OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F25-83

MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL

David S. Adams
Adjudicator

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Summary: An applicant requested a series of video recordings (the Videos) documenting his time in custody at two correctional institutions, from the Ministry of Public Safety and Solicitor General (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The Ministry withheld the Videos in their entirety under ss. 15(1) (harm to law enforcement), 15(2) (harm to proper custody or supervision of a person), and 19(1) (harm to individual safety), and withheld some information in the Videos under s. 22(1) (unreasonable invasion of third-party privacy) of FIPPA. The adjudicator found that ss. 15(1), 15(2), and 19(1) did not apply, but found that s. 22(1) applied to some third-party personal information in the Videos. The adjudicator ordered the Ministry to disclose to the applicant 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), 9(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)(b), 22(3)(d), 22(3)(i), and 22(4)(e).

INTRODUCTION

[1] An applicant made two access requests to the Ministry of Public Safety and Solicitor General (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The applicant is a former inmate at two correctional institutions operated by the Ministry. The first request was for video evidence related to a disciplinary charge hearing, and the second was for all video footage related to the use of force against the applicant during his time in the two institutions.

[2] The Ministry refused access to all of the video footage that was responsive to the applicant's two requests (the Videos) on the basis that ss. 15(1)(l) (harm to the security of a property or system) and 15(2)(c) (harm to the proper custody or supervision of a person) of FIPPA applied. The Ministry also withheld some of that same information under s. 22(1) (unreasonable invasion of

third-party privacy) of FIPPA. The Ministry also informed the applicant of its view that any remaining information in the Videos that was not subject to a FIPPA exception could not reasonably be severed and disclosed in accordance with s. 4(2).

[3] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the Ministry's decision not to disclose the Videos. The applicant also complained that the Ministry had not met its obligations under ss. 4(2) (reasonable severance of a record) and 9(2) (duty to provide a copy of a record). After the OIPC became involved, the Ministry additionally relied on ss. 15(1)(f) (harm to the physical safety of a person) and 19(1)(a) (harm to the safety or mental or physical health of a person) to withhold the entirety of the Videos. Mediation by the OIPC did not resolve these matters and they proceeded to this inquiry. The Ministry and the applicant both provided written submissions and evidence.

ISSUES AND BURDEN OF PROOF

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

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

2. Is the Ministry required to refuse to disclose the portions of the Videos it withheld under s. 22(1) of FIPPA?

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

[5] Under s. 57(1) of FIPPA, the Ministry has the burden of proving that the applicant has no right of access to the information in the Videos under ss. 15(1)(f), 15(1)(l), 15(2)(c), and/or 19(1)(a). The Ministry also has the burden of proving that information cannot reasonably be severed under s. 4(2), and that it has met its obligations under s. 9(2).[1]

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

[1] Order 03-13, 2003 CanLII 49182 (BC IPC) at para 7.
[2] Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

DISCUSSION

Background[3]

[7] The Ministry is responsible for BC Corrections. BC Corrections operates 10 correctional centres in the province, including the Surrey Pretrial Services Centre and the Fraser Regional Correctional Centre, where the applicant was incarcerated (the Jails). The 10 correctional centres collectively house an average of 1,800 inmates who are awaiting trial or serving a provincial custodial sentence of less than two years. BC Corrections maintains video surveillance systems in all of its correctional centres.

[8] The applicant was an inmate at the Jails in 2021 and 2022. He was often housed in a segregation cell. When it was necessary for BC Corrections to move the applicant from one cell to another, he was frequently non-compliant with correctional officers' (COs') commands. On many occasions depicted in the Videos, BC Corrections used a specially-equipped emergency response team (ERT) to move him from one cell to another and between the Jails. At the time submissions were made in this inquiry, the applicant had been released into the community. The applicant has made complaints to the BC Human Rights Tribunal and the BC Ombudsperson about his treatment in custody.

[9] Before the applicant made his access requests, the Ministry, in accordance with its long-standing practice, allowed his representative, who at that time was the interim executive director (the Executive Director) of Prisoners' Legal Services, to view the Videos during a series of viewing sessions.[4] The Ministry did not allow the Executive Director or the applicant to obtain copies of the Videos.

