Order F25-46

MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL

David S. Adams
Adjudicator

June 16, 2025

CanLII Cite: 2025 BCIPC 54
Quicklaw Cite: [2025] B.C.I.P.C.D. No. 54

Summary: An applicant requested video footage (the Video) from the Ministry of Public Safety and Solicitor General (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The Ministry withheld the entire Video, citing ss. 15(1) (disclosure harmful to law enforcement), 15(2) (disclosure harmful to proper custody or supervision), 19(1) (disclosure harmful to individual safety), and 22(1) (disclosure would unreasonably invade a third party's privacy) of FIPPA. The adjudicator found that ss. 15(1), 15(2), and 19(1) did not apply, but that s. 22(1) did apply to portions of the Video. The adjudicator also found that s. 25(1) (disclosure in the public interest) did not apply. The adjudicator ordered the Ministry to disclose to the applicant the portions of the Video it was not required to withhold.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 4(2), 6(1), 9(2), 15(1)(f), 15(1)(l), 15(2)(c), 19(1)(a), 22(1), 22(2)(a), 22(2)(c), 22(2)(e), 22(3)(d), 22(3)(i), 22(4)(e), 25(1)(b)

INTRODUCTION

[1] An applicant is a former inmate at the Vancouver Island Regional Correctional Centre (VIRCC), which is operated by the Ministry of Public Safety and Solicitor General (the Ministry). The applicant requested, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), a video (the Video) depicting the use of force against him by correctional officers (COs) within the VIRCC on a specified date.

[2] In response to the applicant's access request, the Ministry withheld the entire Video under ss. 15(1)(l) (harm to the security of a system) and 15(2)(c) (harm to the proper custody or supervision of a person) of FIPPA. The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the Ministry's decision.

[3] During the OIPC's mediation process, the Ministry additionally relied on ss. 15(1)(f) (endangerment of a person's life or physical safety), 19(1)(a) (harm to individual safety), and 22(1) (unreasonable invasion of third-party personal privacy) to withhold the Video. The mediation process did not settle the matter and it proceeded to this inquiry. Both parties provided submissions and evidence.

ISSUES AND BURDEN OF PROOF

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

1. Is the Ministry required to disclose the Video under s. 25(1) of FIPPA?

2. Is the Ministry authorized to refuse to disclose the Video under ss. 15(1)(f), 15(1)(l), 15(2)(c), and/or 19(1)(a) of FIPPA?

3. Is the Ministry required to refuse to disclose the Video under s. 22(1) of FIPPA?

4. Has the Ministry met its obligations under ss. 4(2), 6(1), and 9(2) of FIPPA?

[5] Under s. 57(1) of FIPPA, the Ministry has the burden of proving that the applicant has no right of access to the Video under ss. 15(1)(f), 15(1)(l), 15(2)(c), and 19(1)(a).

[6] Under s. 57(2), the applicant has the burden of proving that disclosure of personal information in the Video would not be an unreasonable invasion of third-party personal privacy under s. 22(1). However, it is up to the Ministry to establish that the information is personal information.[1] I will discuss the burden applicable to s. 25(1) below.

DISCUSSION

Background[2]

[7] The Ministry is responsible for BC Corrections. BC Corrections operates 10 correctional centres in the province (including the VIRCC), which together house an average of 1,800 inmates who are awaiting trial or serving a provincial custodial sentence of less than two years. BC Corrections maintains video surveillance systems in all of its correctional centres.

[8] According to affidavit evidence provided by the Ministry, the details of which the applicant disputes, the applicant has a significant criminal history, as

[1] Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.
[2] The information in this section is drawn from the parties' submissions and evidence.

well as a significant disciplinary record while in custody, which includes the assault of COs and of other inmates. The Ministry has designated him as a "repeat violent offender".

[9] On February 17, 2023, following an incident of self-harm, Ministry employees moved the applicant to a small "segregation cell" for medical observation. The Video shows a series of interactions between the applicant and several COs in that cell, including a physical altercation. A series of internal reviews found that the COs' use of force was not reasonable, lawful, or consistent with BC Corrections' training and policy. The last of these reviews concluded:

> After reviewing the totality of the circumstances of this incident I believe [that] had a more reasonable assessment been made from the [outset,] this incident would not have escalated in the manner that it did. In my opinion if the objective was [the applicant's] well being there were less forceful and intrusive ways to achieve that objective.[3]

[10] The applicant was later released from the VIRCC and was, at the time of the submissions in this inquiry, not in custody. Before the applicant made his access request, and in accordance with its own long-standing practice, the Ministry allowed the applicant's counsel to view the Video and take notes, but not to obtain a copy.

Record at issue

[11] The only responsive record in this case is the Video, which is 25 minutes and 46 seconds long. The Ministry provided the Video for my review. It depicts the applicant in a segregation cell, and his interactions, some involving force, with several COs. The copy of the Video that I reviewed had no sound.

Disclosure in the public interest – s. 25

[12] The applicant says that s. 25(1)(b) applies and requires the Ministry to disclose the Video proactively, even if the applicant had not made an access request. The relevant parts of s. 25 say 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
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> > (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

[3] Applicant's response submission at para 107.

> (b) the disclosure of which is, for any other reason, clearly in the public interest.
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> (2) Subsection (1) applies despite any other provision of this Act.

[13] Previous orders have established a two-part analysis to decide whether s. 25(1)(b) applies. First, I must decide whether the information concerns a matter that engages the public interest. The factors to be considered are:

- Is the matter the subject of widespread debate or discussion by the media, the Legislature, Officers of the Legislature or oversight bodies?
- Does the matter relate to a systemic problem rather than to an isolated situation?

[14] There may be situations where a matter is not the subject of public debate but there is nevertheless a clear public interest in disclosure – where, for example, the matter is not known to the public.[4]

[15] If the information is about a matter that engages the public interest, I must consider the nature of the information to determine whether it meets the high threshold for disclosure. The factors to consider include whether the disclosure would:

- contribute to educating the public about the matter;
- contribute in a substantive way to the body of information that is already available;
- facilitate the expression of public opinion or allow the public to make informed political decisions; or
- contribute in a meaningful way to holding a public body accountable for its actions or decisions.[5]

[16] The positive duty of disclosure imposed by s. 25(1)(b) exists only in the clearest and most serious of situations.[6] Whether disclosure is clearly in the public interest is contextual and determined on a case-by-case basis. The question is whether a disinterested and reasonable observer, knowing the contents of the information and knowing all the circumstances, would conclude that disclosure is plainly and obviously in the public interest.[7]

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[4] OIPC Investigation Report F16-02, https://www.oipc.bc.ca/documents/investigation-reports/1875 at 27.
[5] Order F20-42, 2020 BCIPC 51 (CanLII) at paras 37-41.
[6] Order 02-38, 2002 CanLII 42472 (BC IPC) at para 46, citing Order No. 246-1998, 1998 CanLII 1449 (BC IPC).
[7] Order F22-64, 2022 BCIPC 72 (CanLII) at para 32; OIPC Investigation Report F16-02, *supra* note 4 at 26-27.

