51(5), 51(6), 51(7); *Interpretation Act*, RSBC 1996, c 238, ss. 2(1), 8, 28(3).

INTRODUCTION

[1] The applicants made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) for records relating to their child's medical treatment. Vancouver Island Health Authority (Island Health) disclosed most of the responsive records to the applicants but withheld some records under s. 51 of the *Evidence Act*.

[2] The applicants asked the Office of the Information and Privacy Commissioner (OIPC) to review Island Health's decision. Mediation by the OIPC did not resolve the matter and it proceeded to inquiry.

[3] Island Health did not initially provide the records in dispute for my review. After reviewing the parties' submissions and evidence, I ordered Island Health, under s. 44(1)(b) of FIPPA, to produce to the OIPC a copy of the records being withheld under s. 51.[1] Island Health complied and provided the disputed records for my review.

[1] Adjudicator's letter, January 19, 2023.

PRELIMINARY ISSUES

New issues raised by the parties

[4] In their inquiry submissions, the parties raise several issues not set out in the notice of inquiry (notice) or investigator's fact report (fact report). The notice clearly states that parties may not add new issues into the inquiry without the OIPC's prior consent.[2] Parties will only be permitted to add issues at the inquiry stage in exceptional circumstances and only after receiving permission from the Commissioner to do so.[3] To allow otherwise would undermine the effectiveness of the mediation process which exists, in part, to assist the parties in identifying, defining and crystallizing the issues prior to the inquiry stage.[4]

[5] The fact report and the notice identify the issues as whether ss. 51(6) and (7) of the *Evidence Act* apply to the records in dispute.[5] Section 51(6) prohibits a board of management or any member of a board of management from disclosing information or a record submitted to it by a committee, with limited exceptions. Section 51(7) provides that ss. 51(5) – (6.1) apply despite any provision of FIPPA, with limited exceptions.

[6] Neither Island Health nor the applicants sought permission to add any new issues and nothing in the materials before me indicates that the either of them informed the OIPC that the fact report and the notice did not accurately reflect the inquiry issues. I will consider whether to add the new issues raised by the parties in their submissions.

Section 51(5) of the Evidence Act

[7] In its initial inquiry submission, Island Health seeks an order confirming that the head of Island Health is prohibited by ss. 51(5) - (7) from disclosing the disputed records to the applicants. Additionally, much of Island Health's submissions and evidence relates to s. 51(5), which prohibits a committee or any person on a committee from disclosing or publishing information or a record provided to a committee within the scope of s. 51, with limited exceptions.

[8] In the particular circumstances of this case, I have decided to add s. 51(5) as an issue. I can see that Island Health referred generally to s. 51 in its initial response to the applicants' access request. I note that the applicants had the opportunity, as part of the inquiry submission process, to respond to Island

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[2] Investigator's Fact Report; Notice of Written Inquiry, June 17, 2022.
[3] Order F18-11, 2018 BCIPC 14 at para. 5.
[4] Order F15-15, 2015 BCIPC 16 at para. 10; Order F08-02, 2008 CanLII 1647 (BC IPC) at paras. 28-30.
[5] Whenever I refer to sections in this order, unless otherwise specified, I am referring to sections of the *Evidence Act*.

Health's submission about s. 51(5) and to its late addition of this issue when the inquiry process was underway. I have also considered that s. 51(5) is a mandatory prohibition against disclosure, which in my view supports adding it as an issue.

[9] I wrote to the parties and asked that they advise the OIPC if they had any objection to adding s. 51(5) as an issue in the inquiry. The OIPC did not receive notice of any objection from either party.

[10] Taking all of the above into account, I find that it is appropriate to add s. 51(5) as an issue in the inquiry.

Complaints about Island Health's response to the access request

[11] The applicants say that Island Health has misconstrued their original FOI request and incorrectly focused on one aspect of their request.[6] The applicants also say that Island Health did not make every reasonable effort to assist them when responding to their access request, contrary to s. 6(1) of FIPPA.[7] These are the type of matters that the OIPC would normally address as complaints under s. 42(2) of FIPPA.

[12] Island Health says that these issues are not properly at issue in this inquiry and that it would be unfair to expand the scope of the inquiry at this point.[8]

[13] In my view, adding these complaint issues would undermine the effectiveness of the mediation process. I cannot see any exceptional circumstances that would justify adding these issues at this late stage. Therefore, I decline to add these issues to the inquiry.