Records at issue

[10] The records at issue are the Videos. The Videos consist of approximately 256 separate segments of video footage[5] recorded at the Jails, which range in length from a few minutes to several hours.

[11] The Videos consist of two types:

1) video footage with sound recorded by a handheld camcorder, and

2) video footage with no sound recorded by fixed surveillance cameras.

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[3] The information in this section is drawn from the parties' submissions and evidence.
[4] The last of these sessions took place after the applicant's first access request.
[5] Some of the Videos are duplicates, appearing in the records package in both .asf (or .avi) and .g64 file formats.

[12] The Videos depict the interiors and exteriors of cells, meeting rooms, hallways, parking garages, and travel between the Jails. The applicant appears in most, but not all, of the Videos.

Standard of proof for harms-based exceptions – ss. 15 and 19

What is the applicable standard of proof?

[13] Before I proceed to my analysis of whether the relevant provisions of ss. 15 and/or 19 apply to the Videos, I will set out the standard of proof required to engage those sections.

[14] Sections 15 and 19 are about harm that *could reasonably be expected to* result if the information in dispute were disclosed. The Supreme Court of Canada has held that where the phrase "could reasonably be expected to" is used in access to information statutes, the standard of proof is a middle ground between that which is merely possible and that which is probable.[6] A party must provide evidence that the expectation of harm is well beyond or considerably above mere possibility in order to reach that middle ground.[7]

[15] There must be a clear and direct connection between the disclosure of the withheld information and the anticipated harm.[8] General speculative or subjective evidence will not suffice.[9] 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".[10] As former Commissioner Loukidelis has explained:

> …harms-based exceptions to disclosure operate on a rational basis that considers the interests at stake. What is a reasonable expectation of harm is affected by the nature and gravity of the harm in the particular disclosure exception. There is a sharp distinction between protecting personal safety or health and protecting commercial and financial interests.[11]

[16] Consistent with past OIPC orders dealing with ss. 15 and 19,[12] I have applied the above principles in considering the parties' arguments about harm under those sections. My analysis also recognizes that disclosure to an applicant

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[6] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 [*Ontario*] at para 54.
[7] *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 [*Merck Frosst*] at paras 94 and 195-206.
[8] Order 02-50, 2002 CanLII 42486 (BC IPC) at para 137; Order F13-06, 2013 BCIPC 6 (CanLII) at para 24.
[9] Order F08-03, 2008 CanLII 13321 (BC IPC) at para 27.
[10] *Ontario*, *supra* note 6 at para 54, citing *Merck Frosst*, *supra* note 7.
[11] Order F08-22, 2008 CanLII 70316 (BC IPC) at para 48.
[12] See, e.g., Order F21-46, 2021 BCIPC 54 (CanLII) at para 8; Order F24-11, 2024 BCIPC 15 (CanLII) at para 27.

should be treated as disclosure to the world.[13] I have also kept in mind the principle that especially where the safety of third parties is concerned, the evidence must be approached with care and deliberation.[14]

Does the standard of proof vary according to the harm?

[17] With respect to the application of the "could reasonably be expected to" standard, the Ministry says that the words "endanger" in s. 15(1)(f),[15] and "threaten" in s. 19(1)(a),[16] represent the Legislature's attempt to move "one step further away from requiring probability of harm" in the application of those sections, compared with s. 15(1)(l), which requires a reasonable expectation of *harm* to the security of a property or system.[17] The applicant does not directly address this aspect of the Ministry's submission.

[18] In my view, if the Ministry's interpretation were followed, then the various provisions under ss. 15 and 19 would have different standards of proof depending on whether or not the word "harm" appears in the provision. I cannot conclude that this was the Legislature's intention. The subsections of ss. 15(1) and 19(1) set out a number of undesirable occurrences or harms. As noted in the opening words of ss. 15(1) and 19(1), a reasonable expectation of the occurrence of one of those harms gives a public body the discretion to apply the associated subsection to refuse access.

