

Order F25-81

MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL

Rene Kimmett
Adjudicator

October 21, 2025

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant asked the Ministry of Public Safety and Solicitor General (Ministry) for access to video footage related to two incidents in a correctional centre (Videos). The Ministry entirely withheld the Videos under ss. 15(1) (harm to law enforcement), 15(2) (harm to custody or supervision), 19(1) (harm to individual or public safety), and 22(1) (harm to third-party personal privacy) of FIPPA. The adjudicator found that ss. 15(1), 15(2), and 19(1) did not apply, but that s. 22(1) applied to portions of the Videos. The adjudicator ordered the Ministry to give the applicant access to the portions of the Videos 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), and 22(4)(e).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant (Applicant) asked the Ministry of Public Safety and Solicitor General (Ministry) for all video footage related to two incidents that occurred at North Fraser Pretrial Centre (North Fraser) while the Applicant was incarcerated there.

[2] The Ministry withheld the videos responsive to the Applicant's access request (Videos) under the following sections of FIPPA: 15(1)(f) (endanger life or physical safety), 15(1)(l) (harm to security of property or system), 15(2)(c) (harm to custody or supervision), 19(1)(a) (harm to individual or public safety), and 22(1) (harm to third-party personal privacy).¹

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

[3] The Applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision to withhold records responsive to his access request. The Applicant also made a complaint to the OIPC that the Ministry's response to his access request did not comply with its obligations under ss. 4(2) (reasonable severing), 6(1) (duty to assist), and 9(2) (how access will be given).²

[4] The OIPC's mediation did not resolve the issues in dispute, and the matter proceeded to this inquiry. The Ministry and the Applicant both provided written submissions.³

PRELIMINARY ISSUE

Section 54(b) – appropriate persons

[5] Sections 54(a) and 54(b) of FIPPA state that, on receiving a request for review, the Commissioner must give a copy of that request to the head of the public body concerned and to any other person that the Commissioner considers appropriate. If a matter proceeds to inquiry, a person given a copy of a request for review under s. 54(b) is entitled to certain participatory and informational rights, including the opportunity to make representations during the inquiry.

[6] A decision to give notice under s. 54(b) is a fact-specific determination and there is no obligation on the Commissioner or their delegate to give notice to every group or individual who may be impacted by the outcome of an OIPC proceeding.⁴

[7] The Videos depict the Applicant, two other inmates, multiple correctional officers and staff who are Ministry employees, two firefighters employed by the City of Port Coquitlam (City), and two paramedics employed by the Provincial Health Services Authority (PHSA).

[8] The Ministry requested that the City and PHSA be added to this inquiry as appropriate persons under s. 54(b) on the basis that these public bodies would be the best situated to provide evidence and submissions on the application of s. 22 to the personal information of the firefighters and paramedics that appear in the Videos.

[9] I declined to add the City or PHSA as participants in this inquiry and encouraged the Ministry to attach evidence from the City or PHSA to its

² The Applicant also argued that s. 25(1) applied to the records. However, this issue was resolved at mediation and does not form part of this inquiry.

³ The Applicant's submission was provided on his behalf by a lawyer working for Prisoners' Legal Services.

⁴ Decision F25-01, 2025 BCIPC 40 (CanLII) at para 21.

submissions if it believed this evidence would assist in the determination of the issues in this inquiry.⁵ The Ministry sought and received an adjournment of 30 business days to consult with the City and PHSA. The Ministry provided affidavit evidence from the City's Records and Privacy Analyst about the application of s. 22 to the firefighters shown in the Videos. The Ministry also attached, to its submission, a submission that PHSA sent the Ministry on the application of s. 22 to the visual depictions of the paramedics in the Videos.

[10] Separate from the Ministry's request, I considered whether to invite the individuals depicted in the Videos to participate in the inquiry and, in doing so, asked myself the following questions:

- Would the individuals be concerned if the Videos were disclosed?
- Would notifying and receiving representations from the individuals assist in the determination of the issues in this inquiry?
- Would notifying the individuals create an administrative burden for the OIPC?
- Would notifying the individuals be a fair, timely and efficient administration of FIPPA?
- Are the individuals' privacy interests represented without the OIPC issuing a s. 54(b) notice?⁶

[11] I found that the individuals may be concerned if the Videos were disclosed because, even if the individuals are aware that the correctional centre has cameras, they may not understand that the video footage captured by the cameras are records that may be disclosed under FIPPA.

[12] I found that notifying and receiving representations from the individuals could assist in determining the issues in dispute because these individuals have knowledge of their own concerns about their privacy, safety, and mental and physical health, which may not be known to the Ministry, the City, or PHSA.

[13] However, I found that identifying, notifying, and receiving representations from the individuals would create an administrative burden for the OIPC. The Videos show two inmates, two firefighters, two paramedics, and an unknown number of correctional staff, though there appears to be at least twenty. The

⁵ Decision letter dated January 28, 2025.

⁶ Decision F25-01, 2025 BCIPC 40 (CanLII) at para 21.

OIPC would need to develop a way to notify all these individuals and receive their submissions and evidence. The individuals may wish to provide some of their evidence *in camera* (meaning only to the OIPC and not the other parties), which requires them to make an application and the OIPC to make determinations about that application. Even if only one or two wanted to participate, this would increase the time and effort needed to manage and adjudicate the file and would take administrative resources away from other files.

[14] I determined that notifying the individuals would not be a fair, timely, or efficient administration of FIPPA. Parties are expected to raise issues, including notice to appropriate persons, as early as possible and are expected to put forward their best arguments and evidence by their submission deadlines. The Ministry has not raised this issue and has not provided evidence from these individuals to support its submissions. I find that inviting the individuals would prejudice the Applicant by delaying the inquiry. It may also, in effect, give the Ministry the opportunity to bolster its position by allowing others to submit evidence that it neglected to provide by its submission deadline.

[15] I also considered whether the employees privacy interests were already represented by the Ministry, the City, and PHSA. It was clear to me, from the Ministry's submissions and its request to add the City and PHSA to this inquiry, that it has seriously considered how to best represent the privacy interests of the individuals depicted. The Ministry provided evidence from one of its employees (an assistant deputy warden who, I understand from his evidence, is not depicted in the Videos), making it clear that the Ministry understands the benefits of obtaining direct evidence from its employees. The Ministry requested and received an adjournment of 30 business days in order to consult with the City and PHSA about how disclosure of the records may be an unreasonable invasion of the personal privacy of the depicted individuals. If the Ministry, or the other public bodies it consulted, viewed evidence from the employees as relevant to the determination of the issues in dispute in this inquiry, the Ministry could have provided evidence from these individuals.