ISSUE

[14] The issue to be decided in this inquiry is whether ss. 51(5) - (7) of the *Evidence Act* prohibit Island Health from disclosing the disputed records to the applicants.

[15] Section 57 of FIPPA does not say who has the burden of proof regarding provisions such as s. 51, but previous orders have held that it is in the interests of both parties to present argument and evidence in support of their positions.[9]

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[6] Applicants' response submission at page 1.
[7] Applicants' response submission at pages 1 and 4-5.
[8] Public body's reply submission at paras 4 and 6.
[9] Order F10-41, 2010 CanLII 77327 (BC IPC) at para 5.

DISCUSSION

Background

Events leading up to the access request

[16] In 2019, the applicants' twins were born prematurely and admitted to the Neonatal Intensive Care Unit (NICU) at Victoria General Hospital (VGH). Out of concern for their privacy, I will not reproduce all the details of the applicants' experience here. In brief, the applicants assert that one of their children (the child) had an extremely arduous journey in the NICU due to countless preventable errors.[10]

[17] The applicants filed a complaint with Island Health's Patient Care Quality Office. They then met with some senior leaders at VGH, who told them that their child's care was the subject of a review under s. 51 because there had been medical errors. The senior leaders also told the applicants that they could submit a formal request for information surrounding their child's care.[11] The applicants subsequently made the access request that is the subject of this inquiry.

[18] I can see that the applicants have serious questions and concerns about Island Health and their child's stay in the NICU. That said, in this inquiry, I have jurisdiction only to review Island Health's decision to withhold records under the *Evidence Act*. I make no comment on the quality of care provided by Island Health or any other concerns raised by the applicants.

Island Health's quality processes

[19] Island Health uses a web-based safety event reporting and management tool, the Patient Safety & Learning System (PSLS), to facilitate the reporting and management of patient safety events.[12] A patient safety event is an event or circumstance that could have resulted, or did result, in unnecessary harm to the patient.[13] Island Health staff and volunteers who witness patient safety events report them into PSLS using an online web form available on the Island Health Intranet.[14]

[20] Island Health has a number of quality councils and committees, which may be geographically based or program-based (for programs that operate across Island Health).[15] The quality councils and committees designate

[10] Applicants' response submission at page 1.
[11] Applicants' response submission at page 4.
[12] Public body's initial submission at para 9.
[13] Affidavit of Island Health's Manager of Safety and Systems Processes (Manager) at para 5.
[14] Manager's affidavit at para 18.
[15] Affidavit of Island Health's Director of Quality (Director) at para 5.

individuals (handlers) to conduct the initial review and investigation of PSLS reports.[16]

[21] Handlers categorize the incidents underlying the PSLS report as levels 1-5 based on the degree of harm sustained by the patient. Level 1 indicates a no-harm event and level 5 indicates an event where an unexpected death has occurred.[17] Where patient safety events are classified as level 4 or 5, the PSLS reports are individually presented to the relevant quality council or committee for consideration. Where patient safety events are classified as level 1, 2 or 3, the PSLS reports are not required to be individually presented to the relevant quality council or committee.[18]

[22] An administrative team that supports the quality councils and committees aggregates the data from all PSLS reports on a monthly basis and presents that data to the relevant quality councils and committees in a standardized monthly report known as a placemat.[19] The data is used by the quality councils and committees to improve safety, examine the system and human factors that contribute to patient safety events, identify potential issues, and develop quality improvement priorities and solutions.[20]

Records at issue

[23] The disputed records are patient safety event reports that are stored in PSLS. Island Health withheld the entirety of these records from the applicants under s. 51.

Section 3(7) of FIPPA

[24] Part 2 of FIPPA provides a right of access to any record in the custody or under the control of a public body subject only to limited exceptions. Section 3(7) of FIPPA says that if a provision of FIPPA is inconsistent or in conflict with a provision of another Act, FIPPA prevails unless the other Act expressly provides that it, or a provision of it, applies despite FIPPA.

[25] Section 51(7) expressly provides that ss. 51(5) - (6.1) apply despite FIPPA, other than ss. 44(1)(b), (2), (2.1) and (3) of FIPPA. Thus, if I find that s. 51(5) or (6) apply to the disputed records, the applicants have no right of access to them under FIPPA.

