



Order F24-08

## VANCOUVER ISLAND HEALTH AUTHORITY

Emily Kraft  
Adjudicator

February 7, 2024

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**Summary:** The applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Vancouver Island Health Authority (Island Health) for records related to Island Health’s decision to delay publishing certain test results on the MyHealth patient portal. Island Health withheld the information in dispute under ss. 13(1), 15(1)(l), and 22(1) of FIPPA, as well as s. 51 of the *Evidence Act*. The adjudicator confirmed Island Health’s decision under s. 15(1)(l) of FIPPA and s. 51 of the *Evidence Act* in full, and its decision under ss. 13(1) and 22(1) of FIPPA in part. The adjudicator ordered Island Health to disclose the information it was not authorized or required to withhold under ss. 13(1) and 22(1) of FIPPA.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165 ss. 13(1), 15(1)(l), 22(1), 22(4)(e), and 22(3)(a); *Evidence Act* RSBC 1996, c 124, ss. 51(1)(b.1), (5) and (7).

## INTRODUCTION

[1] The applicant requested that the Vancouver Island Health Authority (Island Health) provide them with copies of records related to Island Health’s decision to delay publishing certain test results on the MyHealth patient portal.

[2] Island Health provided the applicant with the responsive records but withheld some information under ss. 13 (advice or recommendations), 15 (harm to the security of a property or system), 17 (disclosure harmful to the financial or economic interests of a public body), 19 (disclosure harmful to individual or public safety) 21 (disclosure harmful to business interests of a third party) and 22 (unreasonable invasion of third-party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). It also withheld some information under s. 51 of the *Evidence Act*.

[3] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review Island Health's decision. During mediation, Island Health reconsidered its severing decision and released additional information to the applicant. It also withdrew reliance on ss. 17, 19, and 21 of FIPPA. Mediation failed to resolve the remaining issues in dispute, and they proceeded to inquiry.<sup>1</sup>

[4] During the inquiry, Island Health disclosed further information to the applicant. I conclude that information is no longer in dispute.

### **PRELIMINARY MATTER**

[5] Island Health withheld several email addresses in the records under s. 22(1) of FIPPA. It says that the email addresses are the personal email addresses of several volunteer members of the Island Health Patient Advisory Council.

[6] The applicant says that they are not interested in obtaining access to any personal email addresses in the records; however, they ask me to confirm that the withheld email addresses are in fact personal email addresses.<sup>2</sup>

[7] I am satisfied that the withheld email addresses are personal email addresses because they all end with domain names commonly associated with personal email addresses. Accordingly, I conclude that this information is no longer in dispute.

### **ISSUES**

[8] The issues I must decide in this inquiry are as follows:

1. Is Island Health authorized to refuse to disclose the information in dispute under ss. 13(1) and 15(1)(l) of FIPPA?
2. Is Island Health required to refuse to disclose the information in dispute under s. 22(1) of FIPPA?
3. Does s. 51 of the *Evidence Act* prohibit Island Health from disclosing the information in dispute?

[9] Under s. 57(1) of FIPPA, Island Health has the burden of proving that it is authorized under ss. 13 and 15(1)(l) to refuse to disclose the information in dispute. Under s. 57(2), the applicant has the burden of proving that disclosing any personal information in dispute would not be an unreasonable invasion of a third party's personal privacy under s. 22(1).

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<sup>1</sup> The notice of inquiry dated May 24, 2023 states that s. 19 is an issue in this inquiry, but Island Health has confirmed it is no longer relying on s. 19 to withhold any information in the records: Island Health's initial submission at para 24.

<sup>2</sup> Applicant's email dated January 24, 2024.

[10] FIPPA does not say who has the burden of proof regarding provisions such as s. 51 of the *Evidence Act*, but previous orders have held that it is in the interests of both parties to present argument and evidence in support of their positions.<sup>3</sup>

## DISCUSSION

### Background

[11] The MyHealth patient portal was introduced to patients of Island Health facilities and programs in December 2019.