[16] Based on weighing the above factors, I concluded that, even though the individuals could be concerned about disclosure of the Videos and could provide information relevant to the issues in dispute, it is not appropriate to give notice to these individuals under s. 54(b) because inviting them would create administrative burden for the OIPC and prejudice the Applicant by further delaying the adjudication of his files. This additional burden and prejudice cannot be justified in the circumstances because the Ministry, the City, and PHSA have already made representations about the privacy interests of these individuals.

ISSUES AND BURDEN OF PROOF

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

1. Is the Ministry authorized to refuse access to the records under ss. 15(1)(f), 15(1)(l), 15(2)(c), or 19(1)(a)?
2. Is the Ministry required to refuse access to the records under s. 22(1)?
3. Has the Ministry met its obligations under ss. 4(2), 6(1), and 9(2)?

[18] The Ministry has the burden of proving that it has met its obligations under FIPPA,⁷ including under ss. 4(2), 6(1), and 9(2), and that the Applicant has no right of access to the records under ss. 15(1)(f), 15(1)(l), 15(2)(c), and 19(1)(a).⁸ The Ministry also has the burden to prove that the information withheld under s. 22(1) is personal information.⁹

[19] The Applicant has the burden of proving that disclosure of the personal information in the records would not be an unreasonable invasion of third-party personal privacy under s. 22(1).¹⁰

DISCUSSION

Background

[20] The Ministry is responsible for BC Corrections, which operates 10 correctional centres, including North Fraser. Correctional centres house individuals 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.¹¹

[21] On October 31, 2021, the Applicant experienced a medical emergency and was escorted, by several correctional officers, from his cell to an ambulance. Firefighters employed by the City and paramedics employed by PHSA attended North Fraser in response to this event. Throughout this order, I will refer to this event as the 2021 Incident.

[22] On January 5, 2022, the Applicant was escorted from a holding cell to a segregation cell by several correctional officers. The Applicant resisted this escort, and the correctional officers took him to the ground for a short period

⁷ Order F20-13, 2020 BCIPC 15 (CanLII) at para 13.

⁸ FIPPA, s. 57(1).

⁹ Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

¹⁰ FIPPA, s. 57(2).

¹¹ Assistant Deputy Warden's Affidavit #1 at para 10.

before continuing the escort. The Applicant continued to behave erratically after being put into the segregation cell. Throughout this order, I will refer to this event as the 2022 Incident.

[23] After the Applicant made his access request, the Ministry permitted the Applicant's lawyer to view the unredacted Videos but not retain copies.¹²

Records at issue

[24] The records consist of 25 video files recorded at North Fraser, which the Ministry has entirely withheld from the Applicant. Eighteen of these videos relate to the 2021 Incident and the other seven videos relate to the 2022 Incident.

Disclosure harmful to law enforcement – s. 15

[25] Section 15 of FIPPA aims to prevent harm to law enforcement that could reasonably be expected to result from the disclosure of information.

[26] Section 15 (and s. 19, which I will discuss later in this order) are about the 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. The party with the burden of proof must provide evidence well beyond or considerably above a mere possibility in order to reach that middle ground.¹³ There must be a clear and direct connection between the disclosure of the withheld information and the anticipated harm.¹⁴ 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”.¹⁵

[27] Consistent with past OIPC orders dealing with ss. 15 and 19, I have applied the above principles in considering the parties' arguments about harm under those sections.¹⁶

¹² Ministry's initial submission at paras 4-5; Privacy Analyst's Affidavit #1 at paras 8-14.

¹³ *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 (CanLII) at para 201 [*Merck Frosst*].

¹⁴ Order 02-50, 2002 CanLII 42486 (BC IPC) at para 137; Order F13-06, 2013 BCIPC 6 (CanLII) at para 24.

¹⁵ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para 54, citing *Merck Frosst*, *supra* note 13 at paras 94 and 195-206. See also Order F08-02, 2008 CanLII 70316 (BC IPC) at para 48.

¹⁶ See, e.g., Order F21-46, 2021 BCIPC 54 (CanLII) at para 8; Order F24-11, 2024 BCIPC 15 (CanLII) at para 27.

[28] For clarity, my analysis also recognizes that disclosure to an applicant, provided under FIPPA, should be treated as disclosure to the world.¹⁷

[29] The Ministry's position is that ss. 15(1)(f), 15(1)(l), and 15(2)(c) each apply to the Videos. The Applicant's position is that none of these subsections apply.

Section 15(1)(l) – harm to property or a system

[30] 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' submissions

[31] The Ministry submits disclosing the Videos could reasonably be expected to harm North Fraser and other correctional centre buildings, and also the video surveillance systems and security systems used within these buildings. To support its submissions on this subject, the Ministry provides affidavit evidence from an Assistant Deputy Warden at North Fraser and a Privacy Analyst employed by the Ministry.

[32] The Ministry submits that the Videos contain information about North Fraser's security system, which includes information about the layout of the building and its video surveillance systems as well as the procedures, protocols, and routes correctional officers and medical staff use when responding to medical emergencies.¹⁸ The Ministry submits disclosure could be expected to harm the security system by revealing:

- the techniques correctional officers use to address non-compliance and perform other security-related duties, which could enable individuals in custody to counter these techniques or avoid or escape a correctional officer's control.¹⁹ The Ministry submits interference with these techniques would be especially detrimental to life and safety if the interference occurs during a medical emergency.²⁰

¹⁷ See, e.g., Order 03-33, 2003 CanLII 49212 (BC IPC) at para 44.

¹⁸ Ministry's initial submission at paras 48-53; Assistant Deputy Warden's Affidavit #1 at paras 13-16.

¹⁹ Ministry's initial submission at paras 54(a), 54(b), 54(d), 61-64, 66-67, 54(d) and Assistant Deputy Warden's Affidavit #1 at paras 17-22.

²⁰ Ministry's initial submission at paras 65 and 67.

- gaps in the coverage or quality of North Fraser's video surveillance system, which individuals in custody could use to engage in drug use, self-harm or violence or to plan possible escape routes out of North Fraser.²¹
- the most direct route into and out of North Fraser, including the exact number of doors along the route and how the doors open and close, which could result in individuals in custody or their associates on the outside compromising the security of the centre, smuggling contraband, or planning an escape route.²²

[33] The Ministry submits that, since all correctional centres use common designs, security, training, and equipment, there is a reasonable expectation that disclosure of the Videos could harm the security of all correctional centres in BC.²³

[34] The Applicant submits that the Ministry has failed to establish that the Videos would reveal information not already known to people incarcerated at North Fraser, including information about protocols and procedures, gaps in surveillance, and routes into and out of North Fraser.²⁴ He submits that the harm the Ministry alleges is speculative and that it has not established a direct connection between disclosure of the Videos and the harms alleged.

