Order F24-99

Ministry of Health

Alexander R. Lonergan
Adjudicator

November 29, 2024

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Summary: An applicant requested that the Ministry of Health (the Ministry) provide him access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to a copy of the Ministry's draft provincial medical ventilator allocation framework and other related records. The Ministry disclosed responsive records but withheld some records in their entirety and parts of other records under multiple FIPPA exceptions to disclosure. The Ministry also disputed the applicant's claim that that s. 25(1) (public interest disclosure) required disclosure. The adjudicator confirmed that the Ministry is authorized to refuse to disclose the information it withheld under s. 14 (solicitor-client privilege) and required to refuse to disclose the information it withheld under s. 12(1) (cabinet confidences). The adjudicator determined that the Ministry may not refuse access to the limited amount of information it withheld solely under s.13(1) (advice or recommendations) and ordered the Ministry to disclose that information. The adjudicator determined that s. 25(1) does not require the Ministry to disclose any of the information that the applicant said engages ss. 25(1)(a) or (b).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 4(2), 12(1), 12(2)(c), 13(1), 14, 25(1)(a), and 25(1)(b).

INTRODUCTION

[1] Under the Freedom of Information and Protection of Privacy Act (FIPPA), an individual (the applicant) requested that the Ministry of Health (the Ministry) provide him with records relating to current, past, and draft provincial ventilator allocation frameworks and policies.[1]

[1] Applicant's request for review at pp. 4-6.

[2] Following initial discussions with the Ministry, the applicant refined his request, which now reads as follows:

> Copy of the provincial ventilator allocation framework and any other policy related to how ventilators and other life-saving and sustaining medical resources may be allocated in the event that demand for those resources exceeds supply. I am also seeking any and all records related to the development and drafting of any such framework or policy. (date range from 1/1/2012 to 5/18/2020).[2]

[3] The Ministry determined that there are 1380 pages of records that are responsive to the applicant's request. The Ministry disclosed records but withheld some records in their entirety and parts of other records under ss. 13(1) (advice or recommendations), 14 (solicitor client privilege), 15 (harm to law enforcement), 16 (harm to intergovernmental relations or negotiations), 17 (harm to the financial or economic interests of a public body), and 22(1) (unreasonable invasion of third-party personal privacy).

[4] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision. Mediation by the OIPC failed to fully resolve the issues in dispute and the matter proceeded to this inquiry.

[5] Shortly after mediation ended, the Ministry informed the applicant that it had decided to also refuse to disclose some information under s. 12(1) (cabinet confidences), and that it no longer relied on ss. 15 or 16 to withhold any of the disputed information.[3] Then, the Ministry withdrew its reliance on s. 17 at the outset of this inquiry.[4] Finally, the applicant stated that he accepted the Ministry's severing decisions with respect to the information withheld under ss. 16 and 22(1).[5] Therefore, I find that ss. 15, 16, 17, and 22(1) are not at issue and I will not consider them any further.

[6] At inquiry, the applicant sought permission from the OIPC to add two new issues, namely, ss. 6(1) (duty of a public body to assist applicants) and 25(1) (mandatory disclosure of information in the public interest). An OIPC adjudicator accepted the applicant's request to add s. 25(1) to this inquiry and rejected the applicant's request to add s. 6(1).[6]

ISSUES AND BURDEN OF PROOF

[7] The issues I must decide in this inquiry, which I will consider in the following order, are as follows:

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[2] Investigator's Fact Report at para. 2.
[3] *Ibid.* at para. 8.
[4] Ministry's initial submission at para. 5.
[5] Applicant's email, November 30, 2023.
[6] Adjudicator's letter to the parties, April 10, 2024.

1. Is the Ministry authorized under s. 14 to refuse to disclose any of the disputed information?
2. Is the Ministry required under s. 12(1) to refuse to disclose any of the disputed information?
3. Is the Ministry authorized under s. 13(1) to refuse to disclose any of the disputed information?
4. Is the Ministry required under s. 25(1) to disclose the disputed information without delay?

[8] Section 57(1) places the burden on the Ministry, which is a public body, to prove that it is authorized or required to refuse access to the information and records withheld under ss. 12(1), 13, and 14.

[9] FIPPA is silent about whether there is a burden on either party to prove or disprove that s. 25(1) applies. Past orders have said that it is in the best interest of both parties to provide whatever evidence and arguments they have to support the positions they take, but that it is ultimately up to the Commissioner to determine whether s. 25(1) applies after considering all of the available evidence and arguments.[7] I consider it unnecessary to impose a new legal burden of proof in this matter, therefore, I will adopt the same approach here.

DISCUSSION

Background[8]

[10] The provincial government began some work on a draft ventilator allocation framework in 2009 in response to the H1N1 influenza pandemic, although a finalized framework was never completed or implemented in BC.

[11] During the Covid-19 pandemic, the Provincial Health Officer for BC (Provincial Health Officer) announced that a framework was being developed for allocating scarce medical resources, specifically ventilators that provide mechanical breathing support, to prepare for the possibility that demand for those resources would exceed the healthcare system’s ability to supply them.

[12] The Ministry has never adopted, released or sought broad public input on its draft ventilator allocation framework.

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[7] Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 39; Order 03-02, 2003 CanLII 49166 (BC IPC) at para. 16; Order F22-64, 2022 BCIPC 72 (CanLII) at para. 6; Order F23-24, 2023 BCIPC 28 (CanLII) at para. 5.
[8] 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.

Records and Information in Dispute

[13] There are 1380 pages of responsive records in this inquiry, most of which have some or all information withheld under one or more FIPPA exceptions to disclosure.

[14] The disputed records include multiple different versions of a draft ventilator allocation framework (the draft framework), briefing notes, Ministry emails and legal memoranda discussing the draft framework.

[15] The Ministry produced all disputed records for my review except for the records that it withholds under s. 14. The Ministry also applies ss. 12(1) and 13 to some of the information it withheld under s. 14. I will first determine whether s. 14 applies to any of the disputed information before turning to the other claimed exceptions to disclosure.

Section 14 – Solicitor-Client Privilege

[16] Section 14 says that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege. There are two categories of solicitor-client privilege, being legal advice privilege and litigation privilege.[9] The Ministry says that legal advice privilege applies to the records and information it withholds under s. 14.[10]

[17] The Ministry applied s. 14 to emails and memoranda, as well as some versions of the draft framework.