[19] For example, a reasonable expectation of the endangerment of a person's life or physical safety arising from the disclosure of certain information will allow a public body to apply s. 15(1)(f) to refuse to disclose that information. Section 15(1)(l) contemplates a different *type* of harm, but in both cases, a reasonable expectation of the harm is what must be proven.[18] As noted by the Supreme Court of Canada, this is the standard for all provisions in FIPPA that use the "could reasonably be expected to" language.[19] Therefore, contrary to the Ministry's arguments, I find there is only one standard of proof for ss. 15 and 19 and the absence of the word "harm" from a provision under ss. 15 and 19 does not mean a different standard applies.

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[13] See, e.g., Order 03-33, 2003 CanLII 49212 (BC IPC) at para 44, which dealt with s. 21(1)(c)(i) but I find the reasoning applicable given that s. 21(1)(c)(i) also contains the phrase "could reasonably be expected to".
[14] Order 03-08, 2003 CanLII 49172 (BC IPC) at paras 20-21.
[15] Section 15(1)(f) authorizes a public body to withhold information that could reasonably be expected to *endanger* the life or physical safety of a law enforcement officer or any other person.
[16] Section 19(1)(a) authorizes a public body to withhold information that could reasonably be expected to *threaten* anyone's (other than the applicant's) safety or mental or physical health.
[17] Ministry's reply submission at paras 18-21.
[18] See Order F25-46, 2025 BCIPC 54 (CanLII) at paras 75-76, where I rejected a similar argument in relation to s. 19(1)(a).
[19] *Ontario, supra* note 6 at para 54.

Disclosure harmful to law enforcement – s. 15

[20] The Ministry has relied on ss. 15(1)(f), 15(1)(l), and 15(2)(c) to refuse access to the Videos. I will first consider s. 15(1)(f).

Endangerment of life or physical safety of a person – s. 15(1)(f)

[21] In their submissions, the parties address ss. 15(1)(f) and 15(1)(l) and, at times, s. 19(1)(a), together. The Ministry says it took this approach because the evidence respecting these provisions is interwoven.[20] I have found it more convenient to address them separately because the provisions contemplate distinct types of harm.

[22] Section 15(1)(f) provides 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

[23] The Ministry says that it reasonably expects several types of harm to result from disclosure of the Videos. It says that disclosure would:

- expose gaps in the video surveillance systems in the Jails, leading "inexorably" to the endangerment of life and physical safety;
- reveal COs' training and coordination, so that inmates could determine when COs would be vulnerable to assault;
- reveal how specific COs move and use force, so that inmates could identify their individual vulnerabilities;
- reveal sensitive communication tools used by COs when responding to a violent individual, including key words and physical and verbal indicators, allowing inmates to understand and circumvent these, with "deadly consequences"; and
- allow the applicant to determine which COs and other staff members were involved with him in the past, creating a risk that he will attempt to harm them in retaliation.[21]

[24] In support of these arguments, the Ministry relies on affidavit evidence from the deputy warden of the Surrey Pretrial Services Centre (the Deputy Warden), the assistant deputy warden of the Fraser Regional Correctional Centre (the Assistant Deputy Warden), and a Ministry privacy analyst (the Privacy Analyst).

[20] Ministry's initial submission at paras 38-69; Applicant's response submission at paras 133-156; Ministry's reply submission at paras 5-28.
[21] Ministry's initial submission at paras 48-63.

[25] The Deputy Warden says that a person wishing to commit an assault against a BC Corrections employee could view the Videos and determine where to carry out the assault so that it would be shielded from the cameras' view. He says that assaults are a common occurrence in correctional centres, and that in his view, disclosure of the Videos would increase the risk that an assault would not be captured on video surveillance, leading to the endangerment of people's physical safety. He says, for example, that disclosure would allow an assault to be hidden behind a door when it opens or closes, or allow another person to stand between a camera and the assault.[22] He says that disclosure would reveal how specific COs move their bodies when using force, allowing someone to exploit that knowledge with "potentially deadly consequences". He says the Videos show how specific COs responded to the applicant's behaviour, creating a risk that the applicant or one of his associates will attempt to retaliate against those COs.[23]