Burden of establishing that s. 25(1) applies

[17] FIPPA does not expressly set out who has the burden of proving that s. 25 applies. The Ministry says that the applicant bears the burden of proving that disclosure of the Video is clearly in the public interest, relying on the Supreme Court of Canada's decision in *Ont. Human Rights Comm. v. Simpsons-Sears* for the proposition that absent statutory language to the contrary, a party seeking to establish a point bears the burden of doing so.[8] However, the Ministry does not cite any OIPC orders applying this proposition, and I am not aware of any.

[18] The applicant does not make a submission expressly about the burden of proof under s. 25, but says that under s. 57(1), it is up to the Ministry to prove that the applicant has no right of access to a record.[9]

[19] Previous orders have said that it is in the best interest of both parties to provide whatever evidence and arguments they have, but that it is ultimately up to the Commissioner to determine whether s. 25(1) applies.[10] I see no reason to depart from this interpretation, and I adopt it here.

Does the matter engage the public interest?

[20] I must first decide whether the Video relates to a matter that engages the public interest. The applicant says that s. 25(1)(b) applies to the Video because it depicts the use of excessive force against an inmate. I understand the applicant to be saying that disclosure is plainly and obviously in the public interest.[11]

[21] The applicant's request for review says that the treatment of people in prisons and jails, and the use of force against those people, are ongoing, systemic issues. In support of this position, the applicant refers to a report on the use of force in BC's prisons published by the West Coast Prison Justice Society.[12]

[22] The Ministry submits that the use of force by COs within BC Corrections facilities "is not a matter that attracts the public interest, either historically or

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[8] Ministry's initial submission at paras 9-10; *Ont. Human Rights Comm. v. Simpsons-Sears*, 1985 CanLII 18 (SCC) at para 28; cited in *Lemieux v. British Columbia (Superintendent of Motor Vehicles)*, 2019 BCCA 230 (CanLII) at paras 55 and 57.
[9] Applicant's response submission at para 120.
[10] 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; and Order F25-28, 2025 BCIPC 34 (CanLII) at paras 23-24.
[11] Applicant's response submission at paras 255-259.
[12] Applicant's request for review at para 25; West Coast Prison Justice Society, *Damage/Control: Use of force and the cycle of trauma in BC's federal and provincial prisons*, June 2019.

currently".[13] However, the Ministry also refers to the report *Standing Against Violence: A Review of BC Corrections*, which discusses, among other things, the use of force against inmates.[14]

[23] The evidence and argument on this point is slight. However, given the appearance of the topic in the published reports described above, I accept that the use of force against inmates in BCC facilities, especially the use of force that is unlawful, unreasonable, and contrary to BC Corrections policy, is the subject of public debate and is a systemic issue that is a matter of public interest. I therefore find that the first branch of the test has been met.

Is disclosure clearly in the public interest?

[24] I turn next to the question of whether disclosure of the Video is clearly in the public interest. The applicant says in his request for review that disclosure will "promote accountability in addressing the treatment of people in [BC Corrections'] custody", since the treatment of people in custody is often hidden from public view. He says that people in custody face barriers to accessing justice, and that the Video could provide evidence in civil or human rights claims.[15] In his submission, he says that the Video "falls into a narrowly defined category of information" – namely, video surveillance footage that shows COs using excessive force against one or more inmates – which should be proactively disclosed in the public interest.[16]

[25] The Ministry says that while the COs' use of force was later found to have been excessive, this excessiveness is not obvious to a viewer of the Video, so that the Video "is not likely to be of any interest to the public", and that in any event, the applicant "struck an officer before any force was used [by COs]".[17] It says that the applicant has provided no evidence or argument to demonstrate that disclosure of the Video is clearly in the public interest.[18]

[26] As I noted above, there is a high threshold required to engage s. 25(1)(b). The Video is about one particular interaction between the applicant and COs. I cannot see, and the applicant does not explain, how disclosure of the Video depicting this particular interaction would contribute to educating the public about the matter, contribute to the body of information that is already available, facilitate the expression of public opinion, or allow the public to make more informed political decisions. I also cannot see, and the applicant does not explain, how disclosure of the Video would contribute, in a meaningful way, to holding the

[13] Ministry's initial submission at para 133.
[14] Ministry's reply submission at footnote 26; BC Parliamentary Secretary for Corrections, *Standing Against Violence: A Safety Review of BC Corrections*, December 2014 at 5-6.
[15] Applicant's request for review at para 27.
[16] Applicant's response submission at para 259.
[17] Ministry's initial submission at para 133.
[18] Ministry's reply submission at para 41.

Ministry to account for its actions or decisions. Finally, I do not think the particular interest the applicant has in obtaining the Video to support a human rights complaint or civil claim on his own behalf can be generalized to engage the broader public interest.

[27] Considering all this, I do not think a disinterested and reasonable observer would conclude that disclosure of the Video is clearly in the public interest. As a result, I find that s. 25(1)(b) does not apply.

Disclosure harmful to law enforcement – s. 15

[28] Section 15 of FIPPA aims to prevent harm to law enforcement that could reasonably be expected to result from the disclosure of information. The Ministry's position is that ss. 15(1)(f), 15(1)(l), and 15(2)(c) each apply to the entire Video. The applicant's position is that none of these sections apply.

Standard of proof for harms-based exceptions

[29] Section 15 (and 19, which I discuss below) is about harm that could reasonably be expected to result if the information in dispute were disclosed. The Supreme Court of Canada has held that where the phrase "could reasonably be expected to" is used in access to information statutes, the standard of proof is a middle ground between that which is merely possible and that which is probable. A party must provide evidence well beyond or considerably above mere possibility in order to reach that middle ground.

[30] There must be a clear and direct connection between the disclosure of the withheld information and the anticipated harm.[19] General speculative or subjective evidence will not suffice.[20] The amount and quality of the evidence required will vary depending on the nature of the issue and the "inherent probabilities or improbabilities or the seriousness of the allegations or consequences".[21] As former Commissioner Loukidelis has explained:

> …harms-based exceptions to disclosure operate on a rational basis that considers the interests at stake. What is a reasonable expectation of harm is affected by the nature and gravity of the harm in the particular disclosure exception. There is a sharp distinction between protecting personal safety or health and protecting commercial and financial interests.[22]

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[19] Order 02-50, 2002 CanLII 42486 (BC IPC) at para 137; Order F13-06, 2013 BCIPC 6 (CanLII) at para 24.
[20] Order F08-03, 2008 CanLII 13321 (BC IPC) at para 27.
[21] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para 54, citing *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at paras 94 and 195-206.
[22] Order F08-02, 2008 CanLII 70316 (BC IPC) at para 48.

[31] Consistent with past OIPC orders dealing with ss. 15 and 19,[23] I have applied the above principles in considering the parties' arguments about harm under those sections. My analysis also recognizes that disclosure to an applicant should be treated as disclosure to the world.[24]

Safety of law enforcement officer – s. 15(1)(f)

[32] Section 15(1)(f) says that a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person.