Evidentiary Basis for Determining Legal Advice Privilege

[18] The Ministry did not provide me with copies of the records it severed under s. 14. Section 44(1)(b) empowers me to order production of records so I may review them during the inquiry. Due to the importance of solicitor-client privilege to the proper functioning of the legal system, and in order to minimally infringe on solicitor-client privilege, I will only order production if absolutely necessary to decide the issues in dispute.[11]

[19] Parties that withhold privileged records from the OIPC may provide other information and evidence to support the claim of privilege. The type and amount

[9] *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College*] at para. 26.
[10] Ministry's initial submission at paras. 34-35.
[11] Order F19-14, 2019 BCIPC 16 (CanLII) at para. 10; *Canada (Privacy Commissioner) v Blood Tribe Department of Health*, 2008 SCC 44 at para. 17; *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 (CanLII) at para. 68.

of required information will vary depending on the record at issue, but the record must be sufficiently described so the claim of privilege can be assessed.[12]

[20] The Ministry provided affidavits in support of the severing decisions it made. One affiant is a practicing lawyer with the Ministry of Attorney General's Legal Services Branch (LSB, LSB lawyer). The LSB lawyer's affidavit includes a table that names each record withheld under s. 14 and a general description of what each record contains. When assessing claims of privilege, past OIPC and court decisions have given deferential weight to evidence from a practicing lawyer. This is because lawyers have a professional duty to ensure that privilege is properly claimed.[13] I will adopt the same approach here.

[21] The other affidavit is sworn by the Provincial Health Officer, which includes evidence about her communications with LSB lawyers.

[22] The LSB lawyer's affidavit evidence explains, at the level of individual records, how each record came to exist and why the LSB lawyer believes legal advice privilege applies to them. These explanations are detailed and relevant to whether s. 14 applies. I find that this material is sufficient to allow me to determine whether legal advice privilege applies, therefore, it is not necessary to order the Ministry to provide the records it withholds under s. 14 for my review.

Parties' Positions, s. 14

[23] The Ministry says that disclosing the records withheld under s. 14 would reveal the content of privileged legal advice it sought and received from its lawyers who work at LSB. The Ministry explains that the emails and memoranda contain and discuss the legal advice that LSB provided to the Ministry. Regarding the versions of the draft framework withheld under s. 14, the Ministry says that these documents were attached to privileged communications and themselves contain legal advice the Ministry received from LSB.[14]

[24] The applicant argues that s. 14 does not apply. First, the applicant says that the versions of the draft framework withheld under s. 14 are not privileged because they were not prepared for the purpose of giving or receiving legal advice.[15] The applicant argues that those parts of the draft framework that do not reveal privileged advice can be reasonably severed from the rest, so the Ministry's decision to sever the draft framework under s. 14 should not be

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[12] *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 (CanLII), [*Minister of Finance*] at para. 78; *Stone v. Ellerman*, 2009 BCCA 294 (CanLII) at para. 23.
[13] *Minister of Finance, supra* note #12 at para. 86; *Nelson and District Credit Union v. Fiserv Solutions of Canada, Inc.*, 2017 BCSC 1139 (CanLII) at para. 54; Order F23-99, 2023 BCIPC 115 (CanLII) at para. 23.
[14] Ministry's initial submission at paras. 49 and 53.
[15] Applicant's submission at paras. 100 and 101.

upheld.[16] Finally, the applicant says that the Ministry shared the legal advice it received from LSB along with copies of the draft framework with provincial health authorities and that in doing so it waived privilege over those records.[17]

[25] In reply, the Ministry says that the applicant is applying an incorrect legal test to determine whether s. 14 permits the Ministry to withhold the draft frameworks. Specifically, the Ministry says that its claim of legal advice privilege over the drafts does not depend on the dominant purpose of the framework's creation. The Ministry reiterates that the draft frameworks contain legal advice and that they were also attached to privileged communications. The Ministry argues that attachments to privileged communications can only be severed and ordered disclosed where there is no risk that privileged legal advice will be revealed through disclosure.[18]

Analysis, s. 14

[26] Legal advice privilege does not protect all communications between a client and their lawyer, but the privilege will apply if the communication:

1. Is between a solicitor and client;
2. Entails the seeking or giving of legal advice; and
3. Is intended by the parties to be confidential.[19]

[27] In addition, legal advice privilege extends to the "continuum of communications" between lawyer and client that do not specifically request or offer advice but are "part of the necessary exchange of information between solicitor and client for the purpose of providing advice."[20] This includes information the client gives to the lawyer that relates to the advice sought, including purely factual information, and internal memoranda of the client related to the legal advice received and the implications of it.[21]

[28] As a starting point, the affidavit evidence of the LSB lawyer and the Provincial Health Officer clearly establishes that the Ministry, as an organization, is a client of the LSB lawyers.[22] Additionally, the Provincial Health Officer's affidavit evidence explains that her employer is the Provincial Health Services

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[16] Applicant's submission at paras. 102-105.
[17] Applicant's submission at paras. 108-114.
[18] Ministry's reply submission at paras. 56-60.
[19] *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 (CanLII) at para. 15, citing *Solosky v. The Queen*, 1979 CanLII 9 (SCC) at p. 837.
[20] C*amp Development Corporation v South Coast Greater Vancouver Transportation Authority* 2011 BCSC 88 at para 42.
[21] *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 (CanLII) at paras. 22-24.
[22] Affidavit #1 of FG at paras. 1, 5, and 7; Affidavit #1 of PHO at para. 14.

Authority but that she is seconded to the position of Provincial Health Officer within the Ministry.[23] This explanation satisfies me that, insofar as the Provincial Health Officer participated in the disputed Ministry-LSB communications, she was acting on behalf of the Ministry.

Emails and Memoranda

[29] Most of the records withheld under s. 14 are emails and some legal memoranda. The descriptions provided in the LSB lawyer's affidavit establish that most of the emails are between the Ministry and LSB lawyers that contain the legal advice the Ministry sought. I can also determine from this evidence that some of the withheld emails are internal Ministry discussions about the lawyers' advice that the Ministry received.[24]

[30] The LSB lawyer's affidavit evidence satisfies me that these are communications that were intended by the parties to be confidential and entailed the seeking and receiving of legal advice. I find that disclosing these communications would reveal confidential solicitor-client communications about legal advice, therefore, legal advice privilege applies to them.