[26] The Deputy Warden also says that if the Videos were disclosed, inmates would be able to ascertain the best places to assault other inmates, trade or use drugs, or engage in self-harm, without being detected.[24] He says that based on his long experience working in corrections, he does not believe that the Videos could be redacted, and parts of them disclosed, without "sufficiently" reducing the harm he foresees from disclosure.[25]

[27] The Assistant Deputy Warden says that correctional centres are inherently dangerous environments where, to achieve safety, a high level of control must be maintained. He provides similar evidence to that of the Deputy Warden with respect to the risk of inmate assaults, retaliation against specific COs, and drug use and trade.[26] He says that the applicant has a history of being noncompliant with COs' directions, that he "often displays violent and unpredictable behaviours", and that on one occasion, he physically assaulted a CO, while on another occasion, he uttered a threat.[27] He does not believe it is possible to redact the Videos because "even a small part of a video that just shows an empty hallway or cell provides important security-related information" that could compromise the safety of inmates and staff, and that this, combined with the fact that inmates are often in custody because they have harmed others, warrants a more cautious approach to disclosure than would be appropriate in "more public or less dangerous settings".[28] The Assistant Deputy Warden says he does not think it is likely that the applicant can remember all of the interactions he had with

[22] Affidavit of Deputy Warden at paras 17-23.
[23] *Ibid* at paras 20-22.
[24] *Ibid* at paras 24-29.
[25] *Ibid* at paras 34-35.
[26] Affidavit of Assistant Deputy Warden at paras 8-11 and 17-30.
[27] *Ibid* at paras 31-36.
[28] *Ibid* at paras 39-40.

BC Corrections employees, and that disclosure of the Videos would allow him to determine exactly which employees he interacted with.[29]

[28] The Privacy Analyst says that COs are "often" threatened and targeted for violence both within and outside correctional centres, so disclosure of their identities via the Videos would threaten their personal safety.[30]

[29] The applicant says the Ministry's arguments about anticipated harm are general, speculative, and based on the subjective opinions of its affiants. He says they do not establish a clear and direct connection between disclosure and the anticipated harm. He says that the OIPC and the BC Supreme Court have rejected those kinds of arguments in similar cases. He also says that the Videos do not reveal anything about the Jails that an inmate would not already know, so that no harm could reasonably be expected to result from disclosure.[31]

[30] In reply, the Ministry says that the Deputy Warden and Assistant Deputy Warden have over 43 years' combined experience working in the two Jails, and that the applicant has provided no evidence to counter theirs, so I should accept their evidence.[32] The applicant provided an affidavit from the Executive Director, who deposes that when she reviewed the Video that the Ministry says depicts the applicant assaulting a CO, she could see the COs begin to open his cell door and almost instantaneously close it. She says the applicant is visible standing by the doorway and can be seen moving, but she could not discern whether the applicant made any physical contact with the CO and she does not recall any of the COs in that Video behaving in a way that indicated they were injured.[33] The Ministry says the fact the Executive Director could not see the physical contact only "proves [its] point that the Videos disclose gaps in surveillance that make it impossible [for jail staff] to clearly see assaults, self-harm, contraband smuggling, or other dangerous behaviours".[34]

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[29] Affidavit of Assistant Deputy Warden at paras 31-33 and 38.
[30] Affidavit of Privacy Analyst at para 13. The Privacy Analyst also provided evidence about the incidence of violence in correctional centres and the mental health and substance use of inmates. Because no sources for this data are identified, and because I find it difficult to believe that these matters are within the personal knowledge of the Privacy Analyst, I give most of this evidence very little weight: see, e.g., Order F23-35, 2023 BCIPC 42 (CanLII) at paras 23-26.
[31] Applicant's response submission at paras 133-156.
[32] Ministry's reply submission at paras 10-13. In footnote 7, the Ministry also says that there is no basis for me to substitute my opinion or belief for that of the Ministry's affiants. As I said in Order F25-46, *supra* note 18 at para 78, in weighing and considering the evidence, I have not substituted my own opinion and belief for that of the affiants, but have evaluated that evidence against the standard imposed by the "could reasonably be expected to" language of the harms-based exceptions.
[33] Affidavit of Executive Director at para 37.
[34] Ministry's reply submission at paras 22-26.