[35] In response, the Ministry submits that the Applicant has not provided evidence that people incarcerated know about the gaps in the coverage or quality in the security system, the routes into and out of North Fraser, or staff protocols.²⁵ It submits that the Applicant's arguments do not take into consideration that disclosure under FIPPA is disclosure to the world or that "a person planning on smuggling contraband or planning an escape from custody by relying on reports and recollection from individuals in custody would not have this comprehensive level of detail."²⁶ It submits that the harms explained by the Assistant Deputy Warden are not hypothetical and instead are "realities that correctional staff work to mitigate every day."²⁷

Analysis – ss. 15(1)(l)

[36] I find that North Fraser is property within the meaning of s. 15(1)(l) and that North Fraser is kept secure through a security system, which includes the

²¹ Ministry's initial submission at paras 54(e) and 56-57; Assistant Deputy Warden's Affidavit #1 at paras 13-14 and 23-28.

²² Ministry's initial submission at paras 54(c) and 58; Assistant Deputy Warden's Affidavit #1 at para 16.

²³ Ministry's initial submission at para 41; Assistant Deputy Warden's Affidavit #1 at para 9.

²⁴ Applicant's submission at paras 6-10.

²⁵ Ministry's reply submission at paras 7-8.

²⁶ Ministry's reply submission at paras 7-8 and 10.

²⁷ Ministry's reply submission at para 10.

design of the building, video surveillance, and protocols carried out by correctional staff.²⁸

[37] However, I find that the Ministry has not established that disclosure of any of the information in dispute could reasonably be expected to harm the security of North Fraser or any other correctional centre.

[38] The Ministry's evidence from its Privacy Analyst contains charts, statistics, and anecdotes about violence in, and the security of, correctional centres. The Privacy Analyst does not explain the source of this information, which is plainly outside the scope of her personal knowledge and professional expertise as a privacy analyst. I give little weight to these portions of the Privacy Analyst's evidence.

[39] The Assistant Deputy Warden's evidence includes his direct observations and his opinion about the security features of correctional centres, including North Fraser, and the issues of violence, self-harm, drug use and smuggling in these facilities. He also provides his opinion about whether disclosure of the information in the Videos could reasonably be expected to harm the security of North Fraser.²⁹

[40] I give significant weight to the Assistant Deputy Warden's direct observations and opinion evidence. His opinion evidence is relevant to the issues in dispute and falls within his expertise as someone who has worked in correctional centres for 24 years and has been an assistant deputy warden at North Fraser for the last six and a half years. Even though he provides his opinion about the ultimate issues to be decided in this inquiry, which I am responsible for deciding and cannot delegate, he grounds these opinions in his professional expertise and provides information outside of my own knowledge as a decision-maker under FIPPA.³⁰

[41] However, the Assistant Deputy Warden's evidence does not provide examples directly linking disclosure of specific information in the Videos to the alleged harm to the security of North Fraser. I have carefully reviewed each of the Videos with a keen eye for the harms alleged by the Ministry and the Assistant Deputy Warden. However, without a clear explanation from the Ministry, I cannot see how the specific information in dispute here could

²⁸ Order F21-09, 2021 BCIPC 13 (CanLII) at para 19.

²⁹ Assistant Deputy Warden's Affidavit #1 at paras 11, 22, 24, and 33.

³⁰ The factors I consider in this paragraph are drawn from the *Mohan* criteria for admitting expert evidence (*R. v. Mohan*, 1994 CanLII 80 (SCC), [1994] 2 SCR 9). As an administrative tribunal, the OIPC is not required to follow the strict laws of evidence. It is the OIPC's general practice to admit expert opinion evidence and then decide what weight to give it by applying the *Mohan* criteria: *British Columbia Lottery Corporation v. Skelton*, 2013 BCSC 12 (CanLII) at paras 71-72; *British Columbia (Ministry of Justice) v. Maddock*, 2015 BCSC 746 (CanLII) at para 40.

reasonably be expected to result in the harm alleged. I provide more detailed reasons under the subheadings that follow.

Officers' procedures and communications

[42] The Ministry says that the Videos reveal information about the number and location of correctional officers and procedures and communication they use to respond to medical emergencies, extract inmates from cells, and deal with non-compliant behaviour. The Assistant Deputy Warden says that this information could be used by incarcerated people to counter correctional officers' techniques or avoid or escape correctional officers' control.

[43] I can see that the Videos related to the 2021 Incident show correctional staff responding to a medical emergency and that during the medical emergency the Applicant is taken out of his cell. The Videos related to the 2022 Incident do not appear to relate to a medical emergency and show the Applicant voluntarily leaving a cell and then later becoming non-compliant. I am satisfied that the Videos show the number and location of some correctional staff and emergency responders during the Applicant's incidents and show these people working together to assist or subdue the Applicant.

[44] However, the Ministry has not adequately explained how someone could use this information to avoid or escape custody, counter techniques, or assault a correctional officer. In the absence of further explanation, I cannot find that the Ministry has provided adequate evidence to establish a direct connection between disclosure of this information and the harm the Assistant Deputy Warden says could reasonably be expected to occur.

[45] In making this finding, I cannot agree with the Ministry's position that the findings in Order F15-22 should be applied here. That order found the Ministry's evidence, including evidence submitted *in camera* (i.e., to only the OIPC and not the applicant), was specific and convincing.³¹ Here, the Ministry has not provided this kind of evidence.

Video surveillance

[46] The Ministry submits that the Videos show camera locations, viewing angles, coverage, type, image quality, and lighting quality, which individuals may use to find gaps in the video surveillance system in which to harm someone else without being seen; use, smuggle or pass along contraband (including drugs); engage in self-harm; or plan an escape route.

[47] It is possible that the Videos could show gaps in the video surveillance system, but the Ministry has not provided any specific examples of where it

³¹ Order F15-22, 2015 BCIPC 24 (CanLII) at paras 37-40.

perceives these gaps to be. I cannot tell which parts of the Videos the Ministry is concerned about.

[48] In making this finding, I distinguish Order F25-42 on the basis that, in that inquiry, the Ministry provided *in camera* evidence about how specific information in the video could reasonably be expected to pose a risk to the physical safety of inmates and correctional staff.³²

[49] Without more information I cannot find that the Ministry has met its burden to prove that disclosure of the Videos could reasonably be expected to result in harm to North Fraser's security system by revealing gaps in its video surveillance.

Direct route

[50] The Ministry submits that the Videos show a direct route into North Fraser and that "publicly disclosing a direct route into and out of a correctional centre would obviously be extremely detrimental to North Fraser's security [and] would provide a clear map to would-be escapees or contraband smugglers."³³

[51] I can see that the Videos related to the 2021 Incident, when viewed all together, show a route from the Applicant's cell to an exit, which includes information about the doors along this route and the layout of some of North Fraser. In an abstract sense, I understand the Ministry's concern that having this information disclosed publicly could create possible security risks for North Fraser.

