OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F25-62

MINISTRY OF ATTORNEY GENERAL

Michael Harvey
Information and Privacy Commissioner for BC

August 7, 2025

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Summary: An applicant requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to records regarding a complaint she made about a criminal matter. The Ministry of Attorney General (Ministry) withheld the records in their entirety under ss. 15(1)(g) (exercise of prosecutorial discretion), 16(1)(b) (harm to intergovernmental relations) and 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA. In Order F25-10, an adjudicator acting as the Commissioner's delegate ordered the Ministry to give the adjudicator the records so he could examine them and decide if ss. 15(1)(g), 16(1)(b) and 22(1) applied. In response, the Ministry provided the records to the Commissioner directly and asked that he not delegate the power to examine them pursuant to s. 49(1.1). The Commissioner determined that s. 49(1.1) applied so he would examine the records himself and decide if s. 15(1)(g) applies. In this order, the Commissioner finds that s. 15(4) of FIPPA is an exception to s.15(1)(g), and the applicant is entitled to the reasons for the decision not to prosecute in this case. The Commissioner went on to find that s. 16(1)(b) applied to some but not all information in the records and found that s. 22(1) did not. The Commissioner ordered the public body to disclose part of the information in the records to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 15(1)(g), 15(3), 15(4), 15(4)(a), 16(1)(b), 22(1), 25(1)(b), 44(1)(b), 49(1.1) and Schedule 1 (Definition of "exercise of prosecutorial discretion").*Victims of Crime Act*, RSBC 1996 c 478, s. 6(1).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (applicant) asked the Ministry of Attorney General (Ministry) for access to information regarding a criminal complaint she

made against her spouse. She was seeking written reasons for why Crown Counsel decided not to lay charges as recommended by the police.

[2] The Ministry withheld information in the responsive records under ss. 14 (solicitor client privilege), 15(1)(g) (exercise of prosecutorial discretion), 16(1)(b) (harm to intergovernmental relations) and 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA.[1]

[3] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the Ministry's decision. The OIPC's review and mediation process did not resolve the matter, and the applicant requested it proceed to an inquiry. At the outset of the inquiry, the Ministry withdrew its reliance on s. 14.

[4] The Ministry and the applicant both provided written submissions and evidence in the inquiry, all of which was considered by Adjudicator Hwang, my delegate assigned to decide the matter under s. 56. The Ministry did not provide the records in dispute for Adjudicator Hwang to review.

[5] In Order F25-10, Adjudicator Hwang concluded he could not decide if ss. 15(1)(g), 16(1)(b) and 22(1) applied without seeing the records, so he ordered the Ministry to produce the records for him to review pursuant to s. 44(1)(b).

[6] In response, the Ministry's Acting Assistant Deputy Attorney General for the BC Prosecution Service wrote to me directly pursuant to s. 49(1.1) to request that I not delegate my power to review the records.[2] The records were hand delivered to me in a sealed envelope.

[7] Section 49(1.1) states I may not delegate the power to examine information referred to in s. 15 if the head of a police force or the Attorney General has refused to disclose that information under s.15 and requested, I not delegate the power to examine that information.

[8] In light of the Attorney General's request, I informed the parties that I would not delegate the power to examine the records and would make the decision about the application of s.15(1)(g) myself. I also invited the parties to provide additional submissions about the application of s. 15(4) to the information in dispute.[3] They each provided additional submissions.[4]

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[1] From this point forward, all section numbers refer to FIPPA, unless otherwise specified.
[2] Ministry's Acting Assistant Deputy Attorney General's letter dated February 21, 2025.
[3] Commissioner's letter dated March 11, 2025.
[4] Ministry's submissions are dated April 3 and May 6, 2025; Applicant's submission is dated April 22, 2025.

Therefore, in making my decision I have considered these additional submissions, the parties' submissions from the original inquiry before Adjudicator Hwang, and the records in dispute.

PRELIMINARY MATTER

New Issue – s. 25

[9] In her additional submission, the applicant raises s. 25(1)(b), which is a new matter not set out in the OIPC investigator's fact report or the notice of inquiry. The applicant submits disclosing the disputed information is clearly in the public interest because it will allow the public to scrutinize how the BC Prosecution Services handled her file and how it handles charge assessment decisions in cases involving intimate partner violence in general.[5]

Section 25(1)(b) states 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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> …
>
> (b) the disclosure of which is, for any other reason, clearly in the public interest.

[10] If s. 25(1) applies, it overrides every other provision in FIPPA, including the exceptions to disclosure and the privacy protections in FIPPA. Therefore, the threshold for proactive disclosure under s. 25(1) is very high. The s. 25(1) duty to disclose exists only in the "clearest and most serious of situations" and the disclosure must be "not just arguably in the public interest, but clearly (i.e., unmistakably) in the public interest." [6]

[11] The applicant did not seek the OIPC's permission to add this new issue into the inquiry or explain why she is only raising it now at such a late stage in these proceedings. The OIPC guidance documents provided to the parties in this inquiry, as well as many OIPC orders, say that a party may not add new issues into an inquiry without the OIPC's prior consent. Adding new issues after an inquiry commences undermines the integrity and effectiveness of the OIPC's investigation and mediation process, which is designed to resolve the dispute or crystallize the issues that remain to be adjudicated. It is also at this earlier stage that the parties are given the opportunity to raise any additional issues for consideration at

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[5] Applicant's April 22, 2025 submission, para 147.
[6] Order 02-38, 2002 CanLII 42472 (BC IPC), para 45, citing Order No. 165-1997, [1997] BCIPD No. 22. p. 3.

mediation or inquiry. There is no indication the applicant informed the OIPC that the investigator's fact report or the notice of inquiry were incomplete because they did not include s. 25(1)(b).

[12] In short, I do not think it would be reasonable or fair to change the scope of the inquiry at such a late point by adding this new issue. Furthermore, what the applicant says in her submission about why she believes s. 25(1)(b) applies clearly would not suffice to show that the high threshold for proactive disclosure is met. While the matter addressed by the disputed records is of great personal interest to the applicant, there is nothing to suggest that it garnered any public interest, debate or commentary. The information in the records is focussed solely to the specifics of an individual matter and it does not discuss or shed light on broader issues related to how the BC Prosecution Services addresses the issues of intimate partner violence.