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

[31] With respect to the Ministry's argument that there are gaps in the Jails' video surveillance system that can be exploited, I can see from my review of the Videos that they depict many different areas of the Jails. The fixed surveillance cameras often depict several viewing angles of one room or area. However, when the Videos are considered together, any blind spots or gaps in coverage are not obvious to me, nor is it apparent how disclosure of the video segments would help inmates exploit an existing blind spot. The BC Supreme Court reached a similar conclusion in *British Columbia (Public Safety and Solicitor General) v. Stelmack* (*Stelmack*).[35]

[32] In *Stelmack*, the Ministry applied ss. 15(1)(f) and (l) to withhold several segments of video footage taken in a correctional facility. An OIPC adjudicator rejected the Ministry's argument that disclosure of those segments would reveal the blind spots of video cameras to inmates which could be exploited. On judicial review, Justice Russell found that for any blind spots to create a risk or increase an existing risk, the video segments at issue would have to provide new information to people in a position to exploit them. Justice Russell also found it reasonable to conclude that inmates who try to break or obscure cameras to escape surveillance already know the location and position of the video cameras.[36] Therefore, Justice Russell concluded that disclosure of the video segments would not help inmates to exploit blind spots.[37]

[33] In this case, the Ministry does not say that the locations of the video cameras are hidden from inmates. While it argues in a general way about gaps in coverage leading to harm to individuals, it does not sufficiently specify where these gaps might be. I cannot conclude from the Ministry's evidence, and my own review of the Videos, that disclosure would reveal areas shielded from the cameras' view, or could reasonably be expected to allow someone seeking to exploit gaps in the surveillance system to harm themselves or others. As was the case in *Stelmack*, I also find it reasonable to conclude that any inmates interested in avoiding surveillance would already know the location and position of the video cameras; therefore, without more, I am not persuaded that the disclosure of the Videos would provide the inmates with new information that could reasonably be expected to help them escape surveillance.

[34] I am also not persuaded by the Ministry's argument that the Executive Director's failure to discern any assault in the one video demonstrates that there are gaps in surveillance that inmates could use to their advantage. Having reviewed that particular Video, I do not find there is a reasonable expectation that anyone seeking to carry out an assault or engage in illegal drug activity could

[35] 2011 BCSC 1244.
[36] *Ibid* at para 461.
[37] *Ibid* at paras 456-462.

gain an advantage from viewing it. That Video shows only a pair of cell doors and the area around the doors. The applicant can be seen briefly lunging at a CO before she and another CO close his cell door. I cannot see, and the Ministry does not explain, what exploitable gaps in surveillance this Video reveals.

[35] With respect to the Ministry's assertion that the Videos reveal the communication tools used by COs, I likewise do not find that the Ministry has established a reasonable expectation of harm if this footage were disclosed. The applicant was present during every use of force, and therefore already knows what verbal signals were used. In my view, the Ministry does not sufficiently explain how disclosure of the Videos would allow anyone to circumvent the communication tools used by COs such that harm could reasonably be expected.

[36] Some of the Videos, or portions of them, involve planning sessions conducted by COs and managers. While these sessions were conducted outside of the applicant's earshot, the Ministry does not sufficiently explain how disclosing them could reasonably be expected to allow inmates to circumvent COs' communication tools. It is not apparent to me on the face of the Videos, and the Ministry provides no examples, of how this circumvention might be accomplished.

[37] With respect to the Ministry's arguments about the applicant's possible retaliation against specific COs, for the following reasons, I do not find that the Ministry has established a reasonable expectation that the applicant will attempt to retaliate against the BC Corrections employees who interacted with him if the Videos were disclosed.

[38] I accept that the Videos show exactly which BC Corrections employees interacted with the applicant; however, in order for the Ministry's argument to succeed, there has to be a reasonable expectation that the applicant will use the information in the Videos to retaliate against those employees. In an effort to establish this connection, the Ministry argues the applicant has acted violently in the past by physically assaulting a CO and threatening another CO. I was not provided, however, with any evidence about the circumstances or the surrounding context in which those previous incidents took place. Therefore, I am not prepared to conclude those previous incidents or the applicant's past behaviour means there is a reasonable expectation that the applicant will use the information in the Videos to retaliate against anyone.