[52] However, the Ministry's submissions and evidence do not bring this anticipated harm out of the realm of mere possibility. Even though the Ministry is concerned that the Videos will increase the risk of escape attempts or contraband smuggling, it has not provided evidence about how these activities currently operate or how it expects disclosure of the route and its doors to affect these activities. Without more information, I cannot conclude that disclosure of the route seen in the Videos could reasonably be expected to harm North Fraser's security.

Conclusion

[53] In conclusion, I find that the Ministry has not provided evidence sufficient to establish that the risk of harm to the security of North Fraser is well beyond or considerably above a mere possibility. The Ministry's evidence is too broad and general and does not provide specific examples sufficient to establish a direct

³² Order F25-42, 2025 BCIPC 50 (CanLII) at paras 23-26.

³³ Ministry's initial submission at para 59.

connection between disclosure of the Videos and the reasonable expectation of harm.

Section 15(1)(f) – harm to law enforcement officer or any other person

[54] 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 – ss. 15(1)(f)

[55] The Ministry submits, for the reasons it gave in its submissions under s. 15(1)(l), that disclosing the Videos will compromise the security of North Fraser and other BC correctional centres, which will endanger the life and physical safety of inmates, correctional staff, and the public.

[56] The Ministry also submits that disclosing the Videos will reveal the identities of the specific correctional officers involved in the incidents and create a risk that “the Applicant, his associates in the community, or others” may retaliate against those correctional officers.³⁴ I understand the Ministry’s concerns about “retaliation” to be concerns about physical assault.³⁵ The Ministry submits that the Applicant probably cannot recall, without seeing the Videos, which correctional officers were involved in the incidents due to the passage of time, the number of medical staff and officers involved, and his condition during the incidents. The Ministry’s Privacy Analyst provides two examples of threats of violence uttered against correctional officers by people other than the Applicant.³⁶

[57] The Applicant submits that he would already know the identities of the correctional officers since he was the subject of the use of force and his lawyer has also viewed the Videos.³⁷ He submits that the Ministry has not provided evidence to suggest his alleged condition during the incidents would prevent him from recalling the identities of the correctional officers without the aid of the Videos. The Applicant submits that, even if he were to only learn the identities of the officers after seeing the Videos, the Ministry’s assertion that he would seek to retaliate against the officers is purely speculative.³⁸

Analysis – ss. 15(1)(f)

[58] I found above that the Ministry has not established that disclosing the specific information contained in the Videos could reasonably be expected to

³⁴ Ministry’s initial submission at para 69.

³⁵ Ministry’s initial submission at para 142.

³⁶ Privacy Analyst’s Affidavit #1 at paras 29-30.

³⁷ Applicant’s submission at paras 12-13.

³⁸ Applicant’s submission at paras 12-14.

harm the security of North Fraser or any other correctional centre. For the reasons given in my s. 15(1)(l) analysis, I find that the Ministry has not established there is a reasonable expectation that disclosure of the Videos could endanger anyone's safety, under s. 15(1)(f), by compromising the security of North Fraser.

[59] Regarding the risk of retaliation, I find the Ministry's submissions and evidence to be speculative. The Applicant was released from North Fraser to federal custody in January 2025³⁹ and, I understand, his sentence is expected to end in October 2025.⁴⁰ In future, the Applicant may be readmitted to North Fraser, but, at this time, it is a mere possibility and there is not evidence supporting his return. I accept the Ministry's evidence that the Applicant was violent and non-compliant while incarcerated at North Fraser. However, in the Videos, the Applicant's violence appears to be reactive rather than proactive. The Ministry has not provided evidence establishing that the Applicant has ever engaged, or could reasonably be expected to engage, in the kind of premeditated violence the Ministry alleges. I cannot conclude, based on the evidence before me, that the Applicant could reasonably be expected to seek out correctional staff to physically assault or threaten them, in the community or at North Fraser, after receiving access to the Videos.

[60] For the above reasons, I find that the Ministry has not met its burden under s. 15(1)(f).

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

[61] 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.

[62] The Ministry submits that the Videos are about the history and supervision of the Applicant. It submits that disclosing the Videos would provide the Applicant with information that would make it easier for him to determine where and how to use violence, drugs and home-made alcohol in the centre, and undermine the ability of correctional officers and medical staff to successfully use the necessary protocols when dealing with him, which could harm the proper custody and supervision of the Applicant.

[63] I find that the Videos are about the Applicant's history and supervision while in custody at North Fraser. I understand the Ministry to be arguing that disclosure of the Videos could reasonably be expected to harm the proper

³⁹ Privacy Analyst's Affidavit #1 at para 33.

⁴⁰ August 21, 2025 email from Applicant's lawyer.

custody or supervision of the Applicant at North Fraser. However, as noted above, the Ministry's evidence is that the Applicant has not been in custody at North Fraser or under the supervision of BC Corrections since January 2025. While the Applicant may return to North Fraser at some point, at this time, it is a mere possibility. I do not see, and the Ministry has not adequately explained, how disclosure of the Videos could result in harm to the Applicant's custody at North Fraser, when he has not been in custody there since January 2025 and there is inadequate evidence about whether the Applicant is expected to return to North Fraser.

[64] If the Ministry is concerned that disclosure of the Videos could reasonably be expected to harm the proper custody of the Applicant in federal custody or his supervision in the community, it has not adequately explained these concerns.

[65] For the above reasons, I find that the Ministry has not met its burden under s. 15(2)(c).

Disclosure harmful to safety – s. 19(1)(a)

[66] Section 19(1)(a) says that the head of a public body may refuse to disclose 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 Videos, and the Applicant says it does not.

[67] I have explained the "reasonable expectation of harm" standard of proof at paragraph 26 above. I will apply that standard in my analysis of s. 19(1)(a).

[68] The Ministry submits that all its evidence and argument about s. 19(1)(a) is the same as its evidence and argument under s. 15(1)(f). The Ministry reiterates that the Videos show gaps in the video surveillance system at North Fraser, which could be exploited by individuals in custody to assault others, engage in self-harm, use or smuggle drugs, or plan an effective escape. The Ministry submits that this could threaten the safety or mental or physical health of individuals in custody, correctional officers and staff, and the public. The Ministry also submits that disclosure of the Videos will make it easier for the Applicant to determine where and how to use violence, drugs, and alcohol, which could reasonably be expected to harm the mental health of correctional employees and other inmates who must interact with the Applicant frequently.⁴¹

[69] As I have already explained, the Ministry has not provided clear examples of how any specific information in the Videos reveals gaps in the security system of North Fraser such that an inmate or other person could reasonably be expected to use it to assault someone, engage in self-harm, smuggle or use

⁴¹ Ministry's initial submission at paras 89-90.

drugs, or plan an effective escape. Regarding the Ministry's allegations that disclosure could reasonably be expected to result in the Applicant threatening someone's health or safety at North Fraser or in the community, I find, for the reasons explained earlier in this order, that this assertion is speculative and a mere possibility.