[12] MyHealth is a secure website that gives enrolled individuals direct access to some of their Island Health personal health information contained in their electronic health record (EHR), including Island Health lab results, medical imaging reports, certain clinical documents, and outpatient appointment details and instructions.<sup>4</sup>

[13] General lab results are available on MyHealth as soon as testing has been completed and the results are published to the EHR. Clinical documents are made available to MyHealth eight hours after they have been entered into EHR.<sup>5</sup> However, pathology and medical imaging results are published on MyHealth seven days after they are published to the EHR. Island Health says that it has implemented this delay so that healthcare providers can review the reports first and contact their patients to discuss the reports.<sup>6</sup>

[14] The applicant requested that Island Health provide them with all records related to how Island Health decided to implement the publishing delay.

### Records at issue

[15] The responsive records total 116 pages and can be described as follows:

- PowerPoint slides;
- Meeting minutes of the Patient Portal Steering Committee or its predecessor, the Patient Portal: Project Oversight Committee (the Steering Committee or the Committee);
- Meeting minutes of the Electronic Health Record Quality Council; and
- Emails between members of the Steering Committee, members of the Island Health Patient Advisory Council, and Island Health employees.

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<sup>3</sup> Order F10-41, 2010 CanLII 77327 (BC IPC) at para 5.

<sup>4</sup> Island Health's initial submission at paras 3-5.

<sup>5</sup> Island Health's initial submission at para 11.

<sup>6</sup> Island Health's initial submission at para 10.

[16] The information in dispute appears on 21 pages of the records.

[17] The applicant did not make submissions about the issues in dispute, except to say that Island Health “is not releasing the information that they should.” I will outline Island Health’s submission in my analysis below.

### **Section 13(1) – advice or recommendations**

[18] Section 13(1) states that a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or minister. The purpose of s. 13(1) is to prevent the harm that would occur if a public body’s deliberative process was exposed to excessive scrutiny.<sup>7</sup>

[19] “Recommendations” include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised.<sup>8</sup> “Advice” has a broader meaning than the term “recommendations.” It includes opinions that involve exercising judgment and skill to weigh the significance of matters of fact on which a public body must make a decision for future action.<sup>9</sup> It also includes policy options prepared in the course of the decision-making process.<sup>10</sup>

[20] Previous OIPC orders have stated that s. 13(1) applies to information that would directly reveal advice or recommendations, as well as information that would enable an individual to draw accurate inferences about advice or recommendations.<sup>11</sup>

[21] The first step in the s. 13 analysis is to determine whether the information in dispute would reveal advice or recommendations developed by or for a public body or minister. If it would, then I must decide whether the information falls into any of the categories listed in s. 13(2) or whether it has been in existence for more than 10 years under s. 13(3). If ss. 13(2) or 13(3) apply to any of the information, that information cannot be withheld under s. 13(1).

### ***Would the disputed information reveal advice or recommendations?***

[22] Island Health says that most of the information withheld under s. 13(1) would reveal advice or recommendations about the MyHealth publishing delays

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<sup>7</sup> *Insurance Corporation of British Columbia v Automotive Retailers Association* 2013 BCSC 2025 at para 52. See also *John Doe v Ontario (Finance)*, 2014 SCC 36 [*John Doe*] at paras 43-45.

<sup>8</sup> *John Doe*, *ibid* at paras 23-24.

<sup>9</sup> *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 113.

<sup>10</sup> *John Doe*, *supra* note 7 at para 35.

