



OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
FOR BRITISH COLUMBIA

Order F24-75

## MINISTRY OF HEALTH

D. Hans Hwang  
Adjudicator

August 16, 2024

CanLII Cite: 2024 BCIPC 85

Quicklaw Cite: [2024] B.C.I.P.C.D. No. 85

**Summary:** The Ministry of Health (Ministry) requested the Commissioner exercise their discretion, under s. 56(1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA), to not conduct an inquiry regarding its decision to refuse an applicant access to requested records. The Ministry argued an inquiry should not be held because it is plain and obvious that disclosure could threaten the Provincial Health Officer (PHO)'s safety and mental and physical health in accordance with s. 19(1)(a) of FIPPA. The adjudicator found that it was plain and obvious that disclosure could reasonably be expected to threaten the PHO's safety and mental and physical health. As a result, the adjudicator allowed the Ministry's s. 56(1) application and the upcoming inquiry was cancelled.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 19(1)(a) and 56(1).

## INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested the Ministry of Health (Ministry) provide access to records related to security expenses for the office and residence of the Provincial Health Officer (PHO). Specifically, the applicant requested the Ministry provide access to copies of the following:

All invoices and proof of payment for security goods and services including but not limited to security guard CCTV cameras alarms monitoring etc. for the office and residence of the [PHO], for the period of March 1, 2020 to Nov. 10, 2021.

[2] The Ministry located responsive records and denied the applicant access to these records under ss. 15(1)(f) (harm to law enforcement), 15(1)(l) (harm to a

security of system), 19(1)(a) (threat to safety or health) and 22 (harm to third party personal privacy) of FIPPA.<sup>1</sup>

[3] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the Ministry's decisions. The OIPC's investigation and mediation process did not resolve the issues and the applicant requested the matter proceed to an inquiry.

[4] After the matter was forwarded to inquiry, the Ministry requested the Commissioner decline to hold an inquiry into this matter. Under s. 56(1), the Commissioner has the discretion to choose whether to hold an inquiry. The Ministry argued that it was plain and obvious that the disclosure of the records could reasonably be expected to threaten the PHO's safety and mental and physical health under s. 19(1)(a); therefore, it submits an inquiry into this matter should not be held.<sup>2</sup>

[5] Both parties provided written submissions. The OIPC permitted the Ministry to submit some of its submission and affidavit evidence *in camera*.

## **ISSUE AND BURDEN OF PROOF**

[6] As the Commissioner's delegate, I will determine whether to grant the Ministry's request not to hold an inquiry under s. 56(1) because it is plain and obvious that the disclosure of the records could threaten the PHO's safety or mental or physical health under s. 19(1)(a).

[7] The Ministry bears the burden of proving that its application under s. 56(1) should be granted.<sup>3</sup>

## **DISCUSSION**

### ***Records in dispute***

[8] The records in dispute are a 41-page document that consists of invoices (Invoices). The Ministry withheld the entire records from the applicant.

### ***Discretion to conduct an inquiry, s. 56(1)***

[9] Section 56(1) provides that if the matter in dispute between the parties is not referred to a mediator or settled under s. 55, the Commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the

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<sup>1</sup> From this point forward, whenever I refer to section numbers, I am referring to sections of FIPPA unless otherwise specified.

<sup>2</sup> Ministry's initial submission at para 4.

<sup>3</sup> Order F16-37, 2016 BCIPC 41 (CanLII) at para 10.

inquiry. It is well-established that s. 56(1) gives the Commissioner or their delegate a broad discretionary power to determine whether or not to hold an inquiry.<sup>4</sup>

[10] As set out in earlier OIPC decisions and orders, the Commissioner may decline to conduct an inquiry on a number of grounds, including that it is plain and obvious that the requested records fall under a particular exception or outside the scope of FIPPA.<sup>5</sup>

[11] Regardless of the basis for the s. 56(1) application, in each case, it must be clear that there is no issue which merits adjudication in an inquiry.<sup>6</sup> Put another way, the party asking that an inquiry not be held must establish that there is “no arguable case that merits an inquiry”.<sup>7</sup>

### ***Threat to health or safety, s. 19(1)(a)***

[12] Section 19(1)(a) reads:

#### **Disclosure harmful to individual or public safety**

19(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(a) threaten anyone else's safety or mental or physical health

[13] The harms-based exceptions in FIPPA contain the “could reasonably be expected to” language. The Supreme Court of Canada has characterized the standard imposed by this language as “a middle ground between that which is probable and that which is merely possible”.<sup>8</sup> Meeting this standard requires proof that disclosure will result in a risk of harm that goes “well beyond the merely possible or speculative, but it need not be proved on the balance of probabilities that disclosure will in fact result in such harm”.<sup>9</sup> Further, Former Commissioner Loukidelis has explained:

Section 19(1)(a), specifically, is aimed at protecting the health and safety of others. This consideration focusses on the reasonableness of an expectation of any threat to mental or physical health, or to safety, and not on mathematically or otherwise articulated probabilities of harm.<sup>10</sup>

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<sup>4</sup> *Gichuru v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 835 (CanLII) at para 47; Order F23-09, 2023 BCIPC 11 (CanLII) at para 9.