[70] I find that the Ministry has not established that disclosure of the Videos could reasonably be expected to threaten anyone's safety or mental or physical health under s. 19(1).

Unreasonable invasion of third-party personal privacy – s. 22

[71] Section 22(1) requires a public body to refuse to disclose personal information if its disclosure would unreasonably invade a third party's personal privacy. A third party is any person other than the Applicant and a public body.⁴²

[72] There are four steps in the s. 22(1) analysis, and I will apply each step under the subheadings that follow.⁴³

Section 22(1) – personal information

[73] The first step in the s. 22(1) analysis is to determine if the information in dispute is personal information. Personal information is defined in FIPPA as "recorded information about an identifiable individual other than contact information".⁴⁴ Information is about an identifiable individual when it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.⁴⁵

[74] 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".⁴⁶ Whether information is "contact information" depends on the context in which it appears.⁴⁷

[75] Clear video recordings that allow individuals to be identified by their physical characteristics or demeanor are recorded information about those individuals.⁴⁸

⁴² FIPPA, Schedule 1.

⁴³ Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.

⁴⁴ FIPPA, Schedule 1.

⁴⁵ Order F05-30, 2005 CanLII 32547 (BC IPC) at para 35.

⁴⁶ FIPPA, Schedule 1.

⁴⁷ Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

⁴⁸ F24-10, 2024 BCIPC 14 (CanLII) at para 36.

[76] I find that the Videos contain the personal information of the Applicant, two other inmates, the Ministry's correctional officers and staff, the City's firefighters, and PHSA's paramedics. I will refer to the correctional staff, firefighters, and paramedics collectively as the Public Body Employees. The Public Body Employees are all wearing medical masks covering the lower half of their faces and uniforms. Even though their physical features are obstructed to some degree, I am satisfied that anyone who knows these individuals could identify them from the Videos.

[77] I find there is no contact information in the Videos because none of the information appears in the record to enable any individual to be contacted at a place of business.

[78] The rest of the information in the Videos, including information about the correctional centre, is not personal information.

Section 22(4) – not an unreasonable invasion of personal privacy

[79] The second step in the s. 22(1) analysis is to determine if the personal information falls into any of the categories of information listed in s. 22(4). Section 22(4) sets out circumstances where disclosure of personal information is not an unreasonable invasion of personal privacy.

[80] The personal information of the two inmates does not fall under any categories listed in s. 22(4).

[81] The Applicant submits s. 22(4)(e) applies to the Public Body Employees' personal information because, he argues, it is about their positions and functions as public body employees.

[82] Section 22(4)(e) says that disclosure of personal information would not be an unreasonable invasion of privacy where the information is about a third party's position, functions, or remuneration as an officer or employee of a public body. Past orders have found that s. 22(4)(e) applies to information that identifies individuals as employees of a public body and information that relates to the job duties performed in the normal course of their work, including objective, factual information about what a public body employee said or did while discharging their job duties.⁴⁹

[83] The Ministry submits that s. 22(4)(e) does not apply to video footage because it also captures employees' personal identifiers, including their race.⁵⁰ It submits that information about a public body employee's activities in the normal

⁴⁹ Order 01-53, 2001 CanLII 21607 at para 40. Order F18-38, 2018 BCIPC 41 (CanLII) at para 70.

⁵⁰ Ministry's reply submission at para 19.

course of work typically falls under s. 22(4)(e), but that finding should not be applied here because the videos also capture images of these employees' faces and bodies, which are not about their position, functions or remuneration as a public body.⁵¹

[84] I find that the personal information of the Public Body Employees in the Videos is both about their position and functions as public body employees and also about them as individuals.

[85] The Videos provide objective, factual information about what the Public Body Employees did while performing their job duties in the normal course of their work. While the Videos include high stress situations in which employees respond to a medical emergency and correctional officers use force against the Applicant, the Ministry's evidence is that these situations regularly occur in correctional centres and that staff are trained to respond to them.⁵²

[86] A previous OIPC order found that video footage of a person's face is not about their functions as an employee of a public body because their face "does not provide information about" their functions as an employee of a public body.⁵³ I disagree with this finding. Most jobs require individuals, to some degree, to communicate with other people. Part of human communication includes non-verbal cues conveyed through facial expressions and body language. Jobs can also require a person to read or observe something, which also engages their face in the performance of their job duties. For this reason, I find that the images of the Public Body Employees' faces and bodies are about their positions and functions as public body employees.

[87] A finding that personal information is about an individual's position, function, or remuneration as an employee of a public body usually results in a finding, under s. 22(4)(e), that disclosure of this information would not be an unreasonable invasion of these individuals' personal privacy. This finding is conclusive and ends the analysis under s. 22.

[88] However, in this case, I am persuaded by the Ministry's submission that the Videos showing the Public Body Employees at work contains more information than just information about their positions or functions as public body employees. Specifically, the Videos show these individuals' physical features and mannerisms. This personal information is inextricably linked to their personhood and is not exclusively about their position, function, or remuneration as an employee of a public body. For this reason, I find it is not appropriate to conclude, at this stage in the analysis, that disclosure of the Public Body

⁵¹ Ministry's initial submission at para 111.

⁵² Assistant Deputy Warden's Affidavit #1 at paras 8-9, 13(i), 15, and 20-22.

⁵³ Order F12-12, 2012 BCIPC 17 (CanLII) at para 30.

Employees' personal information would not be an unreasonable invasion of these individuals' personal privacy under s. 22(4)(e).

[89] In making this finding, I distinguish from Order F24-10, which found that the audio and video recordings of public body employees fell under s. 22(4)(e). In that order, the adjudicator found those recordings were a few seconds in duration and mundane.⁵⁴ Here, the recordings were captured during two specific incidents, and each incident was about an hour in duration.

Section 22(3) – presumed an unreasonable invasion of personal privacy

[90] The third step in the s. 22(1) analysis is to determine whether any of the presumptions listed under s. 22(3) apply to the personal information in dispute. If one or more apply, then disclosure of that personal information is presumed to be an unreasonable invasion of personal privacy.

[91] The parties make submissions about ss. 22(3)(d) and 22(3)(i).

Employment history

[92] Section 22(3)(d) says 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.

[93] No one has made submissions about whether s. 22(3)(d) applies to the inmates' personal information and I find that it does not.

[94] The Ministry, the City, and PHSA submit that the personal information of the Public Body Employees falls under s. 22(3)(d) because it provides qualitative information about how particular individuals did their jobs on a particular day, which, they say, is information that relates to the employees' employment history.⁵⁵ The PHSA submits that the Videos show the employees carrying out their ordinary employment responsibilities, which "is a qualitative assessment of the functions of their position".⁵⁶

[95] I have considered whether the Public Body Employees' personal information is the type of information previous OIPC orders have found falls under s. 22(3)(d). Order F23-56 summarizes these categories as follows:

⁵⁴ Order F24-10, 2024 BCIPC 14 (CanLII) at para 54.