[39] The Deputy Warden deposes that retaliation by former inmates in the community is "relatively rare, but not unheard of", and the one example provided by the Deputy Warden is unrelated to the applicant.[38] I am not persuaded a general assertion of a harm that is "not unheard of" and one unrelated example is sufficient to prove the required connection. Ultimately, without more, I do not find

[38] Affidavit of Deputy Warden at paras 21-22.

that a clear and direct connection has been made between the applicant knowing which COs he has interacted with and a reasonable expectation of his retaliation against them.

[40] The Ministry relies on Order F15-39 in support of its argument that disclosure of the Videos could reasonably be expected to cause harm under s. 15(1)(f), saying that "the same finding applies" in this case.[39]

[41] In my view, the facts in Order F15-39 were quite different. The information withheld under s. 15(1)(f) in that case consisted of certain information about a proposed correctional centre's cell occupancy, schematics and layouts, staffing levels, and a staffing model. In my view, the Videos in this case depict different information which falls short of the comprehensiveness that a schematic, layout, or staffing model could be expected to have. The Videos were selected as responsive to the applicant's requests because they are related to the use of force against him. It is unclear to me, and the Ministry does not say, how a complete picture and schematic of the Jails' layout can be discerned from the Videos. Therefore, I find that Order F15-39 is of limited assistance in assessing the harm that could reasonably be expected to result from disclosure in this case.

[42] To summarize, I find that the Ministry has not brought the harms it foresees out of the realm of mere possibility and into the realm of reasonable expectation, as is required under s. 15(1)(f). While I give some weight to the evidence of the Deputy Warden and Assistant Deputy Warden, that evidence falls short of establishing a clear and direct connection between disclosure of the Videos and the s. 15(1)(f) harms the Ministry foresees. I find that the Ministry has not discharged its burden under s. 15(1)(f) with respect to any of the information in the Videos. Therefore, for the reasons given, I conclude the Ministry is not authorized to withhold the Videos under s. 15(1)(f).

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

[43] Section 15(1)(l) provides that a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the security of any property or system, including a building, a vehicle, a computer system, or a communications system.

Parties' positions

[44] The Ministry says the Jails satisfy the definition of a "property", and that the video surveillance system and security protocols satisfy the definition of a "system" under s. 15(1)(l).[40] The Ministry says that disclosure of the Videos, or

[39] Ministry's initial submission at paras 66-68, citing Order F15-39, 2015 BCIPC 42 (CanLII) at paras 52-53.
[40] Ministry's initial submission at paras 41-46.

any portion of them, could reasonably be expected to harm the security of all the correctional centres in BC, since all of those correctional centres have similar designs and share the same protocols for maintaining order, safety, and control.[41] Specifically, the Ministry says that disclosure would:

- disclose gaps in the coverage of the video surveillance system in the Jails, reducing its effectiveness; and
- reveal elements of COs' security protocols and communication tools (such as procedures for opening and closing doors, the response time of COs to incidents of violence, staffing levels for specific activities, and procedures used when extracting an inmate from a cell), which would compromise the security of this system by allowing inmates to plan more effective counter-movements and otherwise circumvent it.[42]

[45] In support of these arguments, the Deputy Warden says that the Videos reveal details about how doors open and close (including whether a particular door is operated by keypad or swipe card) and the direction of the door swing. He says that the Videos show areas with less or no surveillance coverage, so that someone seeking to harm others, pass along contraband, or devise escape routes could do so more easily if the Videos were disclosed. He also says that inmates could study the Videos to determine what protocols COs are trained to use during different parts of their jobs, with a view to determining when they would be most vulnerable to an assault, or to planning more effective movements or methods to escape a CO's control.[43] The Assistant Deputy Warden provides similar evidence.[44]