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[16] Manager's affidavit at para 21.
[17] Manager's affidavit at para 29.
[18] Manager's affidavit at para 30.
[19] Manager's affidavit at paras 23 and 31.
[20] Manager's affidavit at para 16.

Section 51

[26] The purpose of s. 51 is to protect hospitals' efforts to ensure that high standards of patient care and professional competency and ethics are maintained, by ensuring confidentiality for documents and proceedings of committees entrusted with this task.[21]

[27] Sections 51(5) and (6) restrict the disclosure of information received by committees and boards of management as follows:

> 51(5) A committee or any person on a committee must not disclose or publish information or a record provided to a committee within the scope of this section or any resulting findings or conclusion of the committee except
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> (a) to a board of management, or in the case of a committee described in paragraph (b.1) of the definition of "committee", to the boards of management that established or approved the committee,
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> (b) in circumstances the committee considers appropriate, to an organization of health care professionals, or
>
> (c) by making a disclosure or publication
>
> (i) for the purpose of advancing medical research or medical education, and
>
> (ii) in a manner that precludes the identification in any manner of the persons whose condition or treatment has been studied, evaluated or investigated.
>
> (6) A board of management or any member of a board of management must not disclose or publish information or a record submitted to it by a committee except in accordance with subsection (5)(c) or (6.1).

[28] I will first consider s. 51(5). If it applies, then I do not need to consider s. 51(6), since s. 51(5) will prohibit disclosure of the records in dispute. In order for s. 51(5) to apply, the disputed records must have been provided to a committee within the scope of s. 51.

[21] *Lew (Guardian ad litem) v Mount St Joseph Hospital Society*, 1995 CanLII 1291 (BC SC) at para 18, endorsed by the Court of Appeal in *Sinclair v March*, 2000 BCCA 459 at para 23.

Which committee is the relevant committee?

[29] Island Health says that the Child, Youth and Family Council (CYF Council) is a "committee" for the purposes of the *Evidence Act* and that the records in dispute were submitted to the CYF Council.[22]

[30] The applicants question why Island Health refers only to the CYF Council in its submissions as they say they were informed that other quality councils were accountable to implement recommendations in their child's case.[23]

[31] I am satisfied that the relevant committee is the CYF Council. There is no evidence before me that suggests that the disputed records were submitted to any other committee. In my view, the fact that other quality councils are accountable for implementing recommendations does not mean that the CYF Council is not the relevant committee. Therefore, in order to determine whether the records in dispute were provided to a committee within the scope of s. 51, the first step is to determine whether the CYF Council is a properly constituted committee as defined in s. 51(1).[24]

Does the CYF Council qualify as a committee under s. 51(1)?

[32] The relevant parts of s. 51(1) say:

> **"committee"** means any of the following:
> ...
> (b) a committee that is established or approved by the board of management of a hospital, that includes health care professionals employed by or practising in that hospital and that, for the purposes of improving medical or hospital practice of, or care in that hospital, or during transportation to or from that hospital,
>
> > (i) carries out or is charged with the function of studying, investigating or evaluating the medical or hospital practice of, or care provided by, health care professionals in that hospital or during transportation to or from that hospital, ...
>
> (b.1) a committee that is established or approved by the boards of management of 2 or more hospitals, that includes health care professionals employed by or practising in any of those hospitals and that, for the purposes of improving medical or hospital practice or care in those hospitals, or during transportation to or from those hospitals

[22] Public body's initial submission at para 16.
[23] Applicants' response submission at page 6.
[24] Island Health also says, and I accept, that in 2021 the CYF Council was replaced by two new program quality councils.

> (i) carries out or is charged with the functions of studying, investigating or evaluating the medical or hospital practice of, or care provided by, health care professionals in those hospitals or during transportation to or from those hospitals, in relation to a matter of common interest among those hospitals, ...