ISSUES AND BURDEN OF PROOF

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

1. Is the Ministry authorized to refuse to disclose the information at issue under s. 15(1)(g)?

2. Is the Ministry authorized to refuse to disclose the information at issue under s. 16(1)(b)?

3. Is the Ministry required to refuse to disclose the information at issue under s. 22(1)?

[14] Section 57(1) says that it is up to the public body to prove the applicant has no right of access to the information withheld under ss. 15(1)(g) and 16(1)(b). On the other hand, s. 57(2) says that it is up to the applicant to prove disclosure of the information would not be an unreasonable invasion of a third party's personal privacy under s. 22(1). However, the Ministry has the initial burden of proving the information at issue qualifies as personal information as defined by FIPPA.[7]

BACKGROUND

[15] The following helpful background facts, which are not in dispute, were provided by the Ministry in it's initial inquiry submission.[8]

[7] Order 03-41, 2003 CanLII 49220 (BC IPC), paras 9-11.
[8] The information in this background comes from the Ministry's October 23, 2024 submission at paras 18-35 and is not in dispute.

1. The BC Prosecution Service is within the Ministry's Criminal Justice Branch, and it has the authority and responsibility to approve and conduct prosecutions of criminal and provincial offences on behalf of the provincial Crown.[9] The Assistant Deputy Attorney General designates lawyers in the BC Prosecution Service as crown counsel.

2. In BC, police agencies investigate alleged crimes, gather evidence and submit a report to crown counsel (RCC) describing the available evidence in support of the charges recommended by the police. Crown counsel reviews the RCC and assesses what charges will be laid, if any, and against whom. The police require crown counsel's legal assessment before laying charges.

3. The Justice Information System (JUSTIN) is the electronic case management system in which criminal investigative and prosecutorial file information is held.

4. The applicant and her children made a complaint to the Surrey RCMP regarding domestic violence involving the applicant's spouse. After investigating, Surrey RCMP submitted a RCC to the BC Prosecution Service recommending charges be laid. A "charge assessment" crown counsel with the BC Prosecution Service declined to approve the recommended charges.

5. The applicant met with the "administrative" crown counsel, who provided her with oral reasons why charges were not approved. The applicant then wrote to the BC Prosecution Services to request the following:

> Information pursuant to s. 15(4)(a) of FIPPA, regarding a criminal complaint that I made against my spouse, [ ]. This case is Surrey RCMP Police File Number [ ]. Administrative Crown Counsel decided to not lay charges in this case. I asked Surrey Crown Counsel office for written reasons. On July 28, 2022, I met with Administrative Crown Counsel [ ] and I asked for her reasons as to why charges were not laid against my spouse. She told me that this information was privileged, and she refused to provide me with reasons.[10]

[16] As explained at the outset of this order, the applicant was dissatisfied with BC Prosecution Services' decision in response to her request, and it is that decision which she asked the OIPC to review.

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[9] *Crown Counsel Act*, RSBC 1996 c. 87, s. 2.
[10] OIPC Investigator's fact report.

THE RECORDS IN DISPUTE

[17] The records in dispute in this case as described by the Ministry comprise of:

1. A one-page, confidential communication between the Charge Assessment Crown Counsel and the Surrey RCMP.

2. Two pages, consisting of an internal email from the Charge Assessment Crown Counsel to the Administrative Crown Counsel attaching a copy of a confidential communication between the Charge Assessment Crown Counsel and the Surrey RCMP.

Scheme of FIPPA and s.15

[18] This case raises several issues related to the interpretation of s. 15. The modern approach to statutory interpretation requires that I interpret the words in question in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of FIPPA, the object of FIPPA and the intention of the Legislature who enacted FIPPA.[11] This approach is also consistent with s. 8 of the *Interpretation Act* which states: "Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."

[19] The purposes of FIPPA broadly are to make public bodies more accountable and to protect the privacy of individuals. Those twin purposes are divided among Part 2 – Freedom of Information and Part 3 – Protection of Privacy. The relevant sections before me are all found in Part 2 which generally serves an accountability and transparency purpose.

[20] Part 2 does not generally operate to create standalone rights of access or duties to disclose particular information, but rather it creates a general, broad right of access to all **records** in the custody or under the control of a public body.[12] Exceptions to that general right of access are listed in Part 2, Division 2. Where information subject to an exception can reasonably be severed from a record, an applicant has a right to the remainder of the record.[13] In circumstances where there is a carve out to an exception (i.e., an exception to the exception), it is listed within that section. Each public body is designated a "head" who is responsible for, among other things, determining which exceptions might apply to

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[11] *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), para 21; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), paras 120-121.
[12] FIPPA, ss. 3, 4(1).
[13] FIPPA, s. 4(2).

information contained in records requested under FIPPA. Some exceptions are mandatory, while others allow the head to use their discretion to decide whether to withhold information in question.

[21] Section 15 is a discretionary exception that allows the head of a public body to withhold information from an applicant on the basis that disclosure could be harmful to law enforcement. The relevant portions of s. 15 states:

> 15 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to:
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> […]
>
> (g) reveal any information relating to or used in the exercise of prosecutorial discretion
>
> […]
>
> (2) The head of a public body may refuse to disclose information to an applicant if the information
>
> (a) is in a law enforcement record and the disclosure would be an offence under an Act of Parliament,
>
> (b) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or a person who has been quoted or paraphrased in the record, or
>
> (c) 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.
>
> (3) The head of a public body must not refuse to disclose under this section
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> (a) a report prepared in the course of routine inspections by an agency that is authorized to enforce compliance with an Act,
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> (b) a report, including statistical analysis, on the degree of success achieved in a law enforcement program or activity unless disclosure of the report could reasonably be expected to interfere with or harm any of the matters referred to in subsection (1) or (2), or

> (c) statistical information on decisions under the *Crown Counsel Act* to approve or not to approve prosecutions.
>
> (4) The head of a public body must not refuse, after a police investigation is completed, to disclose under this section the reasons for a decision not to prosecute
>
> (a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim, or
>
> (b) to any other member of the public, if the fact of the investigation was made public.

[22] The most obvious interpretation of s. 15 is that its subsections operate harmoniously by first listing exceptions to disclosure in subsections (1) and (2). Then, subsections (3) and (4) each outline circumstances where certain information that would otherwise fall under subsections (1) and (2) cannot be withheld by the head. Subsections (1) and (2) are discretionary, but when that discretion is exercised, subsections (3) and (4) place mandatory limits on that discretion.