<sup>11</sup> Order F16-11, 2016 BCIPC 13 (CanLII) at para 21.

or MyHealth features developed for Island Health. It says that some of the advice or recommendations were provided by stakeholders that it consulted with during its deliberative process. Island Health submits that it consulted with a wide range of stakeholders, including Island Health's Patient Advisory Council, the Canadian Medical Protective Association, the BC College of Physicians and Surgeons, Island Health's Health Authority Medical Advisory Committee and Health Authority Medical Quality Committee, and medical leadership such as department and division heads. It says that one of the key goals of these consultations was to encourage and facilitate the free and frank exchange of ideas, opinions, advice, and recommendations regarding the appropriate management of records that are published to MyHealth, including the existence and duration of publishing delays for particular records or categories of records.<sup>12</sup>

[23] Island Health withheld information in two PowerPoint presentations prepared by members of the Steering Committee for the Health Authority Medical Quality Committee and the Patient Advisory Council. Island Health explains that the presentations were prepared in order to facilitate consultations with these groups.<sup>13</sup> The withheld information reveals proposals developed by the Steering Committee regarding MyHealth publishing delays and MyHealth features.<sup>14</sup> Island Health submits that these proposals have not been approved or implemented by Island Health.<sup>15</sup> I find this information reveals advice or recommendations developed for Island Health.

[24] One of the Steering Committee's proposals about MyHealth is also revealed in the Steering Committee's February 19, 2019, meeting minutes.<sup>16</sup> I find that this information also reveals advice or recommendations developed for Island Health.

[25] Island Health also withheld some information contained in emails between members of the Steering Committee, members of the Patient Advisory Council, and Island Health employees. I can see that most of this information reveals suggestions and opinions provided by the Patient Advisory Council and Island Health employees about the MyHealth publishing delays and MyHealth features.<sup>17</sup> This information is clearly advice or recommendations under s. 13(1).

[26] Island Health also withheld some information in the meeting minutes of Island Health's Electronic Health Record Quality Council (EHRQC) that reveals a recommendation and option being considered by the EHRQC related to the

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<sup>12</sup> Affidavit of Associate Chief Medical Information Officer at paras 13-14.

<sup>13</sup> Affidavit of Associate Chief Medical Information Officer at para 19.

<sup>14</sup> Records at pp 28-29, 111, 113, and 116.

<sup>15</sup> Affidavit of Associate Chief Medical Information Officer at paras 21(a) and (k).

<sup>16</sup> Records at p 51.

<sup>17</sup> Records at pp 71, 92-93, 102, and 104 and 106.

advancement of a certain project.<sup>18</sup> I am satisfied that this information reveals advice or recommendations under s. 13(1).

[27] The remaining information in dispute under s. 13(1) is contained in the Steering Committee's January 22, 2019, and March 19, 2019, meeting minutes. The meeting minutes reveal the Committee's discussions about the status of the MyHealth project, including major issues and concerns, decisions that need to be made, and steps that will be taken.<sup>19</sup> Island Health says that the withheld information reveals the Committee's "frank discussion" about issues relating to the launch of MyHealth.<sup>20</sup>

[28] I can see that a portion of the withheld information reveals some risks and concerns identified by the Steering Committee that are relevant to specific decisions Island Health had to make.<sup>21</sup> In my view, this information reveals advice developed for Island Health.<sup>22</sup>

[29] However, the remaining withheld information in the meeting minutes only reveals updates about parts of the project that do not appear to relate to any decision-making process.<sup>23</sup> I find that s. 13(1) does not apply to this information.<sup>24</sup>

[30] Additionally, there is one instance where Island Health disclosed the opinion provided by an Island Health employee about the MyHealth publishing delays but withheld the name of the employee who provided the opinion under s. 13(1).<sup>25</sup> In my view, the employee's opinion qualifies as advice or recommendations under s. 13(1). However, I do not see how disclosing the employee's name would reveal any advice or recommendations under s. 13(1). I find that s. 13(1) does not apply to this name.<sup>26</sup> Also, Island Health withheld one word in a sentence that does not reveal any advice or recommendations, so I find that s. 13(1) does not apply to that information.<sup>27</sup>

### **Sections 13(2) and (3)**

[31] I have considered whether any of the provisions in s. 13(2) apply to the information I found reveals advice or recommendations, and I find that none

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<sup>18</sup> Records at p 67.