<sup>5</sup> Order F23-23, 2023 BCIPC 27 at para 32; Decision F08-11, 2008 CanLII 65714 (BC IPC), at para 8.

<sup>6</sup> Decision F07-04, 2007 CanLII 67284 (BC IPC) at para 16.

<sup>7</sup> Decision F08-11, 2008 CanLII 65714 (BC IPC) at para 8.

<sup>8</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para 54.

<sup>9</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para 206

<sup>10</sup> Order 00-28, 2000 CanLII 14393 (BC IPC) at p 3.

[14] The evidence the Ministry provides must demonstrate “a direct link between the disclosure and the apprehended harm and that the harm could reasonably be expected to ensue from disclosure”.<sup>11</sup>

[15] Past orders have said that “a threat to mental health is not raised merely by the prospect of someone being made upset” but rather “where disclosure can reasonably be expected to cause ‘serious mental distress or anguish’”.<sup>12</sup>

#### *Parties’ submissions*

[16] The Ministry argues that it is plain and obvious concerns that the disclosure of the Invoices in this case could reasonably be expected to threaten the safety and mental and physical health of the PHO.

[17] First, the Ministry submits that disclosure could reasonably be expected to harm the PHO’s mental health. The Ministry submits that over the past four years, the PHO, her colleagues, friends and family have received hateful, abusive, unsettling messages and phone calls because of her work as the PHO, which caused them to experience serious mental distress.<sup>13</sup> In addition, the Ministry says that there have been repeated break-in attempts at the PHO’s home.<sup>14</sup>

[18] The Ministry also says that disclosure could reasonably be expected to harm the PHO’s safety. The Ministry submits that the Invoices contain information about security measures put in place to keep the PHO’s home safe.<sup>15</sup> It says if this information is disclosed, the existing concerns about the PHO’s safety will be exacerbated because individuals will know what security measures have and have not been put in place at her home and office, and that results in threats to the PHO’s safety and mental and physical health.<sup>16</sup>

[19] To support its claim, the Ministry provided affidavit evidence from the PHO.<sup>17</sup> In her affidavit, the PHO deposes that:

- Throughout the COVID-19 pandemic, the PHO and her colleagues, friends and family have received hateful, abusive, unsettling messages because of her work as a provincial health officer;<sup>18</sup>

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<sup>11</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para 219.

<sup>12</sup> See, for example, Order F20-54, 2020 BCIPC 63 (CanLII), at para 16.

<sup>13</sup> Ministry’s initial submission at paras 20, 32 and 33.

<sup>14</sup> Ministry’s initial submission at para 6.

<sup>15</sup> Ministry’s initial submission at para 39.

<sup>16</sup> Ministry’s initial submission at paras 6 and 33; Affidavit #1 of the PHO at para 7.

<sup>17</sup> Affidavit #1 of Health Officer.

<sup>18</sup> Affidavit #1 of Health Officer at para 4.

- The PHO received email, social media and phone correspondence, which has made her colleagues who have had to review and respond to these messages feel wary and fearful in public spaces, constantly tired and moody, overwhelmed, unable to focus or be productive, listless, unsafe, scared, sad and heartbroken; the PHO provided examples of such communications.<sup>19</sup>
- The PHO has experienced numerous serious threats and significant harassment over the last several years because of her work;<sup>20</sup>
- There have been multiple bomb threats at her workplace and individuals attempted to break in her home in the middle of the night on more than one occasion;<sup>21</sup>
- A restraining order was taken out against an individual with a pattern of obsession with female public figures who had tracked down her home address;<sup>22</sup>
- Many loud and aggressive protestors showed up at public events the PHO was attending and they tried to block her way and disrupt the events;<sup>23</sup> and
- The PHO is also concerned about one of her team members who received many angry and hateful messages as a result of the applicant posting the member's work email address, which the applicant received from his FIPPA access requests, in his blog posts; further, that member was subjected to harassment because the applicant identified her by name as the source of delays in receiving information that the applicant requested in his FIPPA access requests.<sup>24</sup>