[33] Based on my review of Island Health's evidence and submissions, I determined that Island Health had not provided a sufficient evidentiary foundation to establish that the CYF Council qualifies as a committee under s. 51(1). Because of the mandatory nature of the restrictions on disclosure in s. 51, I offered Island Health an opportunity to provide a further submission explaining how the CYF Council meets the definition of a "committee." Island Health provided a supplemental submission and evidence. I also offered the applicants an opportunity to respond to Island Health's supplemental submission, which they took.[25]

Section 51(1)(b)

[34] Island Health says that the CYF Council meets the definition of committee in s. 51(1)(b) because:

- The Island Health Board (the Board), serving as the board of management for VGH and all other public hospitals within the Island Health region, expressly approved the CYF Council as a committee.[26]
- The membership of the CYF Council at all relevant times included a medical professional practicing at VGH, which is the only hospital to which the records in dispute relate.[27]
- The CYF Council was charged with the function of studying, investigating or evaluating the medical or hospital practice of, or care provided by, health care professionals at VGH and elsewhere for the purposes of improving medical or hospital practice.[28]

[35] The applicants say that the CYF Council does not quality as a committee because it was not approved by the Board. The applicants also take issue with Island Health interchangeably using the terms "council" and "committee" and note that the CYF Council is clearly called a council.[29]

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[25] Some of the applicants' supplemental submission raises issues that go beyond the scope of responding to Island Health's supplemental submission and that were or could have been raised in the applicants' first response submission. In my view, it would not be fair to allow them to raise these issues at this point in the inquiry process. I will consider the applicants' supplemental submission only to the extent that it responds to the public body's supplemental submission.
[26] Public body's supplemental submission at para 11.
[27] Public body's supplemental submission at paras 17 and 19.
[28] Public body's supplemental submission at para 25.
[29] Applicants' supplemental submission at page 4.

[36] For the reasons that follow, I am not persuaded that the CYF Council falls within the definition of "committee" in s. 51(1)(b).

[37] In the modern approach to statutory interpretation, the words of a statute are to be read "in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of [the legislature]."[30] The *Interpretation Act* requires that legislation be construed as remedial and "given such fair large and liberal construction as best ensures the attainment of its objectives."[31]

[38] In its grammatical and ordinary sense, s. 51(1)(b) is about a committee within a specific hospital. Island Health acknowledges that the CYF Council is characterized in its terms of reference as a program quality council and not as a hospital-specific committee. Island Health says that the CYF Council served as the quality committee for VGH and all other Island Health hospitals in relation to the delivery of perinatal and pediatric services at those hospitals. [32] Because the CYF Council clearly encompasses all Island Health hospitals, I am not satisfied that it qualifies as a committee under s. 51(1)(b).

[39] I also find that the context of s. 51(1)(b) supports this conclusion. It is presumed that the legislature avoids superfluous or meaningless words and that it does not pointlessly repeat itself or speak in vain. Every word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose.[33] If s. 51(1)(b) is interpreted to include a committee that involves more than one hospital, then the repeated references to "that hospital" throughout the definition have no role to play.

[40] Additionally, s. 51(1)(b) contains very similar language to s. 51(1)(b.1). The only difference is that s. 51(1)(b.1) expressly contemplates a committee involving two or more hospitals in relation to a matter of common interest. I find that interpreting s. 51(1)(b) to encompass committees involving more than one hospital would produce an absurd consequence by rendering s. 51(1)(b.1) pointless.

[41] For these reasons, I am not persuaded that the CYF Council falls within the definition of committee in s. 51(1)(b). I turn now to the definition in s. 51(1)(b.1).

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[30] The Supreme Court of Canada has consistently approved this rule, with the best-known example being *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC) from which the above quote is taken.
[31] *Interpretation Act*, s. 8.
[32] Public body's supplemental submission at para 22.
[33] Chief Justice McLachlin in *McDiarmid Lumber v God's Lake First Nation*, 2006 SCC 58 at para 36, citing Sullivan, Ruth, *Sullivan and Driedger on the Construction of States* (4th ed. 2002) at 158.

Section 51(1)(b.1)

[42] In my view, s. 51(1)(b.1) contains the relevant definition of "committee" because it expressly allows for committees involving two or more hospitals.

[43] The question that arises is whether a committee that is approved by a single board of management responsible for multiple hospitals satisfies the requirement in s. 51(1)(b.1) that the committee be approved by "the boards of management of 2 or more hospitals."

[44] In my view, the words "boards of management" should be read to include a single board of management of multiple hospitals in accordance with s. 28(3) of the *Interpretation Act*, which says:

> In an enactment, words in the singular include the plural, and words in the plural include the singular.

[45] The *Interpretation Act* does not apply where a contrary intention appears in the subject enactment.[34] I do not see a contrary intention in the *Evidence Act*. Rather, I find that interpreting s. 51(1)(b.1) to exclude committees that otherwise meet the definition of s. 51(1)(b.1) simply because the hospitals share a board of management would result in an absurd consequence. Following such an interpretation, committees within one hospital and committees involving multiple hospitals with different boards of management would be able to benefit from the protection of s. 51, but committees involving multiple hospitals with a shared board of management would not.