<sup>19</sup> Records at pp 46 and 54.

<sup>20</sup> Affidavit of Associate Chief Medical Information Officer at paras 21(b) and (d).

<sup>21</sup> Records at p 46, item 1 (with the exception of one sentence that does not reveal any of the identified risks) and p 54, item 3.

<sup>22</sup> For a similar finding, see Order F23-108, 2023 BCIPC 124 at para 28.

<sup>23</sup> Records at p 46, item 3 and p 54, item 2.

<sup>24</sup> For a similar finding, see Order F18-41, 2018 BCIPC 44 at para 21.

<sup>25</sup> Records at pp 103 and 106.

<sup>26</sup> Island Health also applied s. 22(1) to this information, which I will consider below.

<sup>27</sup> Records at p 92.

apply. Also, all of the records are less than ten years old, so s. 13(3) does not apply.

### **Section 15(1)(l) - harm to the security of a property or system**

[32] Island Health is withholding teleconference line phone numbers and access codes under s. 15(1)(l).<sup>28</sup> Section 15(1)(l) allows a public body to refuse to disclose information if the disclosure could reasonably be expected to harm the security of any property or system, including a building, a vehicle, a computer system or a communications system. The standard of proof for s. 15(1) is a reasonable expectation of probable harm, which is “a middle ground between that which is probable and that which is merely possible.”<sup>29</sup> In order to meet that standard, a public body “must provide evidence ‘well beyond’ or ‘considerably above’ a mere possibility of harm.”<sup>30</sup>

[33] Island Health says that the teleconference line phone numbers and access codes are still active. It submits that, since it is a health care organization, the potential for sensitive personal health and other confidential information being discussed during teleconferences is very real.<sup>31</sup>

[34] Island Health cites Order F22-10, where the adjudicator found s. 15(1)(l) applied to the same type of information.<sup>32</sup>

[35] I am satisfied that a teleconferencing system is a communications system within the meaning of s. 15(1)(l) and that disclosing the teleconference line phone numbers and access codes could reasonably be expected to harm the security of the system due to the risk of unauthorized access. I conclude s. 15(1)(l) applies.

### **Section 22 – unreasonable invasion of third-party personal privacy**

[36] Island Health withheld a small amount of information in the records under s. 22(1).

[37] Section 22(1) requires public bodies to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy.

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<sup>28</sup> Records at pp 83 and 90.

<sup>29</sup> *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para 54.

<sup>30</sup> *Ibid* at para 54.

<sup>31</sup> Island Health’s initial submission at paras 44-45.

<sup>32</sup> Order F22-10, 2022 BCIPC 10 at para 70.

### ***Personal information***

[38] Section 22(1) only applies to personal information, so the first step in the s. 22(1) analysis is to determine whether the information in dispute is personal information.

[39] FIPPA defines personal information as recorded information about an identifiable individual other than contact information.<sup>33</sup> Information is about an identifiable individual when it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.<sup>34</sup>

[40] Contact information is defined in FIPPA as information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, address, business email or business fax number of the individual.<sup>35</sup>

[41] Island Health withheld some information in a PowerPoint slide under s. 22(1).<sup>36</sup> The PowerPoint slide outlines what constitutes “sensitive information” that may not be published on MyHealth. Island Health withheld a paragraph of text that provides an example of such sensitive information. It includes detailed information about the circumstances surrounding a hospital patient’s (Hospital Patient) admittance to a hospital’s psychiatric unit, including their psychiatric history and their relationship with their family. It also includes information about the Hospital Patient’s family and friends, including an individual who provided information about the Hospital Patient’s history to hospital staff.

[42] Island Health provided affidavit evidence that the withheld information was taken from the health record of an actual Island Health patient, but that all of the individuals’ names were changed.<sup>37</sup>

[43] Although the withheld information does not include anyone’s real names, the information is specific enough that it is capable of identifying the individuals involved. I am satisfied this information is the personal information of the Hospital Patient and their family and friends.