[23] The Ministry takes the position that s. 15(4) cannot be interpreted as an exception to s.15(1)(g), but is rather a "standalone obligation to provide reasons for a charge approval decision."[14] Support for this interpretation, the Ministry says, is found in the way other exceptions to the exceptions to disclosure in Division 2 of FIPPA use the phrase "subsection X does not apply if".[15] The Ministry says that if the legislative drafters had wanted to make s. 15(4) an exception to s. 15(1)(g), for consistency, they would have expressly used that phrase.[16] The Ministry says that the absence of such express language indicates the drafters did not intend for s. 15(4) to create an exception to s. 15(1)(g).

[24] The Applicant submits that the legislative drafters of s. 15(4) meant for it to convey the message that reasons not to prosecute should be disclosed to victims and to the public.[17] In support, she cites what the Attorney General said during debate about the interplay between s. 15(1)(g) (then 15(1)(f)) and s. 15(4) when FIPPA was introduced in 1992:

> **K. Jones:** Speaking to the Attorney General with regard to (f), we are concerned that a decision not to prosecute is addressed. We've had some explanation given that there are certain circumstances

[14] Ministry's April 3, 2025 submission, para 19.
[15] The Ministry identifies ss. 12(2) and (4), 13(3), 16(3), 18.1(2), and s. 22.1(3) of FIPPA.
[16] Ministry's April 3, 2025 submission, para 19.
[17] Applicant's April 22, 2025 submission, para 81.

under which it would be appropriate not to issue information when there's a decision not to prosecute, but there are probably many more times when there actually should be a reporting of a decision not to prosecute. Therefore I think the information should be made available and shouldn't be used as a reason not to issue that information. I would like to ask if you could address that particular part of the section.

Hon. C. Gabelmann: The member is aware, I think, of the amendment that deals with that issue, adding the following subsection (4) at the end of the full section. Members, I think, would be sensitive to an individual who had alleged sexual assault, for example, or sexual abuse or any number of other issues of that kind where an investigation was done but a decision was made not to lay charges for whatever reason. To have that information revealed publicly as a result of this legislation would, I think, subvert what we're trying to do here in terms of protection of privacy. The language is designed to attempt to protect an individual in that kind of situation.

K. Jones: What you're saying is absolutely correct. That was the case I was referring to. You would want to make sure that the information wasn't given out in that case; but as it's stated in amendment (4): "...must not refuse...if the applicant is aware of the police investigation." That's the only criterion, is it? If the applicant becomes aware, by whatever means, of an investigation, then the head of the public body is required to provide the information. I think there are lots of cases where we become aware of a police investigation without it being the most appropriate time to give that information just on the basis that they're aware of it. And what constitutes an awareness of an investigation?

Hon. C. Gabelmann: The principle here -- we may not have captured it precisely the way we intended, and we'll have another look at this, because I think the member raises a good point -- is that once the information is in the public domain, and a decision has been made not to prosecute, then you have to explain why. That was the principle, but on reflection I'm not entirely sure that we have captured the issue the member raises. I want to go back and have another look at that particular issue as we continue to review this legislation.[18]

[18] Applicant's April 22, 2025 submission, paras 78-81, citing Official Report of the Debates of the Legislative Assembly (Hansard). Monday, June 22, 1992, Afternoon Sitting, Volume 4, No. 24 at p. 2876. [https://www.leg.bc.ca/hansard-content/Debates/35th1st/19920622pm-Hansard-v4n24.htm#2867].

[25] The Applicant also cites what the Attorney General said in 1993 were the reasons why s. 15(4) was subsequently amended to its current language:

> **Hon. C. Gabelmann:** First of all, this amendment is a direct result of comments and suggestions in committee stage last year about who could have knowledge or who could be told of these investigations. I have forgotten which member of the opposition made the points in last year's committee stage, but the point was well made. We are making an amendment to clarify in very specific terms who has the right of access to the reasons for a decision not to prosecute.[19]

[26] I am not convinced by the Ministry's position that s. 15(4) is not an exception to s. 15(1)(g) but is, instead, a standalone provision imposing a positive obligation on a public body to disclose the reasons for a decision not to prosecute. While the wording of exceptions to exceptions vary somewhat in different sections of the Act, that variation is not enough to support an interpretation that ignores the use of the words "in this section" found in subsections (3) and (4), which I find is an explicit reference to s. 15 as a whole, including the exceptions to disclosure in ss. 15(1) or (2). Therefore, a public body cannot rely on any exception to disclosure found in s. 15 when s. 15(4) applies.

[27] While the evidence of the legislative debates is not determinative, it is nonetheless a useful interpretive aid. In this case the debates serve to confirm the interpretation that s. 15(4) operates to limit what information the head of a public body can refuse to disclose under any of the exceptions found in s. 15.

[28] The Ministry says that the verbal and written disclosures they have made to the Applicant which largely repeated charge assessment criteria, were consistent with s. 15(4).[20] While transparency should be a constant goal of any public body, the scheme of FIPPA as a whole—and s. 15 in particular—is inconsistent with the Ministry's approach. Subsection 15(4) only applies to information contained in records that the Ministry is refusing to disclose under s. 15. The Ministry's separate disclosure of information it says "satisfies" its obligations under s. 15(4) have no bearing on the Applicant's entitlement to any reasons for a decision not to prosecute that may be in the Records withheld under s. 15(1)(g).

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[19] Applicant's Reply Submission (April 22, 2025), para 79, citing Official Report of the Debates of the Legislative Assembly (Hansard). Tuesday July 27, 1993, Afternoon Sitting, Volume 12, No. 19, pages 9283-84.
[20] Ministry's October 23, 2024 submission, para 74.

Impact on Prosecutorial Independence

[29] This inquiry touches on the principle of prosecutorial independence. I have reviewed the extensive submissions and law cited from both parties on review of prosecutorial discretion. However, after a review of the relevant authorities and considering the statutory framework of FIPPA, I am not convinced the present inquiry can properly be characterized as a review of prosecutorial discretion. As I will describe further below, I remain mindful of the principle of prosecutorial independence but am instead of the view the legislature intentionally designed FIPPA to strike an appropriate balance between transparency in the exercise of prosecutorial discretion.