[46] For these reasons, I am satisfied that "boards of management" includes a single board of management and that the CYF Council may fall within the s. 51(1)(b.1) definition of committee. I turn now to the question of whether it does.

Was the CYF Council established or approved by the boards of management of two or more hospitals?

[47] The first requirement of s. 51(1)(b.1) is that the committee be established or approved by the boards of management of two or more hospitals.

[48] Because the Board is the board of management for each of the public hospitals within the Island Health region, I am satisfied that the Board is the board of management of two or more hospitals.

[49] The applicants say that the CYF Council was not approved by the Board. The applicants note that the CYF Council terms of reference are only a draft copy

[34] *Interpretation Act*, s. 2(1).

and they do not believe that they are authorized for use.[35] They say that the exhibits provided in Island Health's initial submission suggest that the quality councils did not have any approved terms of reference until late 2020/early 2021.[36]

[50] Based on the affidavit evidence provided by Island Health, I can see that:

- The Health Quality and Performance Committee (HQPC) recommended, in a briefing note dated June 1, 2017, that the Board grant s. 51 protection to the quality councils and committees and physician groups listed in appendix 1 to that briefing note, which includes the CYF Council.[37]
- On June 22, 2017, the Board approved, as recommended by the HQPC, the granting of s. 51 protection to Island Health quality councils and committees and physician groups as outlined in "Appendix 1 of the Briefing Note."

[51] Based on the timing and subject matter, I am satisfied that the briefing note approved by the Board is the June 1, 2017 briefing note prepared by the HQPC. I am therefore satisfied that the Board approved the CYF Council. I find that the CYF Council meets the first requirement of s. 51(1)(b.1).

Did the CYF Council include health care professionals employed by or practicing in any of those hospitals?

[52] The second requirement of s. 51(1)(b.1) is that the committee include health care professionals employed by or practicing in any of the hospitals whose boards of management established or approved the committee.

[53] Island Health provides affidavit evidence from a member of the College of Physicians and Surgeons of British Columbia (the Physician), who says that she practices at VGH and was at all relevant times a member of the CYF Council.[38]

[54] I am satisfied that the CYF Council at all relevant times included a health care professional practicing at VGH, which is one of the hospitals whose board of management established or approved the committee. I therefore find that the CYF Council meets the second requirement of s. 51(1)(b.1).

[35] Applicants' supplemental submission at page 1.
[36] Applicants' supplemental submission at pages 1-2.
[37] Exhibits D and F to the Directors' affidavit.
[38] Physician's affidavit at para 1.

> *Was the CYF Council, for the purposes of improving medical or hospital practice of or care provided by health care professionals in those hospitals, charged with studying, investigating or evaluating the medical or hospital practice or care provided by health care professionals in those hospitals in relation to a matter of common interest among those hospitals?*

[55] The final requirement of s. 51(1)(b.1) is that the committee, for the purposes of improving medical practice of or care provided by health care professionals in the hospitals whose boards of management established or approved the committee, carries out or is charged with the functions of studying, investigating or evaluating the medical or hospital practice or care provided by health care professionals in those hospitals in relation to a matter of common interest among those hospitals.

[56] The CYF Council's terms of reference say that program quality councils are primarily focused around learning for improvement. The duties and responsibilities of the CYF Council are set out in the terms of reference and include the following:

- Monitoring and reporting on quality issues and on overall quality of services provided in the service delivery care area/program with reference to appropriate data; and

- Utilizing PSLS and Patient Care Quality Office aggregate data to identify and steward implementation of opportunities for quality improvement within the service delivery care area/program.[39]

[57] I am satisfied that the CYF Council's duties and responsibilities include studying, investigating or evaluating the medical or hospital practice of, or care provided, by health care professionals within Island Health hospitals.

[58] The program area of the CYF Council is the delivery of perinatal and pediatric services at Island Health hospitals. I have no problem concluding that this is a matter of common interest among those hospitals.

[59] Therefore, I am satisfied that the CYF Council meets the final requirement under s. 51(1)(b.1). I find that the CYF Council qualifies as a committee under s. 51(1)(b.1).

[39] Exhibit H to the Director's affidavit.