[44] Island Health also applied s. 22(1) to the name of the Island Health employee who provided an opinion about the MyHealth publishing delays.<sup>38</sup> I accept this information is also that individual’s personal information.

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<sup>33</sup> Schedule 1 of FIPPA.

<sup>34</sup> Order F19-42, 2019 BCIPC 47 at para 15.

<sup>35</sup> Schedule 1 of FIPPA.

<sup>36</sup> Records at p 22.

<sup>37</sup> Affidavit of Information Access Analyst at para 24.

<sup>38</sup> Records at pp 103 and 106.

***Not an unreasonable invasion of privacy – s. 22(4)***

[45] Having found that all of the information in dispute under s. 22(1) qualifies as personal information, the next step is to consider s. 22(4), which sets out various circumstances in which disclosure of personal information is not an unreasonable invasion of a third party's personal privacy.

[46] Island Health says that no s. 22(4) circumstances apply to the personal information in dispute.

[47] Based on my review of the records, I find that s. 22(4)(e) applies to the name of the Island Health employee who provided an opinion about the MyHealth publishing delays (Employee).<sup>39</sup>

[48] Section 22(4)(e) provides that disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff. Previous orders have held that s. 22(4)(e) applies to personal information about an employee's job duties in the normal course of work-related activities, such as objective factual information about what an employee said or did in the normal course of their job.<sup>40</sup>

[49] Island Health did not explain why disclosing the Employee's name would be an unreasonable invasion of their personal privacy, other than to say that the Employee had not consented to the disclosure.<sup>41</sup>

[50] It appears to me that the Employee provided their opinion about the publishing delays in the normal course of carrying out their job duties. As such, under s. 22(4)(e), disclosing the Employee's name is not an unreasonable invasion of third-party personal privacy. I will not consider this information any further.

[51] I have considered the other factors listed in s. 22(4) and am satisfied that none apply.

***Presumed unreasonable invasion of privacy – s. 22(3)***

[52] The third step in the s. 22(1) analysis is to consider whether any of the presumptions in s. 22(3) apply to the remaining personal information at issue. Section 22(3) lists circumstances in which disclosure of personal information is presumed to be an unreasonable invasion of personal privacy.

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<sup>39</sup> Records at pp 103 and 106. This individual is referred to as an employee elsewhere in the records.

<sup>40</sup> Order F21-17, 2021 BCIPC 22 at para 18.

<sup>41</sup> Affidavit of Information Access Analyst at para 27.

[53] Island Health says that s. 23(3)(a) applies to the information about the Hospital Patient.

[54] Section 22(3)(a) says that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation.

[55] The personal information about the Hospital Patient clearly relates to their medical, psychiatric or psychological history. I find that s. 22(3)(a) applies to this information and disclosure is presumed to be an unreasonable invasion of the Hospital Patient's personal privacy.

[56] The parties did not raise any other s. 22(3) factors, and I am satisfied that none apply.

***Relevant circumstances – s. 22(2)***

[57] The last step in the s. 22(1) analysis is to determine whether disclosure of the disputed information would be an unreasonable invasion of a third party's personal privacy, considering all relevant circumstances including those listed in s. 22(2). It is at this step that any s. 22(3) presumptions may be rebutted.

[58] Island Health says that none of the s. 22(2) factors weigh in favour of disclosing the personal information in dispute.

[59] I have considered the s. 22(2) factors and I find that none are relevant here.

***Summary and conclusion on s. 22(1)***

[60] I find that s. 22(4)(e) applies to the name of the Employee, so Island Health is not required or authorized under s. 22(1) to withhold this information.