Parties' positions

[33] The Ministry says that disclosure of the Video would endanger the lives and physical safety of BCC employees and individuals in custody because the applicant could identify the COs involved, creating a risk that the applicant would retaliate against those COs. The Ministry also says that if the Video were disclosed, the applicant and other inmates could study it with the goal of trading contraband or planning assaults on other inmates or staff. It says that disclosure of the Video would create a "broad risk" of increased stress for BCC staff, since disclosure would compromise the effectiveness of the protocols and practices designed to protect them. It adds that because the safety of individuals is at stake, the evidence must be approached with care and deliberation.[25]

[34] The Ministry also says that the Video itself is persuasive *in camera* evidence of how the information contained in it could allow the applicant or others to "plan more effective counter-movements or methods to avoid or escape" the control of COs.[26]

[35] To support its position on the reasonable expectation of harm, the Ministry provided an affidavit from the Assistant Deputy Warden at the VIRCC (the Assistant Deputy Warden). The Assistant Deputy Warden, who has previously worked as a CO, deposes that the applicant is an "extremely violent repeat offender". He says that disclosure of the Video would allow the applicant to identify exactly which COs were involved in the use of force incident and lead him to retaliate against them. The Assistant Deputy Warden further deposes that in his opinion, the applicant would study the Video in order to learn how COs position themselves and respond to threats. He says that if the Video were disclosed to the applicant, other inmates could study it for "illicit purposes,

[23] See, e.g., Order F21-46, 2021 BCIPC 54 (CanLII) at para 8; Order F24-11, 2024 BCIPC 15 (CanLII) at para 27.
[24] See, e.g., Order 03-33, 2003 CanLII 49212 (BC IPC) at para 44.
[25] Ministry's initial submission at paras 83-86 and 91-93.
[26] Ministry's initial submission at para 92.

including facilitating the trade in contraband, planning of physical assaults and attacks and undermining" BC Corrections staff.[27]

[36] The applicant says that since inmates can see COs as they go about their work, disclosure of the Video would not assist inmates in identifying them. He says that the Ministry's arguments about safety are speculative, and that its evidence amounts to the subjective opinion of an individual.[28]

[37] In reply, the Ministry says it has established a reasonable likelihood of harm. It says that the Assistant Deputy Warden has over 35 years of experience working in corrections, and 10 years of experience in the VIRCC. It says that the applicant has not provided evidence to refute the Assistant Deputy Warden's and Privacy Analyst's opinions.[29]

[38] The Ministry also submits in reply that the Legislature's use of the word "endanger" in s. 15(1)(f) means that "circumstances which could…reasonably be expected to *endanger* life or physical safety need not be as probable as those which could reasonably be expected to *harm*", so that the threshold for mandating disclosure is raised.[30]

Analysis and conclusions on s. 15(1)(f)

[39] I agree with the Ministry that vital third-party interests are engaged by s. 15(1)(f), and that the evidence for the application of that section must be approached with care and deliberation. This approach does not, however, alter the required standard of proof.[31] The Ministry must still prove that disclosure of information could reasonably be expected to endanger a person's life or physical safety, with a clear and direct connection established between disclosure and the alleged harm.

[40] I give some weight to the Assistant Deputy Warden's opinion evidence because of his 35 years of experience working in corrections. However, in my view, the Ministry has not established a clear and direct connection between disclosure of the Video and the endangerment of anyone's life or safety. The

[27] Affidavit of Assistant Deputy Warden at paras 25-32. The Ministry also provided an affidavit from its privacy analyst (the Privacy Analyst), who provides some statistics about violence in BC Corrections' correctional centres, and who points to a 2022 incident in which an inmate graphically threatened to retaliate against a CO with whom he had interacted. I do not think I can draw any conclusions from this example of threatened retaliation that are relevant to this case. The Privacy Analyst does not identify the source of the information, nor does she say how one inmate's threats against a CO have anything to do with the applicant in this case, or with the reasonable expectation of harm arising from disclosure of the Video.
[28] Applicant's response submission at paras 200-214.
[29] Ministry's reply submission at paras 19-21.
[30] Ministry's reply submission at paras 29 and 31; emphasis in original.
[31] Order 03-08, 2003 CanLII 49172 (BC IPC) at paras 20-21.

Ministry and the Assistant Deputy Warden have not explained, and I am unable to tell, what insights the applicant could glean from the Video that he does not already know from having been present during the events depicted in the Video, nor how he could use any insights gained to endanger anyone's life or safety.

[41] Moreover, the Ministry says that in the incident depicted in the Video, the applicant had already positioned himself "strategically" in his cell in order to have the opportunity to strike first.[32] On my review of the Video, just before the use of force begins, the applicant is standing with his back to the wall of the cell. I cannot tell what kind of strategy, if any, the applicant was pursuing in positioning himself in that way, and the Ministry does not adequately explain. The Ministry also does not say, and I am unable to tell, what improved positioning the applicant would be capable of if the Video were disclosed to him.

[42] I am mindful that disclosure to an applicant amounts to disclosure to the world, and that the applicant may show the Video to others. However, the Ministry's arguments and evidence do not establish a clear and direct connection between disclosure of the Video and any use the applicant or others could make of the Video that could reasonably be expected to endanger anyone's life or safety.

[43] In my view, the Ministry's arguments and evidence about the harm it anticipates do not reach the middle ground that is well beyond the mere possibility of harm, so it may not refuse to disclose the Video under s. 15(1)(f).

Harm to security of a property or system – s. 15(1)(l)

[44] Section 15(1)(l) says that a public body may refuse to disclose information to an applicant 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.

Parties' positions

[45] The Ministry says that the VIRCC satisfies the definition of a "property", and that the video surveillance system and security protocols satisfy the definition of a "system" under s. 15(1)(l).[33]

[46] The Ministry says that disclosure of the Video could reasonably be expected to harm the VIRCC and its video surveillance system because it discloses what parts of the cell it depicts are captured, where there are gaps in coverage, the camera angle, the lighting, and the quality of the image. The

[32] Ministry's initial submission at para 90; Affidavit of Assistant Deputy Warden at para 28.
[33] Ministry's initial submission at paras 80-82.

Ministry also says that the Video discloses how COs work together to respond to a violent incident.[34]

[47] The Assistant Deputy Warden deposes that correctional centres are inherently dangerous places, in which a high level of control must be maintained. He says that in his experience, information about security protocols that is disclosed will quickly become common knowledge among inmates. He says that all BC Corrections facilities are similarly designed and that staff are trained uniformly across the province. For this reason, he says that if the Video were disclosed, inmates would use the information in it to facilitate the trade in contraband, plan assaults, and otherwise undermine BC Corrections staff. Such use would, he says, compromise the integrity of BC Corrections' property and systems, which serve to protect staff.[35]

[48] The Privacy Analyst deposes that disclosure of the Video (and other videos) under FIPPA would create a "real risk" that the videos would be compiled and "used collectively to learn about correctional centres in such a way that could undermine and threaten the safety of both staff and inmates". She refers to a "shift in strategy" by inmates and their representatives toward making access requests under FIPPA, rather than having the representatives view the videos in accordance with the Ministry's practice.[36]

[49] The applicant concedes that the VIRCC is a property and that the video surveillance system is a system, but disputes that the security protocols are a system, saying that they are instead "loose arrangements", and that in any event, there is much publicly available information about them.[37]

[50] The applicant says that disclosure cannot reasonably be expected to lead to the harm the Ministry foresees. He says the Video does not reveal any information an inmate would not already know. The applicant also provided 34 short video clips about various BC Corrections programs and facilities. These were produced by the Ministry and uploaded to YouTube between 2010 and 2021. The applicant says that these clips contain "highly detailed, intimate information about all the BC Jails' property, systems, training protocols, and policies", with the result that disclosure of the Video cannot reasonably be expected to lead to any harm to a property or system.[38]