⁵⁵ Ministry's initial submission at para 123, citing Order 15-42, 2015 BCIPC 45 (CanLII) and Order F18-47, 2018 BCIPC 50 (CanLII).

⁵⁶ PHSA's submission.

In past orders, OIPC adjudicators have found that “employment history” includes qualitative information about a third party’s workplace behaviour such as complaints, investigations or discipline relating to a third party’s workplace conduct.

Section 22(3)(d) has also been found to apply to personal information relating to the administration of a third party’s employment, such as information relating to job applications, resumes, personal identifiers and information about leaves to which the employee was entitled (for example, the type, amount or balance of parental, vacation, or sick leave) [citations omitted].⁵⁷

[96] I find that the personal information in the Videos is not the kind of information that previous orders have found falls under s. 22(3)(d). Instead, the information about the employees’ work is objective, factual information about what the employees did in the normal course of performing their job duties. The rest of the employees’ personal information is information about their physical characteristics and mannerisms, which is about their personhood and is unrelated to their employment.

[97] The public bodies support their submissions by analogizing to Order F15-42 and Order F18-47, where the adjudicators found s. 22(3)(d) applied. However, I find it is not appropriate to follow these orders because the facts of those orders differ from the present case. In Order F15-42, the videos in dispute contained the personal information of school district staff related to a parent’s complaint that staff were using inappropriate behavioral interventions on their child.⁵⁸ In Order F18-47, the audio recordings in dispute included the applicant’s criticism of how the dispatchers were handling a 911 call and the call was later the subject of a complaint.⁵⁹ Here, there is no evidence before me that there has been a complaint, investigation, disciplinary measure, or other kind of performance evaluation related to the events depicted in the Videos.

[98] Based on the above, I conclude that s. 22(3)(d) does not apply to any of the personal information in the Videos since the Videos do not relate to a third party’s job application, resume, or leave entitlement, and are not part of a qualitative assessment related to the Public Body Employees’ workplace behaviour.

Racial or ethnic origin and religious beliefs or associations – s. 22(3)(i)

[99] Section 22(3)(i) says that disclosure of a third party’s personal information is presumed to be an unreasonable invasion of the third party’s privacy where the

⁵⁷ Order F23-56, 2023 BCIPC 65 (CanLII) at paras 70-71. On the subject of “qualitative information” also see Order 01-53, 2001 CanLII 21607 (BC IPC) at paras 32-38.

⁵⁸ Order F15-47, 2015 BCIPC 45 (CanLII) at paras 10-19.

⁵⁹ Order F18-47, 2018 BCIPC 50 at para 25.

personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

[100] The Ministry and the City say that the Videos indicate the racial or ethnic origins of the individuals depicted in the Videos because they show the skin colour of these individuals. The Ministry also submits that the Videos indicate the religious beliefs of some individuals because it shows them wearing religious head coverings, specifically turbans. The Ministry and City have not provided submissions or evidence about how they reached these conclusions.

[101] I can see that the Videos show all the individuals' skin colour and some of the employees wearing turbans. However, for the reasons that follow, I find that these visual depictions of this personal information do not indicate these individuals' racial or ethnic origin or religious beliefs or associations for the purpose of s. 22(3)(i).

[102] Other adjudicators in BC and ON have previously grappled with whether video footage showing an individual's skin colour indicates that person's racial or ethnic origin.

[103] In Order F25-46, the adjudicator found that s. 22(3)(i) applied to a video recording because "anyone viewing the [correctional officers'] facial images could discern the racial or ethnic origins of the [correction officers]".⁶⁰ He found that personal information does not need to conclusively indicate a third party's racial or ethnic origin for s. 22(3)(i) to apply.

[104] In contrast, there is a line of orders from Ontario's Information and Privacy Commissioner, which interpret Ontario's equivalent to s. 22(3)(i).⁶¹ These orders find that videos do not indicate a person's racial or ethnic origins simply because they show a person's skin colour and physical characteristics. These orders find that videos only allow the viewer to make assumptions about the racial or ethnic origins of the person depicted and, therefore, do not indicate a person's racial or ethnic origin with the "requisite degree of specificity".

[105] The word "indicate" is a verb that can have several meanings. "Indicate" can mean "be a sign of",⁶² in which case a person's skin colour or religious head covering may indicate (i.e. be a sign of) their racial or ethnic origin or religious beliefs or associations. However, "indicate" can also mean "point out".⁶³ Using this definition, it is not obvious to me that video footage simply showing a

⁶⁰ Order F25-46, 2025 BCIPC 54 (CanLII) at para 101.

⁶¹ Order MO-1570, 2002 CanLII 46350 (ON IPC), cited in Order MO-3135, 2014 CanLII 76761 (ON IPC) and Order PO-4468, 2023 CanLII 123310 (ON IPC).

⁶² *Webster's New World Dictionary*, 5th Ed; *Canadian Oxford Dictionary*, 2nd Ed.

⁶³ *Ibid.*

person's skin colour or religious head covering indicates (i.e., points out) their racial or ethnic origin or religious beliefs or associations.

[106] It is clear, from the BC and ON orders discussed above and the dictionary definitions of "indicate", that there is ambiguity about whether visual depictions of a person's skin colour or religious head covering indicates their racial or ethnic origin or religious beliefs or associations.

[107] To determine whether the presumption under s. 22(3)(i) applies to visual depictions of a person's skin colour or religious head coverings, I must interpret the language of s. 22(3)(i) harmoniously with the scheme and purposes of FIPPA and the intentions of the Legislature.⁶⁴

[108] The purposes of FIPPA are to make public bodies more accountable to the public and to protect personal privacy by, among other things, giving the public a right of access to records, giving individuals a right of access to personal information about themselves, and specifying limited exceptions to the right of access.⁶⁵

[109] Section 22 is one of the limited exceptions to the right of access. It recognizes that there may be situations in which a third party's personal privacy rights outweigh an applicant's right of access to information held by a public body.

[110] Section 22(3) sets out categories of personal information, which, if disclosed by a public body, are presumed to be an unreasonable invasion of a third party's personal privacy. These categories include personal information that:

- relates to an individual's medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation.
- was compiled and is identifiable as part of an investigation into a possible violation of law.
- relates to eligibility for income assistance or social service benefits or to the determination of benefit levels.
- relates to employment, occupational or educational history, including personal information related to a workplace or educational investigation.
- was obtained on a tax return or gathered for the purpose of collecting a tax.