[61] I find that disclosing the information about the Hospital Patient is presumed to be an unreasonable invasion of personal privacy under s. 22(3)(a). There are no factors that rebut this presumption. I find that disclosing this information would be an unreasonable invasion of the Hospital Patient's personal privacy and Island Health is required to refuse to disclose this information under s. 22(1). There are also no factors that weigh in favour of disclosing the personal information of the Hospital Patient's family and friends that appear in the PowerPoint slide. I conclude disclosing that information would be an unreasonable invasion of third-party personal privacy and Island Health is required to refuse to disclose that information.

**Section 51 of the *Evidence Act***

[62] Island Health says that ss. 51(5) and (7) of the *Evidence Act* prohibit disclosure of some of the information withheld from the Electronic Health Record Quality Council's (EHRQC) meeting minutes.<sup>42</sup> It says that the EHRQC is a program quality committee, and the withheld information was submitted to the EHRQC for the purpose of quality review and assurance.<sup>43</sup>

[63] Sections 51(5) and (7) of the *Evidence Act* states:

51 (5) A committee or any person on a committee must not disclose or publish information or a record provided to the committee within the scope of this section or any resulting findings or conclusion of the committee except

(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,

(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.

...

51 (7) Subsections (5) to (6.1) apply despite any provision of the *Freedom of Information and Protection of Privacy Act* other than section 44 (1) (b), (2), (2.1) and (3) of that Act.

[64] 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.<sup>44</sup>

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<sup>42</sup> Records at pp 68-69.

<sup>43</sup> Affidavit of Chief Medical Information Officer at para 25(b).

<sup>44</sup> *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.

***Is the EHRQC a committee under s. 51(1)?***

[65] In order to determine whether the information in dispute was provided to a committee within the scope of s. 51, the first step is to determine whether the Electronic Health Record Quality Council (EHRQC) is a properly constituted committee under s. 51(1).

[66] Island Health says that the EHRQC is a committee under s. 51(1)(b.1), which says as follows:

"committee" means any of the following:

...

(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,

(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 those hospitals or during transportation to or from those hospitals, in relation to a matter of common interest among those hospitals, or

...

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

[67] 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.

[68] In Order F23-21, the adjudicator found that the words "boards of management" in s. 51(1)(b.1) should be read to include a single board of management responsible for multiple hospitals.<sup>45</sup> I agree with this interpretation and I apply it below.

[69] Island Health says that the EHRQC was designated and endorsed by the Island Health Board of Directors (Board) as a quality of care committee for the purposes of s. 51. The Board is the board of management for the public hospitals that are located within its region.<sup>46</sup>

<sup>45</sup> Order F23-21, 2023 BCIPC 24 at para 44.

<sup>46</sup> Order F23-21, 2023 BCIPC 24 at para 48; Order F17-42, 2017 BCIPC 46 at para 46.

[70] Island Health provided evidence that in early June 2017, the Board's Health Quality and Performance Committee (HQPC) recommended that the Board grant approval of s. 51 protection to a number of program quality councils, including the EHRQC.<sup>47</sup> Island Health provided further evidence to show that in late June 2017, the Board approved, as recommended by the HQPC, the granting of s. 51 protection to the EHRQC.<sup>48</sup>

[71] I am therefore satisfied that the EHRQC was approved by the Board, which is a board of management of two or more hospitals. The first requirement of s. 51(1)(b.1) is met.

*Does the EHRQC include health care professionals employed by or practicing in any of those hospitals?*

[72] 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.

[73] Island Health provided affidavit evidence that at the relevant times the EHRQC included health care professionals employed or practicing at various hospitals in the region, including the Royal Jubilee Hospital, the Nanaimo Regional General Hospital, the Cowichan District Hospital, and the Victoria General Hospital.<sup>49</sup>

[74] I am satisfied that the EHRQC included health care professionals employed by or practicing in any of the hospitals whose boards of management established or approved the committee. I find that second requirement of s. 51(1)(b.1) is met.