Law

[30] In the leading case of *British Columbia (Attorney General) v. Davies [Davies],*[21] the Court of Appeal summarized the principles related to the review of prosecutorial discretion:

> [56] Several propositions emerge from the cases that we have reviewed. It is apparent that prosecutorial discretion resides in the executive branch of government, where it is within the purview of the Attorney General. The Attorney General is entrusted to exercise prosecutorial discretion dispassionately, and without regard to public pressure or to political influence that is brought to bear on him. This is the essence of prosecutorial independence.
>
> [57] The courts, both in recognition of the division of powers between the executive branch and the judicial branch and in order to limit pressure on the Attorney General, extend a broad immunity to the Crown in respect of prosecutorial discretion. This immunity is an instrument for the protection of prosecutorial independence.
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> [58] Administrative tribunals may be in a different position vis-à-vis the executive branch of government than are the courts. Although administrative tribunals form part of the executive branch of government, they, too, must exercise caution in inquiring into matters touching on prosecutorial discretion. In the first instance, of course, they must not inquire into matters that are outside of their statutory functions.
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> [59] In recognition of the importance of prosecutorial independence, *Hoem* and *Krieger* strongly suggest that the statutory jurisdiction of a tribunal will be narrowly construed where there is a potential for interference with prosecutorial independence. As *Krieger* indicates, however, this does not mean that inquiries that touch on matters of prosecutorial discretion – even matters touching on the core of

[21] *British Columbia (Attorney General) v. Davies* 2009 BCCA 337 [*Davies*].

> prosecutorial discretion – will always be outside of the tribunal's mandate. So long as such inquiries are strictly within the tribunal's statutory jurisdiction, and do not interfere with constitutionally protected prosecutorial independence, the tribunal may proceed.
>
> [60] Prosecutorial independence is a constitutionally protected value. Even if their statutory mandates extend to inquiring into issues touching on prosecutorial discretion, tribunals must not proceed in a fashion that is apt to place undue pressure on the Attorney General or on Crown counsel such that their independence may be compromised. A tribunal may be required to adjust its procedures, or even limit the scope of its inquiries, to avoid interfering with prosecutorial discretion. If a tribunal fails to do so, the courts undoubtedly possess the power to protect constitutional norms by restricting the scope of inquiries.

[31] *Davies* involved the authority of the Commission of Inquiry into the Death of Frank Paul to examine the Crown's decisions not to lay charges in connection with Mr. Paul's death. The companion case of *Picha v. Dolan [Picha]*[22] was concerned with the authority of the Coroner to call Crown prosecutors to attend an inquest and testify to their involvement in the charging and interim release of an accused who later was suspected of killing several people before taking his own life.

[32] The Court of Appeal recognized in *Davies* the balance that must be struck between the values of public accountability and prosecutorial independence:

> [61] In assessing what limits ought to be placed on the scope of inquiries, however, the courts must be alive to the very real need for public confidence in the prosecutorial system. Prosecutorial independence is, undoubtedly, a sacrosanct value. That does not mean, however, that all attempts to establish a form of public accountability for exercises of prosecutorial discretion ought to be eschewed. In recent years, legal systems have recognized the need for some methods by which the Crown can account to the public for its exercises of prosecutorial discretion, without interfering with prosecutorial independence.
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> [62] The need has been seen as particularly acute in high-profile cases where decisions have been made not to proceed with charges. In England, under the *Prosecution of Offences Act 1985* (UK), 1985, c. 23, courts have found a limited duty on prosecutorial authorities to provide reasons for non-prosecution decisions, and a concomitant right to judicial review: *R. v. Director of Public Prosecutions, Ex p. Manning*, [2001] Q.B. 330 (D.C.).

[22] *Picha v. Dolan* 2009 BCCA 336 [*Picha*].

> [63] In British Columbia, a commission of inquiry made the following recommendation, which has been adopted by the Crown:
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> > Where a decision not to prosecute has been made, and the public, a victim or other significantly interested person is aware of the police investigation, it is in the public interest that the public, victim or other significantly interested person be given adequate reasons for the non-prosecution, by either the police or Crown Counsel.
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> > (The Owen Inquiry (Discretion to Prosecute Inquiry, *Commissioner's Report* (Victoria: The Inquiry, 1990)), recommendation #8(2), at 110 and 118)
>
> [64] Section 15(4) of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, facilitates compliance with this recommendation:
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> > 15(4) The head of a public body must not refuse, after a police investigation is completed, to disclose under this section the reasons for a decision not to prosecute
> >
> > (a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim, or
> >
> > (b) to any other member of the public, if the fact of the investigation was made public.
>
> [65] Protection of prosecutorial independence should not be compromised; nonetheless, the courts must recognize that in a system in which prosecutorial discretion is generally exercised outside of the public gaze, mechanisms for public accountability ought not lightly be discarded.[23]

Positions of the parties

[33] The Ministry argues for a strict interpretation of *Davies* in a way that robustly protects prosecutorial independence. The Ministry says court and tribunal review of prosecutorial discretion is only permissible in narrow circumstances of abuse of process, which requires more than a bare assertion of impropriety.[24] It argues that if a court of inherent jurisdiction can only inquire into the reasons for the exercise of prosecutorial discretion in very limited circumstances, then "it would be an extraordinary abrogation

[23] *Ibid*, paras 62-65.
[24] Ministry's April 3, 2025 submission, paras 35-37.

of that privilege for the OIPC to interpret FIPPA to require such reasons be provided to the public."[25]

[34] The Applicant submits that the present proceeding is closer to the circumstances in *Davies* than *Picha*, because the Legislature clearly expressed its intention in s. 15(4) of FIPPA regarding the conditions under which Crown Counsel are required to provide reasons. She says that s. 15(4), introduced in the Legislature by the then Attorney General, "recognized the need for a legislative provision that would hold the BCPS accountable for its decisions not to prosecute, and in a manner that does not interfere with prosecutorial independence."[26]

[35] The Applicant says she is not asking me to review the exercise of prosecutorial discretion or to make inquiries into the reasons behind that exercise of discretion but instead is only asking me to order the disclosure of the records pursuant to section 15(4).[27]

Analysis

[36] *Picha* and *Davies* provide helpful goalposts for inquiries into prosecutorial discretion itself, but each of those cases involved more direct inquiries into the discretion than the circumstances before me. In *Davies*, the tribunal in question was provided with a clear mandate in the form of an Order in Council from the Executive Council, with the support of the Attorney General, to inquire into the exercise of prosecutorial discretion in a particular case.[28] The Court of Appeal contrasted *Davies* with the circumstances of *Picha*, where the Coroner was relying on "broad general powers of investigation to support a foray into issues touching on prosecutorial independence and discretion."[29] The "foray" referred to by the Court in *Picha* was the coroner issuing subpoenas to Crown prosecutors involved in a death being investigated by the coroner.