[31] In addition, the LSB lawyer's affidavit establishes that disclosing the Ministry's internal emails would reveal what the Ministry and its lawyers said to each other in confidence. Internal client discussions about legal advice are protected by legal advice privilege if disclosure would reveal the content of the confidential solicitor-client communications.[25] I am satisfied that is the case here, therefore, I find that the internal Ministry emails discussing the legal advice received are also protected by legal advice privilege.

[32] Some of the correspondence withheld under s. 14 includes emails between the Ministry and representatives of the province's various healthcare authorities and the College of Physicians and Surgeons of BC (College). The LSB lawyer's affidavit establishes that these emails reveal the confidential communications the Ministry had with its lawyers about legal advice. The LSB lawyer's affidavit clarifies that, through these emails, the Ministry shared the legal advice it received and discussed that advice with the College and healthcare authorities. In light of what these emails reveal, I find that they are subject to legal advice privilege as well. The fact that the Ministry shared some of the legal advice it received raises the issue of waiver, which I will address below.

[23] Affidavit #1 of PHO at paras. 2 and 4.
[24] Affidavit #1 of FG at paras. 4-7.
[25] *Bank of Montreal v. Tortora*, 2010 BCSC 1430 (CanLII) at para. 12, citing *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 (CanLII) at para. 24; Order 04-25, 2004 CanLII 45535 (BC IPC) at para. 104; Order F13-29, 2013 BCIPC 38 (CanLII) at para. 18.

Copies of the Draft Framework

[33] A few of the records withheld under s. 14 are copies of the draft framework that the Ministry exchanged with LSB lawyers. The Ministry explains that these specific copies of the draft framework are privileged because they were attached to emails it sent to LSB lawyers seeking their legal advice about those drafts, and because the drafts themselves contain legal advice from LSB lawyers.[26]

[34] The applicant says that that the framework drafts are not protected under legal advice privilege because the dominant purpose of their creation was not giving or receiving legal advice, but rather to assist clinicians and healthcare administrators in making difficult decisions about the allocation of scarce critical care resources during the COVID-19 public health emergency.[27] The applicant argues that documents authored by third parties and communicated to counsel for the purpose of obtaining legal advice do not gain immunity from disclosure unless the dominant purpose for their preparation was obtaining legal advice.[28]

[35] What the applicant argues does not persuade me that the draft framework must have been *created* for the purpose of seeking or receiving independent legal advice in order to be protected by legal advice privilege. He has not identified any binding case law to support what he asserts about that nor am I aware of any. While it is true that not all records sent to a lawyer are protected by legal advice privilege, such records may be protected by privilege if they form an integral part of the legal opinion requested or given, particularly where the document provides some basis for a reader to determine some or all of the legal advice sought and given.[29]

[36] In this matter, I am satisfied that the LSB lawyers gave legal advice about the copies of the draft framework that were attached to the emails and that those drafts formed part of the necessary exchange of information between those lawyers and the Ministry, all for the purpose of seeking and providing legal advice. For these reasons, I find that the attached draft frameworks withheld under s. 14 form an integral part of the communication between the Ministry and its lawyers for the purpose of obtaining legal advice. On that basis, I find they are subject to legal advice privilege.

[37] The Ministry's evidence also establishes that the drafts being withheld under s. 14 also contain actual legal advice provided by LSB lawyers, so they are

[26] Ministry's initial submission at paras. 47, 49, and 53; Affidavit #1 of FG at para. 6; Affidavit #1 of PHO at para. 14.
[27] Applicant's submission at paras. 100-101. This purpose for the drafts' creation is further supported by Affidavit #1 of PHO at para. 10.
[28] Applicant's submission at para. 103, citing *Ontario (Ministry of Finance) v. Ontario (Assistant Information and Privacy Commissioner)*, [1997] O.J. No. 1465 (Ont.Div.Ct.)(QL) at para. 18.
[29] *Minister of Finance*, *supra* note #12 at paras .110-111.

also privileged on their own, independent of being attached to privileged communications.

Reasonable Severing

[38] The applicant asks that those parts of the disputed records that reveal legal advice be severed, and the balance disclosed. The applicant argues that s. 4(2) requires the Ministry to sever privileged information from the records that are genuinely subject to legal advice privilege while disclosing the balance to the applicant, and he says that the Ministry has made no effort do so.[30]

[39] Section 4(2) says that the right of access to a record does not extend to information that is excepted from disclosure under Division 2 of [Part 2 of FIPPA], but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record. As I will explain, however, there are special considerations in the context of solicitor-client privilege that may limit the effect of s. 4(2).

[40] The BC Supreme Court has said that if some part of an attachment to a privileged communication is itself part of the legal advice received, then the entire attachment is privileged.[31] In another matter, the BC Court of Appeal similarly found that severing privileged communications can only occur where there is no risk that privileged advice will be revealed or become ascertainable.[32]

[41] It is apparent to me that there is a risk of privileged communications being revealed if I require the Ministry to disclose information from the communications and drafts that I found to be subject to legal advice privilege. Therefore, the Ministry is not required to sever and disclose any portions of the records that it withheld under s. 14.

Waiver

[42] Legal advice privilege, once established, belongs to the client and remains in place indefinitely unless the client waives it.[33] Disclosing privileged information to parties outside of the solicitor-client relationship may amount to a waiver of privilege where the client is aware of the privilege and voluntarily exhibits an intention to waive it (express waiver), or where fairness and consistency require disclosure in the absence of such an intention (implied waiver).[34]

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[30] Applicant's submission at paras. 102-104.
[31] *Minister of Finance, supra* note #12 at para. 112.
[32] *British Columbia (Attorney General) v. Lee*, 2017 BCCA 219 (CanLII) at para. 51.
[33] *Blank v. Canada (Minister of Justice)*, 2006 SCC 39 (CanLII), [2006] 2 SCR 319 at para. 37.
[34] *S. & K. Processors Ltd. v. Campbell Ave. Herring Producers Ltd.*, 1983 CanLII 407 (BC SC) at para. 6; see also Order F23-65, 2023 BCIPC 75 (CanLII) at para. 87.