[51] The Ministry says in reply that it provided evidence to establish that disclosure of the Video will pose a "substantial risk to VIRCC, as well as all other correctional centres in BC". It also says that the YouTube clips were created for

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[34] *Ibid* at paras 87-89.
[35] Affidavit of Assistant Deputy Warden at paras 9-12 and 29-32.
[36] Affidavit of Privacy Analyst at paras 12-13.
[37] Applicant's response submission at paras 192-193 and 216-217.
[38] *Ibid* at paras 78-80, 87, 199-201, and 211.

publication, with the advice of BC Corrections employees, and do not show sensitive locations.[39]

[52] Also in reply, the Ministry provided an affidavit from BC Corrections' Deputy Provincial Director (the Deputy Provincial Director), who deposes that the YouTube clips do not reveal things that the Video would, such as the location and angle of video cameras, blind spots, image quality, and staffing levels. In addition, she says that the YouTube clips show only a "minimal snapshot" of the tactical training COs receive.[40]

Analysis and conclusions on s. 15(1)(l)

[53] I find that the VIRCC is a "property" and that the VIRCC's video surveillance system and security protocols are "systems" for the purposes of s. 15(1)(l).[41] The question I must decide, therefore, is whether disclosure of the Video could reasonably be expected to harm the security of that property or those systems.

[54] The Ministry says that disclosure of the Video could reasonably be expected to harm the security of the VIRCC property and other similarly designed facilities. The Video depicts a single small cell from the point of view of a camera mounted in its corner. I cannot see how anyone could study the Video with a view to exploiting the layout of VIRCC or any other facility. The Ministry does not explain what advantage inmates could obtain by learning the layout of the cell depicted in the Video, or why the layout is not obvious to anyone who has occupied such a cell. I am not satisfied that disclosure of the Video could reasonably be expected to undermine the security of the Ministry's properties.

[55] I am likewise not satisfied that disclosure of the Video could reasonably be expected to harm the security of the VIRCC's video surveillance system because of what it may reveal about blind spots in the coverage. I find that the segregation cell is small and any blind spots appear to be limited. Furthermore, any blind spots are likely obvious to anyone who can see the camera's position.[42] The Ministry has not said the camera is hidden, and I conclude that the camera is easily visible and accessible to anyone whose images are being recorded because COs cover the camera with their hats several times during the course of the Video.

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[39] Ministry's reply submission at paras 14-18.
[40] Affidavit of Deputy Provincial Director at paras 7-14.
[41] See, e.g., Order F08-03, *supra* note 20 at para 26; Order F15-72, 2015 BCIPC 78 (CanLII) at paras 26-27; and Order F11-12, 2011 BCIPC 15 (CanLII) at para 75.
[42] For a similar finding, see Order F08-13, 2008 CanLII 41151 (BC IPC) at para 45; upheld on this point on judicial review: *British Columbia (Public Safety and Solicitor General) v. Stelmack*, 2011 BCSC 1244.

[56] With respect to the protocols the COs use and their training, I am likewise not satisfied that disclosure of the Video could reasonably be expected to harm the security of this system. The Video shows how COs responded to one particular situation. I cannot see, and the Ministry has not adequately explained, what general conclusions inmates or members of the public could draw from this information.

[57] To summarize, I find that the Ministry has not established a clear and direct link between disclosure of the Video and a reasonable expectation of harm to its property or systems. As I said above in addressing the standard of proof for harms-based exceptions, a public body's evidence and argument must be "well beyond" or "considerably above" the mere possibility of harm. In my view, the Ministry's evidence and argument do not reach that standard here. Therefore, The Ministry is not authorized to withhold the Video under s. 15(1)(l).

Harm to proper custody or supervision – s. 15(2)(c)

[58] Section 15(2)(c) says that a public body may refuse to disclose information to an applicant if the information is about the history, supervision, or release of a person who is in custody or under supervision and the disclosure could reasonably be expected to harm the proper custody or supervision of that person. The parties point out, and I agree, that this provision has not yet been considered in an OIPC order.

Parties' positions

[59] The Ministry says that the applicant is in the community under supervision. It says that in the incident shown in the Video, the applicant strategically positioned himself in his cell in order to assault a CO. It says that the applicant has a significant history of violence, and that if the Video were disclosed to him, he would study the Video to undermine the ability of COs to engage with him in the future if he returns to custody.[43]

[60] The Ministry refers to the evidence of the Assistant Deputy Warden, who says he believes that if the Video were disclosed, the applicant would study it with the goal of increasing his knowledge about how COs position themselves, communicate, and respond to threats of violence. He says the applicant would also be able to know where there are gaps in surveillance coverage in the cell, and would use the information in the Video to undermine the efforts of COs in the future.[44]

[43] Ministry's initial submission at paras 96-100.
[44] Affidavit of Assistant Deputy Warden at para 28.

[61] The applicant concedes that the Video is about his history in custody. I understand him to be saying, however, that since he is no longer in custody, no further harm can come to his custody or supervision, so s. 15(2)(c) does not apply. He also says that the harms the Ministry alleges are speculative, and that the Ministry has failed to establish a direct connection between disclosure of the Video and the harms it foresees.[45]

[62] The Ministry says in reply that the applicant is likely to return to custody, and that s. 15(2)(c) should be interpreted in light of the reality that many offenders do so return. It says, further, that the applicant is a "violent individual".[46]

Analysis and conclusions on s. 15(2)(c)

[63] In my view, s. 15(2)(c) requires a public body to establish two things:

> i) that the disputed information is about the history, supervision, or release of a person who is in custody or under supervision; and
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> ii) that disclosure of the disputed information could reasonably be expected to harm the proper custody or supervision of that person.

[64] On its face, the Video is about the applicant's history and supervision in custody. In addition, the Ministry says, and the applicant does not dispute, that the applicant is in the community under supervision, so I find that the first branch of the test is met.

[65] However, the Ministry has not sufficiently explained what insights the applicant could glean from the Video that would allow him to strategically position himself in a small rectangular cell or take any other action, and how these insights or actions could reasonably be expected to harm BCC's custody or supervision of him. I find that the Ministry has not established a clear and direct link between disclosure of the Video and harm to the proper custody or supervision of the applicant. On the materials before me, I cannot see how disclosure could reasonably be expected to cause the harm the Ministry foresees, and as a result, I find that s. 15(2)(c) does not apply.

Disclosure harmful to safety – s. 19

[66] Section 19(1)(a) says that 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 threaten anyone else's safety or mental or physical health. The Ministry says that s. 19(1)(a) applies to the Video, and the applicant says it does not.

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[45] Applicant's response submission at paras 233-238.
[46] Ministry's reply submission at paras 32-37.

[67] I have explained the "reasonable expectation of harm" standard at paragraphs 29 to 31 above. I will apply that standard in my analysis of s. 19(1)(a).