[37] The circumstances of a FIPPA inquiry are significantly different. The statutory framework of FIPPA introduced by the then Attorney General functions to protect the important principle of prosecutorial independence, while balancing the purposes of transparency. At first, s. 15(1)(g) gives the head discretion to determine if a record should be withheld where prosecutorial discretion is engaged. Then, as specifically cited by the Court of Appeal in *Davies*, s. 15(4) operates as a "mechanism for public accountability" to provide a minimum level of transparency to interested

[25] Ministry's April 3, 2025 submission, para 36.
[26] Applicant's April 22, 2025 submission, para 46.
[27] *Ibid*, para 58.
[28] *Davies,* supra note 21 at para 91.
[29] *Picha*, supra note 22at para 19.

persons or the public as it may be. Section 49(1.1) of FIPPA provides an extra layer of protection for information subject to s. 15 which requires that only the Commissioner examine information referred to in s. 15 if the Attorney General requests the Commissioner not delegate that power.

[38] The Court of Appeal in *Davies* was unambiguous when it said that an administrative tribunal with a clear statutory mandate is entitled to inquire into issues that touch on prosecutorial discretion as long as that inquiry does not interfere with prosecutorial discretion.[30] While my office enjoys broad powers of investigation into matters of access to information, the present inquiry is clearly not an investigative foray into the exercise of prosecutorial discretion. Rather, it is a principled interpretation and application of the OIPC's home statute in response to a statutory request for review of a public body's decision to refuse an applicant access to information.

[39] The scope of my inquiry is solely about whether the Ministry properly applied FIPPA. I am mindful not only of the principle of prosecutorial independence but also of the mechanisms for public accountability that *Davies* explained ought not to be lightly discarded. Therefore, while my decision may indirectly impact on the principle of prosecutorial independence, I am satisfied that any such impact serves the purpose of accountability that the Legislature intended in enacting s. 15(4) and which the Court of Appeal recognized in *Davies*.

[40] Along with the overall statutory scheme of FIPPA, s. 15 clearly strikes a balance between accountability and the protection of prosecutorial independence. As part of that careful balance, the Legislature clearly intended for some information releasable through s. 15(4) to potentially impact prosecutorial independence. The extent of that impact is largely a policy question for the legislature which was specifically alive to this issue when the sections in questions were being debated.

[41] Indeed, the scheme of FIPPA is similar, but less acute, to the circumstances in *Davies*. In *Davies*, the accountability mechanism was a public inquiry constituted by the Attorney General for the specific purposes of reviewing prosecutorial discretion in a single case. Section 15(4) was also introduced by the then Attorney General and serves as an accountability mechanism, albeit with a much narrower scope. Both are legal frameworks with the express purpose of accountability of otherwise opaque decisions of prosecutorial discretion while carefully balancing the protection of prosecutorial independence.

[30] *Davies*, supra note 21, para 60.

[42] My conclusions on this are largely drawn from an analysis of *Davies* and FIPPA which I consider to be dispositive. However, the parties have also raised a number of ancillary issues that I will address below that are largely resolved given my conclusions above.

Comparisons to privilege

[43] The Ministry advances a variety of arguments that essentially assert its position that prosecutorial independence is akin to a privilege and s. 15(4) "cannot abrogate the prosecutorial independence of the Crown or allow the OIPC to require the Crown to disclose information which would effectively pierce the veil of prosecutorial independence."[31]

[44] In the Ministry's view, the only interpretation of s. 15(4) available to me is one where the reasons for a decision not to prosecute that may be disclosed are only those which "Crown Counsel consider, in their sole discretion, may be disclosed without infringing prosecutorial discretion privilege."[32]

[45] Despite citing some case law that uses the term "prosecutorial privilege", the Ministry did not provide any authority to suggest the courts recognize prosecutorial discretion as a privilege, let alone one that is on the same footing as solicitor client privilege. The courts have said the protection of solicitor client privilege must be as close to absolute as possible.[33] The protection of prosecutorial discretion, on the other hand, does not enjoy the same level of protection or require the same level of clear unambiguous abrogation as is required in cases of solicitor client privilege. Instead, I rely on the statutory scheme of FIPPA, including the clear wording of s. 15(4), consistent with *Davies* as I have described above. To accede to the Ministry's interpretation would effectively be insulating any review of a decision by a head related to the exercise of prosecutorial discretion. Absent explicit statutory direction, I do not agree with the limitations on my powers implicit in the Ministry's position.

Division of powers

[46] The Ministry argues that because Crown Counsel is exercising their delegated duties under the *Criminal Code* pursuant to the federal criminal law power, "a provincial statute such as *FIPPA* cannot be interpreted such that it infringes on that legislative authority."[34] It says that s. 15(1)(g)

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[31] Ministry's April 3, 2025 submission, paras 39-43 (quote at para 43).
[32] *Ibid*, para 46.
[33] *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53, para 43.
[34] Ministry's April 3, 2025 submission, para 43.

respects this division of powers and prevents *FIPPA* from infringing the *Constitution Act*.[35]

[47] The Applicant also challenges the Ministry's division of powers argument, taking the position that the *Constitution Act "*vests exclusive legislative jurisdiction in the provinces in matters related to Crown Counsel acting under the direction of a provincial Attorney General."[36] She also says the Court of Appeal in *Picha* "did not find that the Provincial legislature lacked the constitutional authority to enact a statutory provision requiring Crown counsel to testify at a Coroner's inquests"[37]

[48] The Ministry responded to the Applicant's submissions by clarifying its position on the *Constitution Act*. The Ministry asserts that prosecutorial discretion does not fall under the exclusive jurisdiction of the provinces, but rather it is a principle of fundamental justice under s.7 of the *Charter*, so not "merely a matter of provincial or federal jurisdiction."[38] The Ministry also clarifies that it is not saying/asserting s.15(4) is itself *ultra vires* the province, but that it should be interpreted in a way that is *intra vires* the province. The Ministry says that even if the decision to initiate a prosecution under the *Criminal Code* of Canada is determined to be a matter of concurrent federal and provincial jurisdiction, that I should interpret s.15(4) with deference owing both to the provincial nature of my enabling statute and the fact that my office falls under the legislative branch.[39]

[49] Neither party has provided me with an authority that supports their respective positions that the exercise of prosecutorial discretion is exclusively federal or provincial jurisdiction. Nor has the Ministry provided me with any authority to support their argument that s. 15(4) should be interpreted so narrowly it is effectively unreviewable by my office as a provincial independent officer. Without anything more, I am bound by *Davies*. Given my above conclusion that FIPPA generally and—s.15 in particular—is itself consistent with *Davies,* I do not find either party's positions dispositive or persuasive on this issue.