[43] Evidence justifying a finding of waiver must be clear and unambiguous given the importance of solicitor-client privilege to the proper functioning of the legal system.[35] The onus of establishing a waiver of solicitor-client privilege is on the party seeking to displace it, which in this case is the applicant.[36]

[44] Some of the information withheld under s. 14 is the Ministry's correspondence with the provincial health authorities and the College in which the Ministry shared and discussed the draft frameworks and legal advice it received from LSB lawyers.

[45] The applicant says that the Ministry waived privilege over the draft frameworks and legal advice by sharing it with parties outside of the solicitor-client relationship. Specifically, the applicant says that the Ministry's act of providing a draft of the framework to the Health Emergency Coordination Centre (HECC), an entity operated by the Ministry, is evidence that the Ministry voluntarily intended to waive privilege. Additionally, the applicant says that the Ministry invited the HECC to provide feedback on the draft and argues that the HECC therefore "finalized" the draft. The applicant says that this further demonstrates waiver.[37]

[46] In response, the Ministry denies that it ever waived privilege. In support of its position, the Ministry says that it entered undertakings of confidentiality with the provincial health authorities and the College to prevent disclosure of precisely this information. The Ministry says that these undertakings show that there was never an intention to waive privilege.[38]

[47] For the reasons that follow, I am not persuaded that the Ministry has waived privilege over any of the information withheld under s. 14.

[48] As the applicant himself acknowledges, the Ministry operates the HECC,[39] so I am not persuaded that the HECC exists outside of the Ministry's solicitor-client relationship in the first place. Additionally, the applicant does not clearly explain, nor is it apparent to me, how the HECC's act of "finalizing" the draft framework is evidence of the Ministry's intention to waive privilege. I find that it is not.

[49] The fact that the Ministry obtained undertakings of confidentiality in respect of the College and healthcare authorities satisfies me that the Ministry

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[35] *SNC-Lavalin Engineers & Constructors Inc. v. Citadel General Assurance Co*., 2003 CanLII 64289 (ON SC) at para. 54; *Maximum Ventures Inc. v. de Graaf et al*., 2007 BCSC 1215 (CanLII) at para. 40 (appealed on other grounds).

[36] *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc*., 2007 BCSC 1420 (CanLII) at para. 22.

[37] Applicant's submission at paras. 108, 110, and 112.

[38] Ministry's initial submission at paras. 60-63; Ministry's reply submission at para. 73.

[39] Applicant's submission at para. 108.

did not intend to waive privilege over its confidential solicitor-client communications when it shared those communications in the limited way that it did. The courts have said there is no waiver when a privileged document is provided to an outside party on the understanding that it will be held in confidence and not disclosed to others.[40] In my view, the Ministry's efforts to preserve confidentiality over these communications and records are persuasive evidence of the Ministry's intention to preserve privilege, not to waive it.

[50] The applicant has not persuaded me that the Ministry voluntarily exhibited an intention to waive privilege or that any other circumstances support a finding of implied waiver. Therefore, I find that the Ministry did not waive privilege over any of the information that I determined it may withhold under s. 14.

Conclusion, s. 14

[51] I find that all the information withheld by the Ministry under s. 14 is subject to legal advice privilege. I confirm the Ministry's decision that s. 14 authorizes the Ministry to refuse to disclose that information to the applicant.

Section 12(1) - Cabinet confidences

[52] The Ministry argues that s. 12(1) requires it to withhold various copies of the draft framework and parts of briefing documents relating to the draft framework. There was some overlap between the Ministry's application of ss. 12(1) and 14. I will only consider below the information that I have not already found may be withheld under s. 14.

[53] Section 12(1) says that a public body must refuse to disclose to an applicant any information that would reveal the substance of deliberations of the Executive Council or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees.

[54] The purpose of s. 12(1) is to widely protect the confidence of Cabinet communications,[41] because, "[t]hose charged with the heavy responsibility of making government decisions must be free to discuss all aspects of the problems that come before them and to express all manner of views, without fear that what they read, say or act on will later be subject to public scrutiny".[42]

[40] *Malimon v. Kwok*, 2019 BCSC 1972 (CanLII) at paras. 20-21; *Kamengo Systems Inc. v. Seabulk Systems Inc.*, 1998 CanLII 4548 (BC SC) at paras. 19-20.
[41] *Aquasource Ltd. v. British Columbia (Freedom of Information and Protection of Privacy Commissioner)*, 1998 CanLII 6444 (BC CA), [*Aquasource*] at para. 41.
[42] *Babcock v Canada (Attorney General),* 2002 SCC 57 at para. 18.

[55] The Supreme Court of Canada recently provided the following clarifying comments with respect to Cabinet confidences:

> In approaching assertions of Cabinet confidentiality, administrative decision makers such as the OIPC must pay attention not only to the vital importance of public access to government-held information but also to Cabinet secrecy's core purpose of enabling effective government, and its underlying rationales of efficiency, candour, and solidarity. They must also be attentive to the dynamic and fluid nature of executive decision making, the function of Cabinet itself and its individual members, the role of the Premier, and Cabinet's prerogative to determine when and how to announce its decisions.[43]

[56] Past orders have established the two-stage analytical approach to s. 12(1) that I will follow in this matter. The first question is whether the information in dispute would reveal the substance of deliberations of Cabinet or any of its committees. If the answer is yes, then the second question is whether the information in dispute falls into any of the exceptions set out in s. 12(2).[44]

[57] In the context of s. 12(1), the term "substance of deliberations" refers to the body of information that Cabinet or any of its committees considered in making a decision, or that it would consider in the case of submissions not yet presented. To determine whether information reveals the substance of deliberations, the appropriate question is whether the information at issue forms the basis for Cabinet deliberations.[45]

Parties' Positions, s. 12(1)

[58] The Ministry says that s. 12(1) applies to copies of the draft framework and some briefing materials related to those drafts. The Ministry provided affidavit evidence from the Provincial Health Officer that the draft framework was intended for Cabinet consideration and possible adoption, but that the framework development process is currently halted pending further instructions from Cabinet to proceed and the enactment of unspecified regulations.[46] The Ministry explains that BC never approached a ventilator shortage during the height of the Covid-19 pandemic, so the framework was not needed.[47] The Ministry says that disclosing the draft framework before Cabinet approval is premature, because doing so