[68] With respect to anticipated harm to mental health, the prospect of a person's being made upset is not enough to engage s. 19(1)(a), but the section may be applied where disclosure can reasonably be expected to cause serious mental distress or anguish.[47]

Parties' positions

[69] The Ministry says that disclosure of the Video could reasonably be expected to "seriously threaten" the mental health of Corrections employees because disclosure would create a risk of retaliation by the applicant against them, since he could identify them from the Video. It says that the applicant has attacked peace officers before and has "few, if any, qualms" about doing so. It says that the possibility of retaliation would cause stress and fear for the COs involved in the incident depicted in the Video.[48]

[70] The Assistant Deputy Warden deposes that the applicant is "classified as a repeat violent offender", and the exhibit attached to his affidavit is a "client history report" prepared by the Ministry which sets out the applicant's disciplinary history while in custody. The Assistant Deputy Warden points out that the disciplinary history includes "assaulting correctional officers, assaulting [other] inmates, engaging in activity that is likely to jeopardize the Corrections Centre, threatening to assault, and willful destruction of property".[49]

[71] The Assistant Deputy Warden also says he believes disclosure of the Video would "greatly increase the fear and anxiety (and therefore negatively impact the mental health) of those involved in [the incident depicted in the Video], as well as to those who have experienced [the applicant's] violent behaviours in the past".[50] He expresses an opinion that if the Video is disclosed to the applicant it would be disclosure to the world and such disclosure would:

- cause inmates in BC Corrections facilities to study it for illicit purposes;
- result in corrections staff losing their sense of comfort from the fact that the Ministry does not make video footage available to inmates; and

[47] Order 00-02, 2000 CanLII 8819 (BC IPC) at 5; Order F20-54, 2020 BCIPC 63 (CanLII) at para 16.
[48] Ministry's initial submission at paras 108-111.
[49] Affidavit of Assistant Deputy Warden at paras 14-15 and Exhibit A.
[50] Affidavit of Assistant Deputy Warden at para 27.

- compromise the integrity of the protective measures in use at BC Corrections facilities.[51]

[72] The applicant says that the only evidence the Ministry offers for the harm it foresees is the Assistant Deputy Warden's belief that disclosure of the Video would negatively affect the mental health of the COs involved in the incident. It says the Ministry has not provided any evidence of the applicant's "retaliatory behaviours" or "violent and retaliatory nature", and that he did not retaliate against any COs in the months following the incident depicted in the Video, even though this was the time that the risk of retaliation would have been greatest, the events then being fresh in the applicant's mind.[52]

[73] The applicant says that the Assistant Deputy Warden's evidence on this point amounts to mere personal opinion and speculation, which is insufficient to discharge the Ministry's burden of proof. He says that the Ministry did not provide evidence demonstrating a link between disclosure of the Video and a reasonable expectation that anyone's health or safety would be threatened.[53]

[74] The Ministry says in reply that the Assistant Deputy Warden has long experience of working in correctional centres, and the VIRCC in particular, and is therefore well placed to assess the harms that could reasonably be expected to result from disclosure of the Video. It says that the applicant has not provided any evidence to refute the Assistant Deputy Warden's evidence.[54]

[75] The Ministry says further that the words "threaten anyone else's safety or mental or physical health" should be interpreted as contrasting with the provision in s. 19(2), which says that a public body may refuse to disclose personal information about an applicant if the disclosure could reasonably be expected to "result in immediate and grave harm to the applicant's safety or mental or physical health". It says that s. 19(2) sets out a more stringent standard for its application than does s. 19(1)(a), saying that "the Legislature has gone one step further away from requiring probability of harm" in the application of s. 19(1)(a), compared with s. 19(2).[55]

Analysis and conclusions on s. 19(1)(a)

[76] I cannot accept the Ministry's argument that the language in s. 19(2) has any bearing on the standard of proof for s. 19(1)(a). The *nature* of the harm each provision is designed to protect against differs, but the standard of proof is the same. The standard in both sections is a reasonable expectation of a specified

[51] Affidavit of Assistant Deputy Warden at paras 29-32.
[52] Applicant's response submission at paras 244-248.
[53] Applicant's response submission at paras 249-251.
[54] Ministry's reply submission at paras 26-27.
[55] Ministry's reply submission at paras 28-29.

threat or harm resulting from disclosure.[56] This is the standard for all provisions in FIPPA that use the "could reasonably be expected to" language. Nothing about the wording or context of ss. 19(1)(a) and 19(2) persuades me that the reasonable expectation of harm under s. 19(1)(a) should be evaluated on a different standard.

[77] Keeping this in mind, I find that the Ministry has not met its burden of proving a reasonable expectation of a threat to anyone's health or safety resulting from disclosure. The Ministry's evidence and arguments have not persuaded me that there is a clear and direct connection between disclosure of the Video and such threats. While I accept that the evidence shows that correctional centres are inherently dangerous places which can be stressful for COs, and that the applicant has a lengthy disciplinary history that includes violent acts, the Ministry has not sufficiently shown why or how disclosure of the Video could reasonably be expected to result in the harm it fears. The requisite clear and direct connection is missing.

[78] The Ministry says in a footnote that there is no basis for the OIPC to substitute its own opinion or belief for that of the affiants.[57] In finding that the Ministry has not established that disclosure could reasonably be expected to threaten anyone's health or safety under s. 19(1)(a), I have not substituted my own opinion for that of the Ministry's affiants. I have weighed and considered their evidence, have accepted much of it, and have found that the Ministry still has not established a clear and direct connection between disclosure of the Video and the anticipated harm.[58] I find the Ministry has not provided evidence that is "well beyond" or "considerably above" a mere possibility of harm in order to reach the middle ground that the Supreme Court of Canada has said is necessary to meet the standard of proof.

[79] To conclude, in my view the Ministry's arguments and evidence are too speculative for a reasonable person, unconnected with the matter, to conclude that disclosure of the Video could reasonably be expected to threaten anyone's safety or mental or physical health. I therefore find that s. 19(1)(a) does not apply.

Disclosure harmful to third-party personal privacy – s. 22

[80] Section 22(1) of FIPPA provides that a public body must refuse to disclose personal information whose disclosure would be an unreasonable invasion of

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[56] For orders interpreting the standard in relation to s. 19(2), see, e.g., Order F22-25, 2022 BCIPC 27 (CanLII) at paras 26-37; and Order 02-32, 2002 CanLII 42466 (BC IPC) at paras 9-11 and 17.
[57] Ministry's reply submission at footnote 18, citing *University of British Columbia v. Lister*, 2018 BCCA 139 at para 47; and *College of Physicians and Surgeons of British Columbia v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 354 at para 99.
[58] For a similar finding, see Order F24-68, 2024 BCIPC 78 (CanLII) at para 64.

a third party's personal privacy. The analytical framework for s. 22 is well established and I will apply it in this case. It has been summarized in this way:

> This section only applies to "personal information" as defined in FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy.[59]

[81] The Ministry says that disclosure of the Video would be an unreasonable invasion of the personal privacy of the COs depicted in it. The applicant says that disclosure would not be an unreasonable invasion of their privacy.

Personal information – s. 22(1)

[82] The first step in the s. 22 analysis is to determine whether the disputed information is personal information. Both "personal information" and "contact information" are defined in Schedule 1 of FIPPA:

> "personal information" means recorded information about an identifiable individual other than contact information;
>
> "contact information" means information to enable an individual at a place of business to be contacted and included the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

[83] The parties agree that the images of the COs in the Video are the COs' personal information,[60] and I find that they are.[61] I do not find that anything else in the Video is third-party personal information because it is not reasonably capable of identifying individuals other than the applicant. I find that none of the information in the Video is contact information.