Other issues raised by the parties

[50] The Ministry also submits that disclosing records that underpin prosecutorial discretion could generate masses of documents to review, could compromise Crown strategy, would result in more frequent attempts

[35] *Ibid*, para 44.
[36] Applicant's April 22, 2025 submission, para 37.
[37] Applicant's April 22, 2025 submission, para 41.
[38] Ministry's May 6, 2025 submission, para 8.
[39] Ministry's May 6, 2025 submission, para 13.

to invoke judicial review that would further clog an already overburdened criminal court system without merit or benefit, and would result in courts having to second guess a prosecutor's judgment.[40]

[51] I do not find this line of argumentation to be persuasive as it is nothing more than speculation. In theory, increased access to information about decisions not to prosecute could result in more attempts to judicially review the exercise of prosecutorial discretion. The same could be said for would-be petitioners who, after receiving more information about the decision in question, would decide *not* to initiate proceedings. The Court of Appeal has also clearly recognized the importance of some measure of accountability in how prosecutorial discretion is exercised, which clearly has a public benefit. To that extent, I disagree with the Ministry's assertion that such increased access to information has no merit or benefit.

[52] I will now decide whether the Ministry is authorized under s. 15(1)(g) to refuse to disclose the information in dispute in the records.

Information relating to or used in the exercise of prosecutorial discretion – s. 15(1)(g)

[53] The Ministry submits that s. 15(1)(g) applies because disclosing the information in the records could reasonably be expected to reveal information relating to or used in the exercise of prosecutorial discretion.

[54] In the proceedings before Adjudicator Hwang, the Ministry submitted that the records relate entirely to the exercise of prosecutorial discretion by the charge assessment crown counsel because they are the analysis and decision not to prosecute the individual named in the RCC.[41] Given the Ministry did not provide the records for the adjudicator to review, it relied on affidavit evidence from the BC Prosecution Service's Information and Privacy Crown Counsel (Information Counsel) who said:

> The Records relate entirely to the Charge Assessment Crown Counsel's exercise of prosecutorial discretion regarding their decision not to prosecute the individual named in the RCC. Both the Crown-RCMP Communication and the Crown Communication were prepared by the Charge Assessment Crown Counsel for the purposes of advising the RCMP and the Administrative Crown Counsel, respectively, of their No Charge Decision and conveying the legal advice and analysis on which their No Charge Decision was based."[42]

[40] Ministry's April 3, 2025 submission, paras 31-34, citing *R. v. Power*, 1994 CanLII 126 (SCC), paras 44-45.
[41] Ministry's October 23, 2024 submission, paras 66 and 71.
[42] Information Counsel's 2nd affidavit, para 38.

[55] In the initial inquiry, the applicant did not dispute the Ministry's description of the records, and she agreed they relate to the crown counsel's exercise of prosecutorial discretion within the meaning of s. 15(1)(g) and the definition in Schedule 1.[43] Instead, she argues that the Ministry cannot refuse to disclose the information because s. 15(4)(a) applies.

Analysis and findings

[56] Schedule 1 of FIPPA defines the term "exercise of prosecutorial discretion" as follows:

> "exercise of prosecutorial discretion" means the exercise by
>
> a) Crown counsel, or a special prosecutor, of a duty or power under the *Crown Counsel Act*, including the duty or power
>
> (i) to approve or not to approve a prosecution,
> (ii) to stay a proceeding,
> (iii) to prepare for a hearing or trial,
> (iv) to conduct a hearing or trial,
> (v) to take a position on sentence, and
> (vi) to initiate an appeal, or …

[57] Based on my review of the records, I have no difficulty finding that the information in dispute – all three pages of records in their entirety - could reasonably be expected to reveal information relating to or used in the exercise of prosecutorial discretion.[44] The Supreme Court of Canada has said that "prosecutorial discretion" is an expansive term that covers all "decisions regarding the nature and extent of the prosecution and the Attorney General's participation in it".[45]

The exceptions to s. 15(1)(g)

[58] As discussed above ss. 15(3) and 15(4) stipulate what information a public body must not refuse to disclose under s. 15. Based on my review of the records, there is no question that s. 15(3) is not relevant to consider, and the parties do not argue that it is.

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[43] Applicant's November 12, 2024 submission, paras 2, 6, 9 and 10.
[44] Section 15(1)(g) contains the phrase "could reasonably be expected to", and the Supreme Court of Canada has said that the standard of proof imposed by this language is "a middle ground between that which is probable and that which is merely possible." *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31, para 54, citing *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, paras 94 and 195-206.
[45] *R v. Anderson*, 2014 SCC 41, para 44 citing *Krieger v. Law Society of Alberta*, 2002 SCC 65, para 47.

[59] However, from the outset of her written FIPPA access request, the applicant has asserted that s. 15(4)(a) applies.

> 15 (4) The head of a public body must not refuse, after a police investigation is completed, to disclose under this section the reasons for a decision not to prosecute
>
> > (a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim, or
> >
> > (b) to any other member of the public, if the fact of the investigation was made public.

[60] As far as I can see there is no dispute that the police investigation associated with the records was completed and the applicant is a person who knew of, and was significantly interested in, the investigation. The remaining question, then, is whether the information in dispute is "the reasons for a decision not to prosecute".

[61] FIPPA does not define the term "the reasons for a decision" in s. 15(4), and there have been no previous OIPC orders that have done so. Therefore, this will be the first order of this office to do so.

[62] In my review of the records, each of the three documents contains certain administrative or meta-data and text that includes explanations of why the charge assessment crown did not bring charges. As found above, all of this information is subject to 15(1)(g). Further, with the exception of the administrative data and meta data, and certain other exceptions in the text, I find that s. 15(4) applies to the information in the records.

[63] My reasoning in making this finding relies on a plain language interpretation of "the reasons". First, a reason is the justification and explanation behind a decision. The three records each contain multiple such justifications and explanations.

[64] Second, the inclusion of the definite article "the" implies that the complainant has a right of access to *all* of these reasons. My reasoning is that the legislature chose not to include the modifier "adequate" as recommended by the Owens Inquiry, which would have suggested something that was less comprehensive than complete disclosure. The legislature also could have simply created a right of access to "reasons" without an article, which would similarly have created a right of access to something less than all of the reasons. But the inclusion of the definite article "the" implies that the right of access is to *all* of the reasons.