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[43] *Ontario (Attorney General) v Ontario (Information and Privacy Commissioner),* 2024 SCC 4 (CanLII), [*Ontario*] at para. 61.
[44] Order F18-43, 2018 BCIPC 46 (CanLII) at paras. 13-16; Order F24-73, 2024 BCIPC 83 (CanLII) at para. 46.
[45] *Aquasource*, *supra* note #41 at paras. 39 and 48; See also *British Columbia (Minister of Public Safety) v British Columbia (Information and Privacy Commissioner)*, 2024 BCSC 345 (CanLII) at paras. 69-70.
[46] Affidavit #1 of PHO at paras. 9 and 12-13.
[47] Ministry's initial submission at paras. 30-33 and 84-86.

would create or encourage ill-informed public or political criticism that paralyzes the collective decision-making process.[48]

[59] The applicant says that s. 12(1) does not apply to these records because the information in them is not being considered by Cabinet, but rather there is only a possibility that Cabinet will consider that information in the future.[49] The applicant says that these records cannot contain information that forms the substance of Cabinet deliberations because Cabinet has not yet considered, or been presented with, the records that are being withheld under s. 12(1).[50]

[60] In reply, the Ministry says that s. 12(1) applies equally to submissions that are intended for Cabinet but not yet submitted to it, which includes the draft framework and briefing documents. The Ministry argues that s. 12(1) is not limited to information about the outcome of the deliberative process because limiting s. 12(1) in this way would disregard the negative impact on efficient government caused by premature disclosure.[51] In support, the Ministry refers to the recent Supreme Court of Canada decision, cited above, that rejected a narrow interpretation of s. 12(1) on this basis.[52]

Analysis, s. 12(1)

[61] I accept the Provincial Health Officer's evidence that the draft framework and its related briefing materials were prepared for submission to Cabinet. The fact that those materials have not yet been submitted to Cabinet does not mean that s. 12(1) does not apply.

[62] The BC Court of Appeal in *Aquasource* noted that s. 12(1) includes the phrase "submitted or prepared for submission to", which makes it plain that the term "substance of deliberations" in s. 12(1) refers not only to the body of information which Cabinet considered in making a decision, but also to the body of information which it would consider in the case of submissions not yet presented.[53] Clearly, s. 12(1) applies to information that is prepared for, but not yet submitted to, Cabinet.

[63] I conclude that the information and records withheld under s. 12(1) were prepared for submission to Cabinet and that s. 12(1) applies to this information notwithstanding the fact that the materials are not currently scheduled to be presented to Cabinet at a specific time.

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[48] Ministry's initial submission at para. 76.
[49] Applicant's submission at para. 124.
[50] Applicant's submission at paras. 121-122. The applicant also raises a similar argument in the context of s. 13 at para. 132.
[51] Ministry's reply submission at paras. 41-43.
[52] *Ontario, supra* note #43 at para. 7.
[53] *Aquasource*, *supra* note #41 at para 39; See also Order F18-24, 2018 BCIPC 27 (CanLII) at paras. 46-48.

Exceptions, s. 12(2)

[64] The second step of the analysis is to determine whether the information in dispute falls into any of the exceptions set out in s. 12(2). If so, the Ministry would not be required or authorized to withhold that information under s. 12(1). The Ministry says that none of these exceptions apply to the records and information it withholds under s. 12(1), whereas the applicant argues that ss. 12(2)(c)(i) and 12(2)(c)(iii) apply.[54]

[65] Section 12(2)(c)(i) says that s. 12(1) does not apply to information in a record, the purpose of which is to present background explanations or analysis to the Executive Council or any of its committees for its consideration in making a decision, if the decision has been made public.

[66] The applicant argues that the Provincial Health Officer made "finalization of the Draft Framework" public on April 1, 2020, so all drafts dated before that date engage s. 12(2)(c)(i).[55] In reply, the Ministry says that the Provincial Health Officer's announcement on April 1, 2020 did not finalize the draft framework, but instead merely announced an intention to release it at an unspecified time in the future.[56]

[67] Having reviewed the affidavit evidence and the announcements referred to by the applicant,[57] I do not see any Cabinet or executive committee decision that was made public on that date specifically about the draft framework. The content of the announcement leaves me with the impression that the Provincial Health Officer was simply reassuring the public that the government was aware of increased demand for ventilators in the context of the Covid-19 pandemic. As there is no decision to engage s. 12(2)(c)(i), I find that this exception does not apply to any of the records withheld under s. 12(1).

[68] Section 12(2)(c)(iii) says that s. 12(1) does not apply to information in a record, the purpose of which is to present background explanations or analysis to the Executive Council or any of its committees for its consideration in making a decision, if 5 or more years have passed since the decision was made or considered.

[69] The applicant argues that s. 12(2)(c)(iii) prevents the Ministry from withholding a record of the draft framework dated from 2012 (the 2012 Draft) because more than five years have passed "since a decision was made or considered in relation to the briefing note included in the record." To support their

[54] Ministry's initial submission at paras. 72, 93, and 100; Ministry's reply submission at para. 46; Applicant's submission at paras. 126-128.
[55] Applicant's submission at para. 126.
[56] Ministry's reply submission at paras. 4, and 47-48.
[57] The Ministry provided copies of this material in its reply submission at footnotes 1-5.

position, the applicant refers to a "draft decision briefing note" among the disputed records.[58]

[70] Having reviewed the unsevered copies of the draft decision briefing note and the 2012 Draft, I can see that the Ministry has already disclosed all information in the draft decision briefing note whose purpose is to provide background explanations and analyses. All that remains at issue in the draft decision briefing note are specific options for policy actions, while the 2012 Draft is a draft of a written policy. This information's purpose is plainly not to present background explanations or analyses. Therefore, I find that s. 12(2)(c)(iii) does not apply to this information, regardless of the fact that more than five years have passed since those two records were drafted.