⁶⁴ R. Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at 1, citing E. A. Driedger, *The Construction of Statutes* (1974), at 67. See also, *Canadian National Railway Co v Canada (Attorney General)*, 2014 SCC 40 at para 36

⁶⁵ FIPPA s. 2(1); Order F21-65, 2021 BCIPC 76 (CanLII) at para 142.

- describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness
- consists of personal recommendations or evaluations, character references or personnel evaluations about the third party or supplied in confidence by the third party.
- consists of the third party's name, address, or telephone number and is to be used for mailing lists or solicitations by telephone or other means.

[111] Each of the categories of personal information under s. 22(3) has something about it that is sensitive or private in nature. These categories of personal information are so plainly connected to an individual's personal privacy interests that the Legislature intended for these kinds of personal information to be excepted from an applicant's right of access to information under FIPPA (subject to evidence rebutting the presumption). Section 22(3) protects personal information that an individual reasonably expects a public body to keep private.

[112] In contrast, a person's skin colour and religious head coverings are visible to anyone they come across. It is personal information that forms part of their public persona. Generally, it is not the kind of personal information that is, in itself, sensitive or private.

[113] In the Videos, the depictions of the individuals' skin colours and religious head coverings do not indicate anything about the individuals' racial or ethnic origins or religious beliefs or associations that is not already apparent to anyone that looks at these individuals. A finding that it is presumptively an unreasonable invasion of these individuals' personal privacy to disclose this information, which is already visible to the world, does not strike the appropriate balance between FIPPA's purposes of giving applicant's a right of access to records and protecting personal privacy. Therefore, I find that disclosure of the visual depictions of the individuals' skin colours and religious head coverings is not presumptively an unreasonable invasion of these individuals' personal privacy. These visual depictions are not personal information that "indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations" as that phrase appears in s. 22(3)(i). For these reasons, I find that s. 22(3)(i) does not apply to any personal information in the Videos.⁶⁶

[114] The parties do not make submissions about any other s. 22(3) presumptions, and I find that none apply to the personal information in the Videos.

⁶⁶ If I am wrong and disclosure of the individuals' skin colours or religious head coverings is presumptively an unreasonable invasion of their personal privacy under s. 22(3)(i), I find that, in this case, the presumption is rebutted by the lack of sensitivity of this personal information and the fact that this information is already known to the Applicant and anyone else who has interacted with these individuals.

Section 22(2) – all relevant circumstances

[115] The final step in the s. 22(1) analysis is to consider all relevant circumstances, including those listed in s. 22(2), to determine whether the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy.

[116] The parties make submissions about ss. 22(2)(a), (c), and (e), the fact that some of the personal information in the Videos is that Applicant's personal information, and the sensitivity of the information in dispute.

Subject the activities of a public body to public scrutiny - s. 22(2)(a)

[117] Section 22(2)(a) requires a public body to consider whether the disclosure is desirable for the purpose of subjecting the activities of a public body to public scrutiny.

[118] The Ministry submits 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 Videos.⁶⁷

[119] I do not accept the Ministry's submission that allowing the Applicant's lawyer to view a record, in person or over Microsoft Teams, is the same thing as subjecting the information in that record to public scrutiny. The Privacy Analyst emphasizes that a lawyer who views video footage from a correctional centre is not permitted to have a copy of the footage or reproduce the footage in any way.⁶⁸ The Videos have not been disclosed to the public and, therefore, the public has not had the opportunity to scrutinize them.

[120] The Applicant submits that disclosure of the Videos is needed to facilitate meaningful public scrutiny of the incidents depicted in the Videos. He submits that this type of oversight is imperative to ensure the fair and humane treatment of people in custody.⁶⁹

[121] The Applicant has not adequately explained his view that the public has an interest in scrutinizing the Videos. I understand the Applicant to be alleging that the Videos show unfair or inhumane treatment. However, I cannot tell, from his submission or the content of the Videos, the specifics of the alleged wrongdoing. Without more information, I cannot find that disclosure of the personal information in the Videos is desirable for the purpose of subjecting

⁶⁷ Ministry's initial submission at paras 130-133.

⁶⁸ Privacy Analyst's Affidavit #1 at paras 8-14.

⁶⁹ Applicant's submission at para 32.

a public body's activities to public scrutiny. I find that s. 22(2)(a) does not weigh in favour of disclosing the personal information in dispute.

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

[122] Section 22(2)(c) requires a public body to consider whether the personal information is relevant to a fair determination of the applicant's rights.

[123] The Applicant submits that

his ability to access redress through various legal mechanisms depends on having possession and access to the footage in question. Relying on a viewer's notes of the footage to hold correctional authorities accountable in the context of a legal proceeding would be impractical, time consuming, and ineffective.⁷⁰

[124] The Applicant submits that the Ministry "is not able to determine or assert what the Applicant has or has not contemplated regarding future legal proceedings".⁷¹

[125] The Applicant has not identified any specific legal right or said that he contemplates any specific legal proceeding.⁷² I find that the Applicant has not met his burden to establish that disclosure of the information in dispute is necessary for a fair determination of his rights.

Financial or other harm s. 22(2)(e)

[126] Section 22(2)(e) asks whether disclosure will unfairly expose a third party to financial or other harm.

[127] The Ministry submits that, while the Applicant may have, at one point, known which Public Body Employees were involved in the incidents, the Applicant may no longer know this information as a result of the passage of time and his condition at the time of the incidents.⁷³ It submits that disclosing the Videos would refresh the Applicant's memory and, as a result, the employees would be exposed to retaliation from the Applicant, in the form of physical assault, if he returns to North Fraser or the community.⁷⁴

⁷⁰ Applicant's submission at para 33.

⁷¹ *Ibid.*

⁷² This is required for s. 22(2)(c) to apply. Order 01-07, 2001 CanLII 21561 (BCIPC) at para 31; Order F15-11, 2015 BCIPC 11 at para 24; and Order F24-09, 2024 BCIPC 12 (CanLII) at para 48.

⁷³ Ministry's initial submission at para 141.

⁷⁴ Ministry's initial submission at para 29.

[128] I accept the Ministry's evidence that the Applicant was violent and non-compliant, while incarcerated at North Fraser. However, as set out earlier in this order, the Applicant's return to North Fraser is a mere possibility. Further, the only violence I can see in the Videos is related to his non-compliance with correctional officers' directions. The Ministry has not provided evidence establishing that the Applicant has ever engaged, or could reasonably be expected to engage, in the kind of premeditated violence the Ministry alleges. I find that the Ministry has not provided evidence sufficient to establish that the Public Body Employees would be exposed to the risk of physical assault from the Applicant if the Applicant receives access to the Videos.