[65] As mentioned above, there is a small amount of information in the text of these records that is connected to the exercise of prosecutorial discretion but which is not "the reasons".

[66] In summary, I find that Ministry is authorized to refuse access to the administrative and meta data in the records, and certain other minor information, under s. 15(1)(g). However, it is not authorized by s. 15(1)(g) to refuse to disclose the balance of the information in the records because I find that s. 15(4) applies.

[67] I will now consider if the information I found was subject to s. 15(4) may be withheld under s. 16(1)(b). For ease of reference, I will refer to this as the Remaining Information.

Intergovernmental relations, s. 16(1)(b)

[68] Under s. 16(1)(b), the head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal information received in confidence from the following entities or their agencies:

(i) The government of Canada or a province of Canada;
(ii) The council of a municipality or the board of a regional district;
(iii) An Indigenous governing entity;
(iv) The government of a foreign state;
(v) An international organization of states.

[69] Deciding whether a public body may rely on s. 16(1)(b) to withhold information has two distinct steps. First, the public body must demonstrate that it received the information from one of the entities listed at (i) - (v), above, or an agency of one of those entities. Second, the public body must establish that it received the information "in confidence."[46]

Parties' submissions

[70] The Ministry submits that the information it withheld under s. 16(1)(b) is criminal investigative information contained within the RCC, which BC Prosecution Services received in confidence from the Surrey RCMP via JUSTIN.[47] The Ministry submits that the Surrey RCMP is a federal agency for the purpose of s. 16(1)(b), so disclosing that information could reasonably be expected to reveal confidential information received from a federal agency.

[46] See Order 02-19, 2002 CanLII 42444 (BC IPC), para 18 and Order F15-72, 2015 BCIPC 78 (CanLII), para 48.
[47] Ministry's October 23, 2024 submission, para 90.

[71] The Ministry says the following to support its claim that BC Prosecution Services received the information in confidence from the Surrey RCMP: [48]

- A reasonable person would regard information being shared by the RCMP with Crown Counsel as being confidential in nature, particularly the details of an alleged criminal offence.
- The RCC information was not compiled for a purpose that would be expected to lead to disclosure to the public in the ordinary course.
- BC Prosecution Services received the information in the RCC from JUSTIN, a secure integrated case management system that only permits authorized users to access criminal investigative file materials on a 'need to know' basis and tracks users' access to files to ensure information security.
- Disclosing the "narrative" section of the RCC would indirectly reveal or allow accurate inferences about the RCC information.
- There is a confidentiality statement in the footer on the RCC.
- The intention for the information to remain confidential is evidenced by the fact that charge assessment crown counsel only shared it with administrative crown counsel.

[72] The applicant does not dispute that the BC Prosecution Services received the information withheld under s. 16(1)(b) from the RCMP or that the RCMP is a federal agency under s. 16(1)(a)(i).

[73] The applicant argues that any confidence that information may have attracted was lost because the RCMP shared information with her and others in the justice system about the decision not to prosecute.[49] She also argues a reasonable person could not regard the information as being confidential because s. 6(1)(c) of BC's *Victims of Crime Act* (VCA) says she is entitled to see it.[50]

> **6(1)** Subject to the *Youth Criminal Justice Act* (Canada) and insofar as this does not prejudice an investigation or prosecution of an offence, justice system personnel must arrange, on request, for a victim to obtain information on the following matters relating to the offence:
> …

[48] Ministry's October 23, 2024 submission, paras 90-97.
[49] Applicant's November 12, 2024 submission, paras 91-92, 118.
[50] Applicant's November 12, 2024 submission, paras 96-97. *Victims of Crime Act, RSBC 1966 c. 478.*

(c) the reasons why a decision was made respecting charges;

[74] Further, the applicant believes the information in dispute is likely information the RCMP discussed with her when explaining the decision not to lay charges as well as being information she and her children provided to the RCMP.[51]

[75] In reply, the Ministry repeats that the RCMP confidentially sent the Report to Crown Counsel to crown counsel via JUSTIN.[52] It points to its initial submission where it said that JUSTIN contains some of the most sensitive information held by government, including Reports to Crown Counsel (containing details of police investigations, witness 'will say' statements, witness and victim contact information and charge assessments), accused history reports, law enforcement availability and court case tracking and administration.[53]

[76] The Ministry also responds to the applicant's argument that confidentiality was lost because the RCMP shared the information with her. The Ministry says that the communications between the RCMP and the Ministry were protected by prosecutorial privilege, and there was no waiver of privilege when the RCMP shared that information with the applicant or others. There was no waiver, it submits, because the common-interest privilege exception to waiver applies and privilege cannot be unilaterally waived by one party to the privilege, i.e., the RCMP. The Ministry submits that only the Attorney General and the Deputy Attorney General have the authority to waive privilege and they have not done so in this case.[54]

[77] Regarding the applicant's argument about s. 6(1) of the VCA, the Ministry says that the definition of "justice system personnel" in s. 1 of that Act does not include BC Prosecution Services or crown counsel. For that reason, the Ministry says, s. 6(1) does not apply to their communications or override prosecutorial discretion privilege.[55]

[51] Applicant's November 12, 2024 submission, paras 100-111.
[52] Ministry's November 26, 2024 submission, paras 64-66.
[53] Ministry's November 26, 2024 submission, para 66 and November 12, 2024 submission, paras 31-34.
[54] Ministry's November 26, 2024 submission, paras 67-74.
[55] Ministry's November 26, 2024 submission, paras 79-81.

Analysis and decision

Did the Ministry receive the Remaining Information from an agency?

[78] Consistent with prior orders, I find that the RCMP is an "agency" of the Government of Canada under s. 16(1)(a)(i).[56]

[79] The three records in question do not appear themselves to be received from the RCMP. However, the Ministry's submission is that there are elements in the Remaining Information that would reveal information that had been received from the RCMP, and in my review of the information I can confirm that this is the case for some of the information. As discussed above, the Remaining Information comprises "the reasons" for the decision taken by the charge assessment crown counsel and these reasons are based on the charge assessment crown counsel's review of the investigation file. Some, but not all, of this information could therefore be reasonably expected to reveal information in that investigation file.

Did the Ministry receive the Remaining Information "in confidence"?

[80] In order for information to be "received in confidence," there must be an implicit or explicit agreement or understanding of confidentiality between those supplying and receiving the information.[57] Past orders have identified several non-exhaustive factors that may be usefully considered to determine if the information was received in confidence, including the nature of the information, explicit statements of confidentiality, evidence of an agreement or understanding of confidentiality and objective evidence of an expectation of or concern for confidentiality.[58]

[81] I find that some, but not all, of the subset of the Remaining Information that would reveal information received from the RCMP was received in confidence.