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

[84] The next step in the s. 22 analysis is to consider whether disclosure of any of the withheld personal information would not be an unreasonable invasion of a third party's personal privacy. Section 22(4) sets out circumstances where

[59] Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.
[60] Ministry's initial submission at para 42; applicant's response submission at para 153.
[61] For a similar finding, see Order F12-12, 2012 BCIPC 17 at paras 22-23.

disclosure of personal information would not be an unreasonable invasion of a third party's privacy.

Position, functions, or remuneration – s. 22(4)(e)

[85] Section 22(4)(e) provides that disclosure of personal information is not an unreasonable invasion of a third party's privacy where the information is about the third party's position, functions, or remuneration as an employee of a public body.

[86] The Ministry says that the personal information in the Video is not about the COs' position, functions, or remuneration; rather, it is about the response of individual COs to a stressful, violent incident. It shows how they moved and interacted with each other, and whether they are "obese or fit, tall or short, fully mobile or not, whether they present as male or female, wear glasses, have long or short hair or perhaps no hair at all, or appear to be of a certain racial or ethnic origin".[62]

[87] The applicant submits that s. 22(4)(e) applies to all of the personal information in the Video because the information depicts the COs' tangible activities in the normal course of the performance of their duties.[63]

[88] In Order F12-12, the adjudicator considered the application of s. 22(4)(e) to the video images of a CO taken in the Vancouver City Jail during the applicant's incarceration. In that case, the images of the CO's body had already been disclosed to the applicant, so the only information in dispute were the images of the CO's face. She found that s. 22(4)(e) did not apply to the CO's facial images because they did not provide information about the CO's position, functions or remuneration as a public body employee. Although the CO's body images were not withheld, she seemed satisfied that s. 22(4)(e) would have applied if they had been because they depicted the CO's "tangible activities" in the normal course of their work.[64]

[89] In Order F15-42, by contrast, the adjudicator found that s. 22(4)(e) did not apply to the facial and body images of a school district teacher and a youth worker who were recorded interacting with a student over a 10-day period in a classroom. The adjudicator found that these public body employees were identifiable even if their facial images were severed "due to the unsevered portions of their bodies, their clothing and the very specific context in which they were recorded", namely, in a classroom over a 10-day period in which only a few public body employees were recorded. Because of this, the adjudicator found that severance of the employees' facial images would not make the remaining

[62] Ministry's initial submission at paras 45-49.
[63] Applicant's response submission at paras 154-160.
[64] Order F12-12, *supra* note 61 at paras 29-30.

personal information that would be disclosed (i.e., the images of the employees' bodies) "merely about their functions" as public body employees, so that s. 22(4)(e) did not apply to either the facial or the bodily images of the public body employees.[65]

[90] The adjudicator in Order F15-42 also adopted the reasoning from Order F2008-020, an order of the Alberta Information and Privacy Commissioner, that a video recording of an employee is more likely to be "about" a "specific employee, their actions and how they do their job compared to a written record created in the course of an employee's ordinary functions, tasks and activities", owing to the larger amount of detail (including "more private or personal information") that usually characterizes video footage, compared to written records.[66]

[91] In Order F24-10, meanwhile, the adjudicator considered a series of short video recordings of a bus driver and transit security officer. She found that these videos contained "no more personal information than would a dry, written narrative of [the employees'] actions", with the result that the videos were "objective, factual statements about what [the employees] did in the normal course of discharging their job duties" so that s. 22(4)(e) applied to them. The adjudicator also found that s. 22(4)(e) applied to the public body employees' facial images because they were "in focus for only a few seconds and convey[ed] no specific emotion or information", and that in any event it was not an unreasonable invasion of privacy to disclose the identity of a public body employee in the context of information that relates to their ordinary employment responsibilities.[67]

[92] In this case, the Video shows the COs engaging in the tangible activities of their jobs. It is an objective, factual account of what they did. On the other hand, the COs' use of force was later found to be excessive and unlawful, suggesting that the use of force depicted in the Video is somewhat outside of the COs' normal duties. In contrast with the circumstances in Order F24-10, here the Video contains more (and more detailed) personal information than a "dry, written narrative" would. I accept the Ministry's submission that the Video shows how the individual COs moved and interacted with the applicant and with each other. In addition, the COs' facial images are in focus for much longer than a few seconds at a time. While in my view, this case is close to the line, having considered the relevant factors, I find that s. 22(4)(e) does not apply to the COs' body or facial images.

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[65] Order F15-42, 2015 BCIPC 45 (CanLII) at paras 33-37.
[66] *Ibid* at paras 33-35; Order F2008-020, 2009 CanLII 90936 (AB OIPC) at para 114.
[67] Order F24-10, 2024 BCIPC 14 (CanLII) at paras 52-58.

[93] The parties do not address any other s. 22(4) provisions, and I find that none apply to the personal information in the Video.[68]

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

[94] The third step in the s. 22 analysis is to consider whether any of the presumptions set out in s. 22(3) apply. If one or more do, disclosure of the information is presumed to be an unreasonable invasion of a third party's personal privacy. The Ministry submits that the presumptions set out in ss. 22(3)(d) and (i) apply. The applicant submits that no such presumptions apply.

Employment or occupational history – s. 22(3)(d)

[95] Section 22(3)(d) provides that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where the information relates to the third party's employment, occupational, or educational history.

[96] The Ministry says that the personal information in the Video provides qualitative details about how particular COs did their jobs on a particular day, so that s. 22(3)(d) applies.[69] The applicant says that the Video depicts the COs acting in the normal course of their duties, so that s. 22(3)(d) does not apply.[70]

[97] In Order F15-42, the adjudicator found s. 22(3)(d) to apply to both the facial and body images of public body employees because those images revealed how the employees did their jobs, so that the images were about the employees themselves rather than their "ordinary job functions, tasks and activities".[71]

[98] Here, I find that the COs' images in the Video show exactly how particular COs did their jobs on a particular day. I also find that the images in the Video show how the COs performed their jobs in circumstances that were later investigated to determine whether their use of force was reasonable, lawful, and consistent with BC Corrections' training and policy. Given that context, I find that the COs' images are part of their employment history, and that s. 22(3)(d) applies to them.

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[68] The applicant says that "the personal information at issue falls under sections 22(4)(a) [the third party has consented to or requested the disclosure in writing], 22(4)(b) [there are compelling circumstances affecting anyone's health or safety and notice of the disclosure is mailed to the third party], and 22(4)(c) [an enactment authorizes disclosure]", but does not make any arguments about those sections: applicant's response submission at para 161.
[69] Ministry's initial submission at paras 52-55.
[70] Applicant's response submission at paras 171-172.
[71] Order F15-42, *supra* note 65 at paras 35-37.

Racial or ethnic origin – s. 22(3)(i)

[99] Section 22(3)(i) provides that disclosure of a third party's personal information is presumed to be an unreasonable invasion of the third party's privacy where the personal information indicates the third party's racial or ethnic origin.