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

[75] The final requirement of s. 51(1)(b.1) is that the committee, for the purposes of improving medical practice or care 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 of or care provided by health care professionals in those hospitals in relation to a matter of common interest among those hospitals.

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<sup>47</sup> Affidavit of Chief Medical Information Officer, Exhibit B.

<sup>48</sup> Affidavit of Chief Medical Information Officer, Exhibit D.

<sup>49</sup> Affidavit of Chief Medical Information Officer at para 21.

[76] The EHRQC's terms of reference state that it is focused on the improvement and advancement of the electronic health record as an enabler of quality outcomes across the health region.<sup>50</sup> One of the responsibilities of the EHRQC, as set out in the terms of reference, is to provide oversight to the review, analysis and subsequent improvements arising from reported incidents involving the EHR as a contributing factor.

[77] I assume that a "reported incident" is some kind of adverse incident that occurs while a patient is under the care of a health care professional. Therefore, I find that one of the EHRQC's responsibilities is to study, investigate or evaluate the medical or hospital practice of or care provided by health care professionals in situations where the EHR was a contributing factor.

[78] To conclude, I find that the EHRQC is a committee under s. 51(1)(b.1).

***Was the disputed information provided to the EHRQC within the scope of s. 51?***

[79] Section 51(5) of the *Evidence Act* states that a committee or any person on a committee must not disclose or publish information or a record provided to the committee within the scope of s. 51 or any resulting findings or conclusions of the committee.

[80] Island Health says that the information that was withheld under s. 51 is a summary of a Patient Safety and Learning System (PSLS) report that was submitted to the EHRQC for a quality review.<sup>51</sup> Island Health explains that the PSLs is a web-based tool that facilitates the reporting and management of patient safety events. It says that a patient safety event is an event or circumstance that could have resulted, or did result, in unnecessary harm to the patient.<sup>52</sup> It says that PSLs reports are created for the sole purpose of quality review and assurance by appropriately constituted quality committees such as the EHRQC.<sup>53</sup>

[81] The information in dispute is not the PSLs report itself, but a summary of the report contained in the EHRQC meeting minutes. Island Health's evidence establishes that the PSLs report was provided to the EHRQC within the scope of s. 51. Since the withheld information is a summary of the PSLs report, I find that s. 51(5) prohibits its disclosure.

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<sup>50</sup> Affidavit of Chief Medical Information Officer, Exhibit A.

<sup>51</sup> Affidavit of Chief Medical Information Officer at para 25(b).

<sup>52</sup> Island Health's initial submission at para 78.

<sup>53</sup> Affidavit of Chief Medical Information Officer at para 25(b).

## CONCLUSION

[82] For the reasons given above, I make the following order under s. 58 of FIPPA:

1. Subject to item 2 below, I confirm, in part, Island Health's decision to withhold the information in dispute under s. 13(1).
2. Island Health is not authorized under s. 13(1) to withhold the information I have highlighted in yellow in the copy of pages 46, 54, 92, 103 and 106 of the records provided to Island Health with this order. I require Island Health to give the applicant access to this highlighted information.
3. I confirm Island Health's decision to withhold the information in dispute under s. 15(1)(l).
4. Subject to item 5 below, I require Island Health to withhold the information in dispute under s. 22(1).
5. Island Health is not required under s. 22(1) to withhold the information I have highlighted in yellow in the copy of pages 103 and 106 of the records provided to Island Health with this order. I require Island Health to give the applicant access to this highlighted information.
6. I confirm Island Health's decision that it is required to refuse access to the information in dispute under s. 51 of the *Evidence Act*.
7. Island Health must provide the OIPC registrar of inquiries with a copy of its cover letter and the records it sends to the applicant in compliance with items 2 and 5 above.

[83] Pursuant to s. 59(1) of FIPPA, Island Health is required to comply with this order by **March 21, 2024**.

February 7, 2024

### ORIGINAL SIGNED BY

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Emily Kraft, Adjudicator

OIPC File No.: F21-87216