[82] The Report to Crown Counsel contains a strong confidentiality statement and it is reasonable that its author would have expected this confidentiality to be maintained.

[83] However, there is some information in the Remaining Information that informed "the reasons" but is plain, presented with no analysis, and

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[56] See, for example, Order 02-19, 2002 CanLII 42444 (BC IPC), paras 55 and 58; Order F05-24, 2005 CanLII 28523 (BC IPC), paras 23-26; Order F17-56, 2017 BCIPC 61 (CanLII), para 85.
[57] Order No. 331-1999, 1999 CanLII 4253 (BC IPC), page 7.
[58] Order No. 331-1999, 1999 CanLII 4253 (BC IPC), pages 8-9; Order F19-38, 2019 BCIPC 43 (CanLII), para 117; Order F23-07, 2023 BCIPC 8 (CanLII), para 76.

would be obviously known to the applicant. Revealing this information would not betray any confidence. There is other information, some of which would be known to the applicant and some which might not be, but disclosure of which would reveal information about the investigation record and that the RCMP would have expected to be maintained in confidence.

[84] Further, there is some information in the Remaining Information that is the charge assessment crown counsel's analysis and would not reveal information received in confidence from the RCMP.

[85] In summary, I find that the Ministry is authorized to refuse to disclose some of the information subject to section 16(1)(b).

[86] Given I have found that the Ministry may refuse the applicant access to some of the Remaining Information under s. 16(1)(b), it is now necessary to decide if s. 22(1) applies to what is left, which for the sake of simplicity I will refer to as the Non-Confidential Remaining Information.

Disclosure harmful to personal privacy, s. 22

[87] Section 22(1) of FIPPA requires a public body to refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy.[59] There are four steps in the s. 22(1) analysis, and I will apply each step under the headings that follow.

Personal Information, s. 22(1)

[88] The first step in the s. 22 analysis is to determine whether the Non-Confidential Remaining Information is "personal information" within the meaning of FIPPA. Schedule 1 of FIPPA defines personal information as "recorded information about an identifiable individual other than contact information." Contact information is defined as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual".

[89] I find that the Non-Confidential Remaining Information is about identifiable individuals, specifically the accused, the applicant, the RCMP and the crown prosecutors, and none of it is contact information. Therefore, I find all of it is personal information.

[59] A "third party" is defined in Schedule 1 of FIPPA as any person, group of persons or organization other than the person who made the access request or a public body.

Section 22(4) – Circumstances where disclosure is not an unreasonable invasion of privacy

[90] The next step in the s. 22 analysis is to consider s. 22(4). Section 22(4) sets out circumstances where disclosure is not an unreasonable invasion of a third party's personal privacy. If information falls into one of the circumstances enumerated in s. 22(4), the public body is not required to withhold it under s. 22(1).

[91] The Ministry submits s. 22(4) does not apply. The applicant says s. 22(4)(c) applies.

Enactment authorizes the disclosure – s. 22(4)(c)

[92] Section 22(4)(c) provides that a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if an enactment of British Columbia or Canada authorizes the disclosure.

[93] The applicant says s. 15(4) of FIPPA and s. 6(1)(c) and (d) of the VCA are the enactments that authorize the disclosure. The Ministry responds that s. 15(4) and s. 6(1) do not explicitly authorize disclosure of personal information. Instead, they require the provision of "reasons" as opposed to "personal information".[60]

[94] First, I have no difficulty finding s. 15(4) of FIPPA and s. 6(1) of the VCA are enactments. While the term "enactment" is not defined in FIPPA or its regulation, the *Interpretation Act,* defines an "enactment" as "an Act or a regulation or a portion of an Act or regulation".[61] Based on that interpretation, clearly s. 15(4) of FIPPA and s. 6(1) of the VCA are enactments.

[95] I do not think that s. 15(4) is an enactment that "authorizes disclosure". Section 15(1) is an exception to disclosure which authorizes a public body to *refuse to disclose* information. Section 15(4) sets a limit on that ability to refuse to disclose by carving out an exception to the exception to disclosure.

[96] However, for the reasons that follow, I find that s. 6(1)(c) of the VCA is an enactment that authorizes disclosure of the Non-Confidential Remaining Information.

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[60] Ministry's November 26, 2025 submission at para 98.
[61] Past orders have used the same approach of using the *Interpretation Act* definition. For example, most recently, Order F25-24, British Columbia (Public Safety and Solicitor General) (Re), 2025 BCIPC 30 (CanLII), 2025 BCIPC 30 (CanLII) at para 84.

Section 6(1)(c) of the VCA says:

> **6** (1) Subject to the *Youth Criminal Justice Act* (Canada) and insofar as this does not prejudice an investigation or prosecution of an offence, justice system personnel must arrange, on request, for a victim to obtain information on the following matters relating to the offence:
>
> …
>
> (c) the reasons why a decision was made respecting charges;
>
> (d) the name of the accused;
>
> …

[97] I have already found above that the Non-Confidential Remaining Information are the reasons for a decision not to prosecute under s. 15(4) of FIPPA. Both s. 6(1) of the VCA and s. 15(4) of FIPPA use virtually the same language. Consistent with the modern approach to statutory interpretation, I find s. 6(1) of the VCA and s.15(4) of FIPPA should be interpreted harmoniously to have the same meaning. To interpret one differently from the other would result in an absurdity and cannot be the intention of the legislature.

[98] In conclusion, I find that s. 22(4)(c) applies and disclosing the Non-Confidential Remaining Information would not be an unreasonable invasion of a third party's personal privacy. Therefore, the Ministry is not required or authorized to refuse to disclose it under s. 22(1).

CONCLUSION

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

1. I confirm, subject to item 2 below, the Ministry's decision to refuse the applicant access to some of the information withheld under ss. 15(1)(g) and 16(1)(b).

2. The Ministry is required to give the applicant access to the information that I have determined it is not authorized or required to withhold under ss. 15(1)(g), 16(1)(b) or 22(1). I have highlighted this information in a copy of the records that is provided to the Ministry with this order.

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

4. Pursuant to s. 59(1) of FIPPA, the Ministry is required to comply with this Order by September 19, 2025.

August 7, 2025

ORIGINAL SIGNED BY

Michael Harvey, Information and Privacy Commissioner for BC

OIPC File No.: F22-91303