[100] The Ministry says that the images of the COs in the Video "could" reveal the COs' racial or ethnic origin, so the presumption in s. 22(3)(i) applies.[72] The applicant says that the Ministry has not made any arguments about how the COs' racial or ethnic origins are discernible from the Video.[73]

[101] The applicant appears to take the position that the standard of proof required for s. 22(3)(i) to apply is that the personal information must "conclusively" indicate a third party's racial or ethnic origin.[74] I do not agree. The wording of the provision has no such requirement for conclusiveness; personal information that *indicates* a third party's racial or ethnic origin will come under the presumption. In my view, anyone viewing the COs' facial images could discern the racial or ethnic origins of the COs, so s. 22(3)(i) applies to those facial images. However, since the COs are uniformed and, in most cases, wear gloves, I do not find that their body images indicate their racial or ethnic origins.

[102] The parties do not make submissions about any other s. 22(3) presumptions, and on my review of them in light of the personal information, I find that none apply.

Relevant factors – s. 22(2)

[103] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those listed in s. 22(2). It is at this step that the applicable s. 22(3) presumptions – in this case ss. 22(3)(d) and (i) – may be rebutted. The parties raise ss. 22(2)(a), (c), and (e); I will address each in turn, as well as any unlisted factors I find to be relevant to the question of whether disclosure of the personal information in the Video would unreasonably invade the COs' privacy.

Scrutiny of public body – s. 22(2)(a)

[104] Section 22(2)(a) asks whether disclosure of the personal information is desirable for subjecting the activities of a public body to public scrutiny.

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[72] Ministry's initial submission at para 57.
[73] Applicant's response submission at paras 174-175.
[74] *Ibid* at para 174.

[105] The Ministry says that s. 22(2)(a) may apply, but has "very little weight" in the circumstances of this case, since public scrutiny of the Ministry's activities has already been achieved by allowing the applicant's lawyer to view the Video.[75]

[106] The applicant says that the use of force against inmates is a systemic concern: the inside of prisons is often hidden from public view and inmates experience barriers to accessing information about their experiences there. Disclosure of the Video, he says, would also "expose BCC's illegal use of segregation, which is closely connected to the increased use of force". He also says that disclosure would allow public scrutiny of the Ministry's policy of allowing only inmates' lawyers to view video footage.[76]

[107] The Ministry says in reply that the prisoners' legal advocacy organization that is assisting the applicant has already viewed "numerous videos from correctional centres" in order to compile a report that is available publicly, so that the public's ability to scrutinize the Ministry's activities would not be enhanced by disclosure.[77]

[108] I do not think, as the Ministry suggests, the fact that the advocacy organization has reviewed and publicized the contents of other videos taken in correctional centres means that no further public scrutiny is possible with the disclosure of the information in the Video that is in issue in this case. The circumstances of each correctional centre video recording are unique.

[109] However, I also do not think the Video reveals anything further about the Ministry's policy of allowing inmates' lawyers to view video footage. That policy is already public, and the applicant does not explain how disclosure of the personal information in the Video would allow the public to scrutinize it.

[110] Previous orders have said that the purpose of s. 22(2)(a) is to make public bodies more accountable.[78] In the circumstances, I find that disclosure of the COs' body images would contribute to the public's ability to scrutinize the Ministry's activities. The COs were acting on behalf of the Ministry, and were guided by Ministry policies on the use of force. I therefore find that these images reveal something about the Ministry's policies and activities, the disclosure of which would contribute to the public's ability to scrutinize those policies and activities, particularly where, as is the case here, the use of force has been found to be excessive. I also find that disclosure of these images would allow more public scrutiny than merely allowing the applicant's lawyer to view the Video. I therefore find that this factor weighs in favour of disclosure of the COs' body images.

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[75] Ministry's initial submission at paras 59-63.
[76] Applicant's response submission at paras 177-183 and 185.
[77] Ministry's reply submission at paras 8-9.
[78] See, e.g., Order F18-47, 2018 BCIPC 50 (CanLII) at para 32.

[111] However, I do not think disclosure of the COs' facial images would contribute anything to the public's ability to scrutinize the Ministry's activities (as opposed to the activities of individuals).[79] Therefore, I find that s. 22(2)(a) is not a factor that weighs in favour of disclosing the facial images.

Fair determination of applicant's rights – s. 22(2)(c)

[112] Section 22(2)(c) asks whether the withheld personal information is relevant to a fair determination of the applicant's rights. Previous orders have established a four-part test that must be met in order for s. 22(2)(c) to apply in favour of disclosure:

> 1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
>
> 2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
>
> 3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
>
> 4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.[80]

[113] The applicant says that all of the criteria for s. 22(2)(c) are met in this case. He says the legal right at issue is a right of action to seek damages from BC Corrections in a tort claim, and that he intends to commence such an action. He says that the information in the Video is central to his tort claim and is the best evidence for proving that claim. As a result, he says, s. 22(2)(c) weighs heavily in favour of disclosure.[81] He also says that former inmates are often not believed about their experiences in custody, and that disclosure of the personal information will assist him in hiring a lawyer on a contingency basis to begin a civil suit.[82]

[114] In reply, the Ministry says that the applicant has not provided any evidence to support his assertions. It says that in any event, the applicable limitation period for a civil action has now passed, so that s. 22(2)(c) cannot apply.[83]

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[79] For orders discussing the distinction between scrutiny of a public body and scrutiny of individuals, see, e.g., F24-48, 2024 BCIPC 56 (CanLII) at para 105; Order F12-12, *supra* note 61 at para 38.
[80] Order 01-07, 2001 CanLII 21561 (BC IPC) at para 31.
[81] Applicant's response submission at para 184.
[82] *Ibid* at para 186.
[83] Ministry's reply submission at para 10.

[115] With respect to the first branch of the test, I have no difficulty finding that the right identified by the applicant – to seek damages in tort – is a right based on the common law.

[116] With respect to the second branch, while there is no evidence on this point beyond the applicant's assertion that he intends to begin a civil action, and while recognizing that an applicant's statement of intention is not necessarily determinative,[84] I am satisfied that he is contemplating a proceeding. The Ministry does not say how it calculated the applicable limitation period. It provides no evidence or argument, beyond bare assertion, that it has elapsed. I therefore make no finding about any applicable limitation period.

[117] As for the third branch, I am satisfied on my review of the Video that it has significance for the applicant's contemplated claim. The Video shows the very acts which will form the factual basis of any such claim.

[118] Finally, I find that the fourth branch of the test has been met with respect to the COs' body images, but not their facial images. The applicant has not said that he plans to bring his claim against the individual COs depicted in the Video.[85] In my view, the Video with the COs' body images disclosed and the facial images withheld would still provide an evidentiary foundation for the applicant's contemplated civil claim, as he has described it, and will also assist a lawyer in assessing the strength of his claim. I therefore find that the body images are necessary to prepare for the proceeding, but that the facial images are not. As a result, s. 22(2)(c) weighs in favour of disclosure of the COs' body images, but does not apply to their facial images.

Unfair exposure to harm – s. 22(2)(e)

[119] The Ministry says that disclosure of the Video would expose the COs and other inmates to the harms it foresees under ss. 15 and 19, described above.[86] The applicant does not make a submission directly on s. 22(2)(e).