[20] The applicant submits the Ministry has not provided sufficient evidence to support its arguments.<sup>25</sup> He says that there is no evidence of connection between the disclosure of the information in dispute and the alleged harm. He says that the Ministry's affidavit evidence should be not considered as evidence because it lacks supporting fact about the threats and incidents (e.g., date and time, location, police file number, court file number and result), as a result, it should be given no weight.<sup>26</sup> The applicant also says that the public's right to know includes the spending of public funds by public officials, so a public body will not engage in wasteful or corrupt behaviour.<sup>27</sup>

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<sup>19</sup> Affidavit #1 of Health Officer at para 5-6; Exhibit A to the affidavit.

<sup>20</sup> Affidavit #1 of Health Officer at para 14.

<sup>21</sup> Affidavit #1 of Health Officer at para 7.

<sup>22</sup> Affidavit #1 of Health Officer at para 7.

<sup>23</sup> Affidavit #1 of Health Officer at para 9.

<sup>24</sup> Affidavit #1 of Health Officer at para 13.

<sup>25</sup> Applicant's response submission at para 19.

<sup>26</sup> Applicant's response submission at paras 14-15.

<sup>27</sup> Applicant's response submission at paras 19-21.

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*Analysis and findings*

[21] From my review of the parties' submissions and evidence, I am satisfied that it is plain and obvious that s. 19(1)(a) applies to the Invoices for reasons that follow.

[22] First, I am not persuaded by the applicant's submission that the PHO's evidence should be given no weight because it does not include specifics. As some of the PHO's affidavit evidence was accepted into the inquiry *in camera*, I am restricted in what I can say about it. However, I am satisfied that the PHO is in the best position to describe the threats, harassments and violence she has experienced. There is nothing in the materials before me that contradicts or undermines this evidence or the Ministry's explanations. I reject the applicant's submission that I should give the PHO's evidence no weight.

[23] I am aware that one of the purposes of FIPPA is to make public bodies more accountable to the public by giving the public a right of access to records, as the applicant argues; however, the public's right may be restricted where exceptions set out in FIPPA including s. 19(1)(a) apply.<sup>28</sup>

[24] I am satisfied that there is a direct link between the disclosure of the Invoices and a threat to the safety and mental and physical health of the PHO under s. 19(1)(a).

[25] I accept that that the numerous serious threats and harassment that involved physical violence and the use of email, telephone, social media, and mail could reasonably be expected to cause the PHO to feel vulnerable, apprehensive and threatened. Further, I am satisfied that someone who already feels vulnerable, apprehensive and threatened because of the threats, harassment and opposition to their work can reasonably be expected to experience increases in those negative feelings upon learning that their security-related information was disclosed to the world.<sup>29</sup> In my view, the threat to mental health involved in this case clearly rises above mere inconvenience, upset or unpleasantness to the level of serious mental distress or anguish.

[26] Further, I accept that there were multiple death threats, bomb threats, break-in attempts and aggressive protestors against the PHO which threatened the PHO's safety and there are ongoing safety-precautions the PHO has to take. I find that the Ministry's submissions and evidence satisfactorily demonstrate the connection of the security information on the Invoices to the threats to the safety of the PHO.

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<sup>28</sup> Division 2 – Exceptions (Sections 12 to 22.1).

<sup>29</sup> I accept the well-established principle that, under FIPPA, disclosure of information to an applicant in response to an access request is, in effect, disclosure to the world.

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[27] Having considered these circumstances, I find that the Ministry's evidence clearly establishes a threat to safety and physical and mental health of the PHO that is well beyond the merely possible or speculative. In my view, disclosure of the Invoices could reasonably be expected to cause the PHO to suffer physical threat and mental distress. I conclude, as a result, that it is plain and obvious that s. 19(1)(a) applies to the Invoices.

[28] I find that the information is dispute cannot reasonably be severed from the protected information because after the excepted information is removed, the remaining information is disconnected and not intelligible. Therefore, reasonable severing of information under s. 4(2) is not appropriate in this case

### **CONCLUSION**

[29] For the reasons given above, I conclude that it is plain and obvious that disclosure could reasonably be expected to threaten the PHO's safety and mental and physical health under s. 19(1)(a). Accordingly, the Ministry's s. 56(1) application is allowed and the upcoming inquiry is cancelled

August 16, 2024

### **ORIGINAL SIGNED BY**

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D. Hans Hwang, Adjudicator

OIPC File No.: F22-89887