[71] I have considered whether any of the other provisions set out at s. 12(2) apply to the information withheld under s. 12(1), and I find that they do not. I conclude that none of the circumstances set out under s. 12(2) prevent the Ministry from withholding the information that I determined it must withhold under s. 12(1).

Conclusion, s. 12(1)

[72] I find that all of the information I am considering under s. 12(1) forms the basis of Cabinet deliberations and none of the exceptions set out at s. 12(2) apply. Therefore, the Ministry must withhold this information under s. 12(1).

Section 4(2) - Is the information withheld under s. 12(1) reasonably severed?

[73] As discussed in greater detail in the s. 14 analysis above, s. 4(2) says that if that information can reasonably be severed from a record, then an applicant has a right of access to the remainder of that record.

[74] The applicant says that "The provisions at issue in this inquiry with respect to reasonable severance are ss. 12, 13 and 14."[59] I understand this statement to mean that the applicant questions whether the Ministry has reasonably severed and disclosed the information and records it withholds under ss. 12(1) and 13. In light of my findings relating to s. 14 above and s. 13 below, I need only consider whether the Ministry has reasonably severed the information it withholds under s. 12(1).

[75] Amongst other things, the Ministry says that it is unreasonable to require it to release information that is so fragmented that it is unintelligible and no longer

[58] The applicant refers to pages 1-3 of the disputed records to assert this argument at para. 128 of the applicant's submission.
[59] Applicant's submission at para. 44.

responsive to the access request, such as disconnected words or snippets of sentences.[60]

[76] In my view, the requirements of s. 4(2) have been met in this case. I find that any further disclosure of the information that I have found must be withheld under s. 12(1) would not be reasonable because such disclosure would only result in the applicant receiving unintelligible snippets of information.

Section 13 – Policy advice or recommendations

[77] The Ministry is withholding some information under s. 13. There was some overlap between the Ministry's application of ss. 12(1), 13, and 14. I will only consider below the information that I have not already found the Ministry is authorized or required to withhold under ss. 12(1) or 14.

[78] Section 13(1) says that the head of a public body may refuse to disclose information that would reveal advice or recommendations developed by or for a public body or minister. Section 13 protects "a public body's internal decision-making and policy-making processes, in particular while the public body is considering a given issue, by encouraging the free and frank flow of advice and recommendations".[61] The purpose of s. 13 is to prevent the harm that would occur if a public body's deliberative process was exposed to public scrutiny.[62]

[79] The term "recommendations" includes material relating to a suggested course of action that will ultimately be accepted or rejected by the one being advised.[63]

[80] On the other hand, the term "advice" has a broader meaning than "recommendations". It includes providing relevant considerations, options, analyses, and opinions, including expert opinions on matters of fact. Advice can be an opinion about an existing set of circumstances and does not have to be a communication about future action.[64]

[81] Section 13 applies not only where the information directly reveals advice or recommendations, but also where knowledge of the information would permit an accurate inference about the advice or recommendations.[65] This extends to

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[60] Ministry's reply submission at paras. 20-21.
[61] Order 01-15, 2001 CanLII 21569 (BCIPC) at para. 22; Order F23-13, 2023 BCIPC 15 (CanLII) at para. 16.
[62] *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 (CanLII) at para. 52.
[63] *John Doe v. Ontario (Finance)*, 2014 SCC 36 (CanLII) at para. 23.
[64] *Ibid.* at paras. 24-26 and 34; *College*, *supra* note #9 at paras. 103 and 113.
[65] Order 02-38, 2002 CanLII 42472 (BC IPC) at 135; Order F17-19, 2017 BCIPC 20 (CanLII) at para. 19.

factual or background information that is a necessary and integral part of the advice or recommendation.[66]

[82] The analysis under s. 13 has two steps. First, I will determine whether disclosing the withheld information would reveal advice or recommendations developed by or for the Ministry. If so, the second step is to determine whether any of the categories or circumstances listed in s. 13(2) apply to that information, as well as determining whether the record has been in existence for more than 10 years in accordance with s. 13(3). If ss. 13(2) or 13(3) apply, then the Ministry cannot withhold the information under s. 13(1).

Parties' positions, s. 13

[83] The information in dispute under s. 13 that I am considering is recorded in an email between employees of the Ministry and the Public Health Services Authority. The information at issue is about the number of available ventilators in BC at a specific point in time.[67]

[84] The parties do not specifically address this information in their submissions.

[85] The Ministry argues that the information it withholds under s. 13 would reveal advice and recommendations developed for the Ministry if disclosed. Additionally, the Ministry says that to the extent that the information contains "factual information", the factual information is so interwoven with or integral to the advice and recommendations that it would reveal and forms part of that advice and recommendations.[68] Finally, the Ministry argues that none of the circumstances set out at ss. 13(2) or 13(3) prevent it from refusing to disclose the information it withholds under s. 13(1).[69]

[86] The applicant disputes that s. 13(1) applies. The applicant also argues that the Ministry has failed to properly exercise its discretion in its application of s. 13(1) to the information in dispute.[70]

Analysis, s. 13

[87] The information that I am considering under s. 13 is a description of the type, source, and number of available ventilators in BC at a point in time. This

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[66] *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 (CanLII) at para. 94
[67] The records at p. 1302. The context and nature of the information withheld from this email is ascertainable from the part of the record that was disclosed.
[68] Ministry's initial submission at paras. 108-109, 112, and 114.
[69] Ministry's initial submission at paras. 115-118.
[70] Applicant's submission at paras. 132 and 136.

information was communicated between Ministry staff in an effort to prepare for a press conference.

[88] It is not apparent, and the Ministry's submissions and evidence do not explain, how this information is an opinion or expert analysis, or that it relates to deliberations about, or options for, future courses of action. I find that this information is purely factual and disclosing it would not reveal any advice or recommendations.

Conclusion, s. 13(1)

[89] I am not persuaded by the Ministry's arguments that the information I am considering under s. 13(1) would reveal advice or recommendations if disclosed. Consequently, I find that s. 13(1) does not apply to this information.

Section 25(1) – Public Interest Disclosure

[90] The applicant asks that I order the Ministry to disclose the draft framework and related records under ss. 25(1)(a) and (b).[71] However, the applicant's arguments respecting s. 25(1) refer only to the draft framework. Therefore, although most of the analysis below refers to the draft framework, I have also considered whether s. 25(1) applies to any of the other information in dispute.