[120] For s. 22(2)(e) to apply, a party must establish that disclosure of personal information will expose a third party to harm, and that such exposure would be unfair. I found above that the harms-based exceptions in ss. 15 and 19 do not apply to the Video because its disclosure could not reasonably be expected to

[84] Order F16-36, 2016 BCIPC 40 (CanLII) at para 50.
[85] In Order F25-24, 2025 BCIPC 30 (CanLII), the adjudicator found that the fourth branch of the s. 22(2)(c) test had been satisfied where the applicant said she required the names of certain individual public body employees so she could add them as defendants in a civil claim that was already underway: at paras 129-133. Here, however, the applicant has not said that he needs to know the COs' identities for the purposes of his civil claim; he speaks only of a contemplated claim against BC Corrections.
[86] Ministry's initial submission at para 68.

cause the harms contemplated in those exceptions. I therefore cannot find that disclosure *will* expose the COs to harm. In addition, the Ministry has not explained how, if such exposure existed, it would be unfair. I find that s. 22(2)(e) is not a relevant factor in this case.

Applicant's existing knowledge

[121] Previous orders have established that an applicant's existing knowledge of the contents of personal information can be a factor favouring disclosure.[87]

[122] Although the parties do not address this point, I am satisfied that this is a relevant factor that favours disclosure of all of the withheld personal information – both the COs' body images and facial images. The applicant was personally and intimately involved in the events depicted in the Video, and is therefore highly likely to know the contents of the personal information, including how the COs did their jobs.

Individuals not identifiable if facial information severed

[123] In Order F24-67, the adjudicator found that s. 22(1) did not apply to certain withheld information because when other information was severed from the record, the remaining information was no longer personal information.[88]

[124] Leaving to one side the question of whether personal information remains personal information if other information is severed from a record, I do not think the individual COs would be identifiable if their facial information were severed from the Video. The COs wear identical uniforms and, in most cases, gloves. Their bodies appear similar in shape and size. I cannot see how disclosure of their body images would be an unreasonable invasion of their personal privacy if they were no longer identifiable. In these circumstances, I find this to be a factor strongly favouring disclosure of the COs' body images.

Conclusion on s. 22(1)

[125] To summarize, I have found that the portions of the Video depicting the COs are the personal information of the COs. I have found that no s. 22(4) circumstances apply to the personal information. I have found that s. 22(3)(d) applies to all of the personal information, and that s. 22(3)(i) applies to the COs' facial images, so that disclosure of those images is presumptively an unreasonable invasion of their privacy.

[87] See, e.g., Order F17-05, 2017 BCIPC 6 (CanLII) at paras 54-60.
[88] Order F24-67, 2024 BCIPC 77 (CanLII) at para 135.

[126] Considering the relevant factors for and against disclosure, I find that the presumption has been rebutted with respect to the COs' body images, but not with respect to their facial images. As I found above, two separate s. 22(3) presumptions apply to the facial images, and the sole factor favouring disclosure of them, the applicant's existing knowledge, is not strong enough to rebut those presumptions. The Ministry must therefore disclose the body images to the applicant, but must refuse to disclose the facial images.

Reasonable severing – s. 4(2)

[127] Section 4(2) provides that an applicant's right of access to a record does not extend to information that is subject to a disclosure exception, but if that excepted information can reasonably be severed from a record, the applicant has a right of access to the remainder of the record.

[128] The Ministry says it is not possible or reasonable to sever and disclose portions of the Video because all of the information in it is excepted from disclosure under one or more sections of FIPPA. The Ministry refers to several OIPC orders where adjudicators have found that severing and disclosing further information would result in the applicant receiving meaningless and disconnected snippets. It concludes: "Section 4(2) does not require the Ministry to disclose the remaining information because there is none".[89]

[129] The applicant says that the Ministry has failed to prove that any exceptions to disclosure apply to the Video or any of the information in it. He says that even if those exceptions applied to part of the Video, the Ministry was obligated to sever and disclose the remainder.[90]

[130] I wrote to the parties to invite submissions and evidence on the technical feasibility of editing the Video so that the identities of the COs would be obscured. The Ministry submitted that this was technically feasible, but said that such severing was not reasonable as the remaining portions of the Video would have no informational value.[91]

[131] I found above that none of the claimed ss. 15 and 19 harms-based exceptions to disclosure apply to the Video. The Ministry does not explain why, if the COs' facial images were severed, the remaining information in the Video would not be intelligible. The orders to which the Ministry refers involved information such as report headings, dates and subject lines of emails, and spreadsheet column descriptions. The information in the Video is of a very

[89] Ministry's initial submission at paras 112-125, citing Order F16-12, 2016 BCIPC 14 at paras 37-39; Order F17-39, 2017 BCIPC 43 (CanLII) at para 138; and Order F24-36, 2024 BCIPC 44 (CanLII) at para 115.
[90] Applicant's response submission at paras 263-274.
[91] Ministry's letter of April 7, 2025.

different character. The events depicted in the Video are clearly intelligible even without the facial images. I therefore find that those facial images can reasonably be severed by obscuring them, and the remainder of the Video disclosed.

Duty to assist – s. 6(1)

[132] Section 6(1) provides that a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately, and completely. The applicant says the Ministry has breached this duty but, as far as I can tell, does not say why.[92] The Ministry says it has upheld its obligations under s. 6(1).[93]

[133] The Ministry acknowledged receipt of the applicant's request on April 13, 2023 and responded on May 9, 2023.[94] The Ministry did not disclose the Video because it took the position that one or more exceptions to disclosure applied to it. In the absence of any argument or evidence to the contrary, I find that the Ministry has performed its duty to the applicant under s. 6(1).

Copy of the record to be provided with response – s. 9(2)

[134] Section 9(2) provides that if an access applicant has asked for a copy under s. 5(2) and the record can reasonably be reproduced, a copy of the record or part of the record must be provided with the public body's response. There is no dispute that the Ministry did not provide a copy of the Video to the applicant because it took the position that various exceptions to disclosure applied to it in its entirety.

[135] The applicant says that the Ministry has failed to prove any exceptions to disclosure apply to the Video and that, alternatively, if any exceptions apply to only part of the Video, the Ministry was obligated to sever and disclose the remainder. He says the Ministry's arrangement to have his counsel view the Video was insufficient for the purposes of s. 9(2).[95] The Ministry says in reply that it has upheld its obligations under s. 9(2).[96]

[136] I do not think the Ministry's arrangement for the applicant's counsel to view the Video is relevant to this inquiry, since that arrangement preceded his access request under FIPPA. The applicant's argument seems to me to amount to his disagreement with the Ministry's decision to apply exceptions to disclosure to the Video. As I have dealt with the merits of the Ministry's application of the

[92] Applicant's response submission at paras 286-287.
[93] Ministry's reply submission at para 39.
[94] Investigator's Fact Report.
[95] Applicant's response submission at paras 278-285.
[96] Ministry's reply submission at para 39.

disclosure exceptions above, I do not think it is necessary to make a finding on s. 9(2).

CONCLUSION

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

1. The Ministry is not authorized to refuse to disclose the Video under ss. 15(1)(f), 15(1)(l), 15(2)(c), or 19(1)(a).

2. The Ministry is required, under s. 22(1), to refuse to disclose the correctional officers' facial images that appear in the Video. The Ministry is not required under s. 22(1) to refuse to disclose the balance of the Video, and it must disclose it to the applicant.

3. The Ministry must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records described at item 2 above.

[138] Pursuant to s. 59(1) of FIPPA, the Ministry is required to comply with this order by **July 29, 2025**.

June 16, 2025

ORIGINAL SIGNED BY

David S. Adams, Adjudicator

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