Applicant's personal information

[129] Previous OIPC decisions have found that the fact that a record contains an applicant's own personal information weighs in favour of disclosure. However, the weight of this factor is limited where the information in dispute is simultaneously the applicant's personal information and the personal information of other individuals.⁷⁵

[130] The Ministry submits that the personal information in the Videos is the joint personal information of the Applicant and the public body employees and, therefore, this factor does not favour disclosure.⁷⁶

[131] There are some instances in which the Videos depict only the Applicant. There are also portions of the Videos that depict the Applicant in close proximity to the Public Body Employees. There are some instances in which parts of the Applicant's face or body are obstructed by Public Body Employees. Overall, the fact that the Videos contain the Applicant's personal information weighs in favour of disclosure.

Sensitivity of the personal information

[132] Many past orders have considered the sensitivity of information as a relevant circumstance. Where information is sensitive, this is a circumstance weighing in favour of withholding the information.⁷⁷ Conversely, where information is innocuous and not sensitive in nature, then this factor may weigh in favour of disclosure.⁷⁸

[133] The Ministry submits the personal information in dispute is sensitive because it shows the ways in which different employees respond to violent or non-compliant behaviour, intoxication and medical emergencies and these

⁷⁵ Order F24-48, 2024 BCIPC 56 at para 146.

⁷⁶ Ministry's initial submission at para 152.

⁷⁷ Order F19-15, 2019 BCIPC 17 at para 99.

⁷⁸ Order F16-52, 2016 BCIPC 58 at para 91.

responses, to highly stressful situations, are obviously sensitive.⁷⁹ The Ministry submits that because the records are videos, and not written accounts, they contain more sensitive information.⁸⁰

[134] I find that the depictions of the two inmates are sensitive because they reveal that these individuals have been incarcerated and depicts them in a state of undress. It also shows one of these individuals waving his arms around in an unusual manner. The sensitivity of this information weighs in favour of withholding it.

[135] The depictions of what the Public Body Employees did while performing their job duties in the normal course of their work is not sensitive. While the Videos include high stress situations in which employees respond to a medical emergency and correctional officers use force against the Applicant, the Ministry's evidence is that these situations regularly occur in correctional centres and that staff are trained to respond to them.⁸¹ This factor weighs in favour of disclosure of this personal information.

[136] The depictions of the Public Body Employees physical characteristics are also not sensitive. Everything that is captured in the video recordings about the Public Body Employees' skin colour, religious head coverings, size, shape, tattoos, clothing, ability, etc. is readily apparent to anyone who looks at these individuals. It is information visible to their co-workers, other public body employees, the inmates at North Fraser, and any other person these individuals came across. I find that this personal information is not sensitive and that this factor weighs in favour of disclosure.

Conclusion – s. 22

[137] I found above that the Video recordings contain the personal information of the Applicant, two other inmates, the Ministry's correctional officers and staff, the City's firefighters, and PHSA's paramedics.

[138] I found that none of the personal information could be disclosed, under s. 22(4)(e), because even though the Videos contained information about individuals' positions and functions as public body employees it also contained information about their physical characteristics, which does not relate entirely to these individuals' positions and functions as public body employees.

[139] I found that no s. 22(3) presumptions, including ss. 22(3)(d) and 22(3)(i), apply to any of the personal information in dispute.

⁷⁹ Ministry's initial submission at para 155.

⁸⁰ *Ibid.*

⁸¹ Assistant Deputy Warden's Affidavit #1 at paras 8-9, 13(i), 15, and 20-22.

[140] The personal information of the inmates is sensitive, and its disclosure would be an unreasonable invasion of these individuals' personal privacy. The Ministry is required to withhold this personal information under s. 22(1).

[141] Regarding the rest of the personal information in dispute, I found that some of it was the Applicant's personal information and that none of it was sensitive. These factors weigh in favour of disclosure and, therefore, I find the Ministry is not required to withhold this personal information under s. 22(1).

Reasonable severing – s. 4(2)

[142] Section 4(2) says 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.

[143] The Ministry submits that several exceptions to access apply to almost all the information in the Videos such that the remainder would be disconnected portions of images that have no "informational value" and would be "essentially meaningless".⁸²

[144] I have found above that the Ministry has not established that ss. 15(1)(f), 15(1)(l), 15(2)(c) or 19(1)(a) apply to the Videos and, therefore, the Ministry is not authorized, under these sections, to withhold information in the Videos.

[145] I found that only a small amount of information in dispute falls under s. 22(1) and must be withheld from the Applicant. I find that this information can reasonably be severed such that the remainder of the Videos will continue to have meaning.

Duty to assist – s. 6(1) and copy to be provided with response – s. 9(2)

[146] Section 6(1) says that a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately, and completely.

[147] Section 9(2) says 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.

[148] The Applicant did not make submissions about why he believes s. 6(1) or 9(2) apply. However, I understand, from his request for review, that he believes

⁸² Ministry's submissions at paras 172-173.

the Ministry breached these obligations by failing to provide copies of the video footage responsive to his access request.⁸³

[149] The Ministry submits that it did not breach these duties and that it responded appropriately by informing the Applicant that it was withholding all the information responsive to his access request under the various exceptions to disclosure in FIPPA.

[150] An applicant's right of access to records in the custody or under the control of a public body does not extend to records exempted from disclosure under FIPPA. An applicant that disagrees with a public body's decision to withhold information responsive to an access request under one or more of FIPPA's exceptions to disclosure may ask the OIPC to review the public body's decision. However, a public body does not fail to meet its obligations under ss. 6(1) or 9(2) just because an applicant disagrees with the public body's decision to withhold information under FIPPA. For this reason, I find that the Ministry did not fail to meet its obligations under ss. 6(1) or 9(2) as alleged by the Applicant.

CONCLUSION

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

1. The Ministry is not authorized to refuse to disclose any information in the Videos under ss. 15(1)(f), 15(1)(l), 15(2)(c), or 19(1)(a).
2. Subject to item #3 below, the Ministry is not required, under s. 22(1), and not authorized, under s. 4(2), to refuse access to the personal information in the Videos.
3. The Ministry is required, under s. 22(1), to refuse access to the personal information of the two inmates depicted in the following videos:
 - a) NF 034 - Seg Fixed Low-2022-01-05_21h23min33s693ms;
 - b) NF 035 - Seg PTZ-2022-01-05_21h25min14s105ms; and
 - c) NF 039 - Seg Phone 1-2022-01-05_21h31min59s825ms.
4. The Ministry must give the Applicant access to the information described in items #1 and #2 above.

⁸³ Applicant's request for review at paras 27-31.

5. The Ministry must copy the OIPC registrar of inquiries on the cover letter and records it sends to the Applicant in compliance with item #4 above.

[152] Pursuant to s. 59(1) of FIPPA, the Ministry is required to comply with this order by **December 3, 2025**.

October 21, 2025

ORIGINAL SIGNED BY

Rene Kimmett, Adjudicator

OIPC File Nos.: F23-93727 and F23-94032