[91] The relevant parts of s. 25 are as follows:

> **25** (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
>
> > (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
> >
> > (b) the disclosure of which is, for any other reason, clearly in the public interest.
>
> (2) Subsection (1) applies despite any other provision of this Act.

[92] Section 25(1) overrides all of FIPPA's discretionary and mandatory exceptions to disclosure but cannot compel disclosure of information or records that are subject to solicitor-client privilege.[72] Therefore, I will not consider whether s. 25(1) applies to any information or records that I determined may be withheld under s. 14.

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[71] Applicant's submission at para. 140.
[72] *British Columbia (Children and Family Development) v. British Columbia (Information and Privacy Commissioner)*, 2024 BCCA 190 (CanLII) at para. 63.

[93] The applicant argues that both ss. 25(1)(a) and (b) apply to the disputed information. I will address each subsection separately.

Section 25(1)(a) - Risk of to public health or safety

[94] Section 25(1)(a) requires the head of a public body to immediately disclose information about a risk of significant harm to the environment or to the health or safety of the public or a group of people. Past orders have said that the following types of information may engage s. 25(1)(a):

- Information that discloses the existence of the risk;
- Information that describes the nature of the risk and the nature and extent of any harm; or
- Information that allows the public to take actions that are necessary to meet the risk or mitigate or avoid harm.[73]

[95] The applicant asserts that there is a real risk of a ventilator shortage in BC, but that the specific risk that engages s. 25(1)(a) is the risk of people with disabilities being disproportionately harmed by a framework that is not compliant with human rights legislation.[74] The applicant says that there is a risk of serious harm to people with disabilities if the draft framework fails to incorporate the ethical and legal obligations set out in the *Canadian Charter of Rights and Freedoms* and BC *Human Rights Code*.[75] Finally, the applicant points to a triage protocol developed in Ontario as an example of the deficiencies he believes the draft framework will contain if the Ministry does not disclose the draft framework to enable public input.[76]

[96] In reply, the Ministry argues that a ventilator shortage is a hypothetical situation and reiterates that the province has never actually approached such a shortage. The Ministry says that s. 25(1)(a) requires the risk of significant harm to be real and probable but that the applicant has provided no evidence to show that such a risk exists.[77] With regard to the draft framework itself, the Ministry says that the existence of this record is evidence of proper emergency planning but not evidence of an "imminent" risk to the health or safety of the public or a group of people.[78] Finally, the Ministry says that the draft framework cannot

[73] Order F23-95, 2023 BCIPC 111 (CanLII) at para. 16; Order F14-35, 2014 BCIPC 38 (CanLII) at para. 16; Order 02-38, 2002 BCIPC 38 (CanLII) at para. 56.
[74] Applicant's submission at para. 55.
[75] *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11*; Human Rights Code,* RSBC 1996, c 210.
[76] Applicant's submission at paras. 59, and 70-72.
[77] Ministry's initial submission at paras. 138-139; Ministry's reply submission at paras. 23 and 24.
[78] Ministry's reply submission at para. 28.

contravene applicable human rights legislation because it is a draft and not actual policy.[79]

[97] I have carefully considered what the parties submit and what their evidence and the information in dispute reveals. I accept the evidence of the Provincial Health Officer that the healthcare system in BC has never even approached a shortage of ventilators, even during the Covid-19 pandemic. That is consistent with the history of the draft framework's development and its present state of incompletion. Further, neither party provides evidence or argument suggesting that the information in dispute is about an actual or imminent shortage of ventilators.

[98] In Investigation Report F13-05, former Commissioner Denham stated that there does not need to be certainty of a health danger to engage s. 25(1) but that there should be factors that suggest there is a real and probable risk of a significant health or safety harm.[80] I acknowledge that if a shortage of ventilators were to occur in BC it could be a significant harm to health and safety. However, the information in dispute is about one policy approach to a hypothetical shortage. It is not about a real or probable risk of a shortage.

[99] I understand the applicant to be arguing that s. 25(1)(a) applies because public consultation and input on the information at issue is necessary to ensure that the framework does not disproportionately disadvantage people with disabilities or violate their human rights if there is a ventilator shortage in the future. The Provincial Health Officer's evidence is that the Ministry would consult with stakeholders and the wider public before the draft framework is finalized and implemented, if Cabinet ever directs the Ministry to proceed.[81] There is no evidence before me of any real or probable risk that the draft framework will be implemented without such consultation. Therefore, I am not persuaded that there is a real or probable risk of the harm described by the applicant.

[100] Having considered the parties' arguments and evidence, I conclude that the information in dispute is not about a risk that is imminent, probable, or that currently exists. The information is about a policy option for addressing a hypothetical risk that will likely never arise. I am not satisfied that the information in dispute is about a risk of significant harm to anyone's health or safety, therefore, I find that s. 25(1)(a) does not apply to the any of the information in dispute.

Section 25(1)(b) – Disclosure that is clearly in the public interest

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[79] Ministry's reply submission at para. 27.
[80] *Investigation Report F13-05*, 2013 CanLII 95961 (BC IPC) at p. 28.
[81] Affidavit #1 of PHO at paras. 12 and 13.

[101] Section 25(1)(b) requires the head of a public body to disclose information without delay if disclosure is clearly in the public interest for any other reason. This obligation exists only in the clearest and most serious situations, where the disclosure is unmistakably, not just arguably, in the public interest.[82]

[102] The applicant argues that s. 25(1)(b) applies to the information in the draft framework because disclosure would contribute new and purposeful information to public discourse on a matter relating to proper public administration, which he says is in the public interest.[83] The applicant does not explain how s. 25(1)(b) applies to information in the other disputed records.

[103] Past orders have approached the s. 25(1)(b) analysis by first determining whether the information at issue concerns a subject, circumstance, matter or event that engages the public interest.[84] If the information does engage the public interest, then the nature of the information itself must be considered to determine whether it meets the high threshold for disclosure.[85]

Does the information concern a matter that engages the public interest?