Were the disputed records provided to the CYF Council within the scope of s. 51?

[60] Island Health says that to the extent that documentation exists that could further demonstrate the submission of the PSLS reports to the CYF Council (e.g. CYF Council meetings materials and minutes), it is legally unable to produce such documentation under the *Evidence Act*.[40] Instead, Island Health provides affidavit evidence from its Manager of Patient Safety and Systems Processes (Manager), who deposes that all of the disputed records were presented to the CYF Council in aggregate form and some were also presented to the CYF Council individually. The Manager also deposes that:

- Reporters of patient safety events understand that the sole purpose for submitting the report in PSLS is for quality review and improvement.[41]

- All PSLS reports are annotated with a header indicating that the report is "Privileged and Confidential – For Quality Review."[42]

- Members of the quality council or committee who receive a particular placemat always have the ability, as participants who are provisioned with PSLS accounts, to access the individual PSLS reports referenced if they deem it necessary to do so in the course of their quality improvement activities.[43]

[61] The applicants question whether all of the disputed records were provided to a committee under s. 51. They say that PSLS report 1299084 refers to an error that Island Health has repeatedly denied was an error. The applicants say that if the records contain a report about that error, it would not have been forwarded to a quality committee for improvement purposes because, according to Island Health, it was not an error.[44]

[62] In my view, it is clear that the PSLS reports that were submitted to the CYF Council in individual form were provided to the CYF Council within the scope of s. 51. I am also satisfied that the PSLS reports that were *not* submitted to the CYF Council in individual form were provided to the CYF Council within the scope of s. 51 based on the following factors:

- Handlers designated by the quality councils and committees received and investigated the underlying reports.

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[40] Public body's supplemental submission at para 27.
[41] Manager's affidavit at para 19.
[42] Manager's affidavit at para 20.
[43] Manager's affidavit at para 35.
[44] Applicants' response submission at page 8.

- The underlying reports were created in order to collect and maintain data to be delivered to the CYF Council. [45]

- The data from the underlying reports was included in placemats and provided to the CYF Council for the purposes of quality improvement.

- CYF Council members were provided access to all of the individual underlying reports in PSLS.

[63] In my view, an interpretation of "provided" that would exclude the underlying reports from the protection of s. 51 would be unduly restrictive and contrary to the purpose of s. 51. For these reasons, I am satisfied that all of the disputed records were provided to a committee under s. 51(5). I find that s. 51(5) applies and as a result, I do not need to consider whether s. 51(6) applies.

Summary

[64] I find that because the disputed records were provided to the CYF Council within the scope of s. 51, s. 51(5) prohibits their disclosure. I also find that the applicants have no right of access to that information under FIPPA because s. 51(7) says that s. 51(5) applies despite FIPPA.

The applicants' requested remedies

[65] Based on my review of their submissions, it appears the applicants are primarily seeking the disclosure of medical facts. They express concern that their child does not have a reliable medical record that would allow those involved in her care to make fully informed decisions, and they say that the potential risk of harm is increased when the care team does not have their child's full medical history. They request that I order Island Health to enter all medical facts learned about their child into her patient chart, create a separate record of the medical facts learned and disclose all medical facts to the applicants.[46]

[66] The applicants submit that s. 51 is not a bar to disclosure of medical facts because it does not state or imply that medical facts are prohibited from disclosure.[47] However, I do not share this interpretation. Section 51 clearly applies to entire records and it does not carve-out an exception to allow for disclosure of medical facts, as the applicants suggest. I have found that s. 51 applies to the records in their entirety.

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[45] Master Schwartz found that this was sufficient to bring PSLS reports within the protection of s. 51(2) in *Cameron v British Columbia (Interior Health Authority)*, 2019 Oral Reasons for Judgment (BCSC) at para 21.
[46] The information in the paragraph is from the applicants' response submission at pages 10-11,
[47] Applicants' response submission at page 2.

[68] Therefore, while I acknowledge the importance of this matter to the applicants and their desire to protect their child by obtaining medical facts about her care, FIPPA does not empower me to order the remedies they seek.

CONCLUSION

[69] For the reasons given above, under s. 58 of FIPPA, I confirm Island Health's decision that it is required to refuse access to all of the records in dispute under s. 51 of the *Evidence Act*.

March 24, 2023

ORIGINAL SIGNED BY

Elizabeth Vranjkovic, Adjudicator

OIPC File No.: F20-83441