[104] The term "public interest" relates to matters of a broader, systemic or widespread significance, however, the "public interest" does not encompass everything that the public might be interested in learning.[86]

[105] The applicant argues that the matter which engages the public interest is the existence and content of a draft ventilator allocation framework developed for use in the event that demand for ventilators in the public health system exceeds the available supply. The applicant also says that critical care triage frameworks in the context of public health emergencies are the subject of nation-wide media debate.[87] Finally, the applicant says that the draft framework engages the public interest because it is a matter relating to proper public administration.[88]

[106] I understand the applicant's statements to be an argument that the information withheld from the draft framework relates to widespread, systemic concerns about the fair allocation of scarce resources in the public healthcare system.

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[82] Order No. 165-1997, 1997 CanLII 754 (BC IPC) at p. 3; Order 02-38, 2002 CanLII 42472 (BC IPC) at paras. 45-46; Order F24-40, 2024 BCIPC 48 (CanLII) at para. 62.
[83] Applicant's submission at para. 75.
[84] Order F20-42, 2020 BCIPC 51 (CanLII) at para. 38; *Investigation Report F16-02*, 2016 CanLII Docs 4591 [*Report F16-02*] at pp. 26-27.
[85] *Report F16-02, supra* note #84 at pp. 26-27.
[86] *Clubb v. Saanich (Corporation Of The District)*, 1996 CanLII 8417 (BC SC) at para. 33; Order F20-47, 2020 BCIPC 56 (CanLII) at para. 20.
[87] Applicant's submission at paras. 80-81.
[88] Applicant's submission at paras. 75 and 96.

[107] The Ministry argues that the draft framework does not relate to any matter that engages the public interest within the meaning of s. 25(1)(b), and says that the applicant's submission does not clearly explain how it does.[89]

[108] After considering the applicant's submission and the content of the disputed records, I can see that the draft framework directly relates to the ability of the health care system to manage critical care equipment in the context of a public health emergency. I find it is obvious that this matter is of broad and systemic significance. Management of critical care equipment shortages during public health emergencies directly relates to the life and death of any medically vulnerable person in BC and the resulting wellbeing of their family, friends, and colleagues. For this reason, I find that the information in the disputed records relates to a matter which engages the public interest.

Is disclosing the disputed information clearly in the public interest?

[109] Having found that the disputed information concerns a matter that engages the public interest, the second step is to determine whether disclosing any of the disputed information meets the high threshold of being clearly in the public interest.

[110] Past orders have approached this question by asking whether a disinterested and reasonable observer, knowing what the information is and knowing all of the circumstances, would conclude that disclosure is plainly and obviously in the public interest.[90] Relevant considerations include whether disclosure would:

- Contribute to educating the public about the matter;
- Contribute to the body of information already available in a substantive way;
- Facilitate the expression of public opinion or allow the public to make informed political decisions; or
- Contribute to holding a public body accountable for its actions or decisions in a meaningful way.[91]

[111] The applicant provides several reasons why disclosure is clearly in the public interest. He argues that disclosure would contribute to the body of information available about critical care triaging in public health emergencies. In addition, the applicant says that a lack of government transparency regarding pandemic-related information has increased distrust of the government, but that

[89] Ministry's reply submission at paras. 30-32.
[90] *Report F16-02, supra* note #84 at p. 26.
[91] *Report F16-02, supra* note #84 at pp. 26-27; Order F18-26, 2018 BCIPC 29 (CanLII) at paras. 14-16.

disclosure would contribute to legitimacy and public trust in the healthcare system. Finally, the applicant says that it is not premature to disclose the draft framework, but rather that withholding it prevents the public from making informed political decisions.[92] The applicant supports his arguments with several references to academic materials.

[112] In reply, the Ministry argues that that the "mere fact the Ministry has considered a subject matter to be fit for policy development does not raise that subject matter to the level of "extraordinary" or a "most serious situation", as required by s. 25(1)(b).[93]

[113] Taking all of the above into consideration, as I will explain below, I find that disclosure is not clearly in the public interest.

[114] I am not satisfied that disclosure would contribute to the body of information about critical care triaging in public health emergencies that is already available, in any meaningful sense. The disputed information is about one approach to managing a hypothetical shortage of one piece of critical care equipment in BC. I do not see how the disputed information, which is only about one proposed approach to a hypothetical situation, could meaningfully contribute to the existing body of public knowledge about the handling of such equipment shortages. Furthermore, the fact that the policy is in a draft framework that has never been fully developed, enacted, or used means that disclosure would contribute nothing to public knowledge of the Ministry's actual approach to such equipment shortages.

[115] In addition, I am not persuaded that disclosure would enhance public trust in the Ministry, enable the public to make informed political decisions, or allow the public to hold the government accountable. Cabinet has not yet decided to adopt or reject the draft framework, nor was a ventilator allocation framework in BC ever needed. The draft framework has not affected anyone in the past and cannot affect anyone's healthcare in the future without first undergoing the public consultation process described in the Provincial Health Officer's affidavit. I recognize that the public may wish to hold the Ministry and Cabinet to account for not taking further steps to enact a ventilator allocation policy at all, but I do not think the public needs access to any of the disputed information to do that.

[116] I find that a disinterested and reasonable observer, knowing what the information is and knowing all of the circumstances, would not conclude that disclosure, of any of the disputed information, is clearly in the public interest. Therefore, I find that s. 25(1)(b) does not apply.

Conclusion, s. 25(1)

[92] Applicant's submission at paras. 83 and 88-91.
[93] Ministry's reply submission at paras. 33-34.

[117] I conclude that s. 25(1)(a) and (b) do not apply to any of the information in the draft framework or other disputed records. Therefore, the Ministry is not required to disclose this information without delay.

CONCLUSION

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

1. I confirm the Ministry's decision to withhold all of the information it withheld under s. 14.

2. I require the Ministry to refuse to disclose all of the information it withheld under s. 12(1).

3. I confirm the Ministry's decision that it is not required to disclose any of the information in dispute under s. 25(1).

4. The Ministry is not authorized under s. 13(1) to withhold the information I have highlighted in green on a copy of page 1302 of the records provided to the Ministry with this order. I require the Ministry to give the applicant access to this highlighted information.

5. The Ministry must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the page described at item 4 above.

[119] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by January 15, 2025.

November 29, 2024

ORIGINAL SIGNED BY

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Alexander R. Lonergan, Adjudicator

OIPC File No.: F22-90058