[46] As I noted above under s. 15(1)(f), the applicant says that the Ministry's arguments and evidence are "general, speculative, and based on the subjective opinions of [BC Corrections] staff members".[45] He says that the Ministry has failed to establish a direct connection between disclosure of the Videos and the harms it foresees, that the Videos do not reveal any information the applicant does not already know, and that no harm to the security of a property or system could reasonably be expected from disclosure.[46] The applicant also says that the Ministry itself has posted several videos on YouTube featuring the Jails and their interiors, layouts, and training and communication protocols, such that "[a]ny concern for the misuse of the information contained in the [Videos] using the mosaic effect was effectively eliminated".[47]

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[41] Ministry's initial submission at para 34.
[42] *Ibid* paras 34-69.
[43] Affidavit of Deputy Warden at paras 13-23.
[44] Affidavit of Assistant Deputy Warden at paras 20-30.
[45] Applicant's response submission at para 133.
[46] *Ibid* at paras 154-155.
[47] *Ibid* at para 151.

[47] In reply, the Ministry says that the videos it posted to YouTube were carefully vetted before publication and do not show sensitive locations or much of the Jails' interiors, so they are not comparable to the Videos.[48]

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

[48] In Order F25-46, I considered whether a correctional centre operated by the Ministry, as well as that centre's video surveillance system and security protocols, were properties or systems for the purposes of s. 15(1)(l), and concluded that they were.[49] I make the same finding here. I am satisfied that the Jails are "properties" and that their video surveillance systems and security protocols are "systems" for the purposes of s. 15(1)(l). The question I must decide, therefore, is whether disclosure of the Videos could reasonably be expected to harm the security of those properties or systems.

[49] Having viewed the YouTube videos and considered what the applicant says about them, I accept the Ministry's argument and evidence that they were carefully vetted for publication and reveal much less information about the Jails' layout and systems than do the Videos. The fact that the Ministry has disclosed different information on YouTube has no bearing on my conclusions about the information in dispute in this case. I am concerned only with whether the FIPPA exceptions claimed apply to the information at issue in the Videos.

[50] I am not persuaded that disclosure of the Videos could reasonably be expected to harm the security of BC's correctional centres by revealing the Jails' common design elements. The Videos depict hallways, cell interiors and exteriors, and parking garages. While I have kept in mind the BC Supreme Court's warning in *Stelmack* that "[t]here is no doubt that the prison environment is a dangerous one where information will be used to an inmate's best advantage",[50] as I will explain below, I am not persuaded from my review of the Videos that someone could use this particular information to harm the security of the Jails.

[51] I noted above that the Ministry relies on Order F15-39 to support its position under s. 15(1)(f); it also says that the adjudicator in that case found s. 15(1)(l) to apply to a proposed correctional centre's cell occupancy, schematics and layouts, staffing levels, and a staffing model.[51] However, the adjudicator in that order found that a reasonable expectation of harm had been made out under s. 15(1)(f) and not under s. 15(1)(l). Besides, as explained above

[48] Ministry's reply submission at paras 6-9.
[49] Order F25-46, *supra* note 18 at para 53; the applicant contends (at para 156 of his response submission) that the security protocols and procedures amount to only "loose arrangements" and not systems, but does not explain why this might be so.
[50] *Stelmack*, *supra* note 35 at para 459.
[51] Ministry's initial submission at paras 66-68.

in the s. 15(1)(f) analysis, the information in dispute here in the Videos is not the same as the information in dispute in Order F15-39. Therefore, without more explanation from the Ministry, I am not persuaded that Order F15-39 supports a finding that s. 15(1)(l) applies to the Videos.

[52] The Ministry says that the Videos reveal facts about the Jails' video surveillance system such as camera location and angle, the type of camera (whether fixed or able to pan and tilt), the areas covered by video surveillance (and by implication, those not covered), areas where the lighting is dimmer or where the Videos' images are of lower quality, and blind spots. It says that disclosure of this information would compromise the effectiveness of the video surveillance system because someone with access to the Videos could decide where to harm someone without being seen, use or trade contraband, engage in self-harm, or plan possible escape routes.[52] I accept that the Videos do reveal things like camera locations and angles, but the Ministry has not said that these things are concealed from inmates. Moreover, in my view the Ministry has not explained how an inmate harming someone without being seen, using or trading contraband, engaging in self-harm, or planning possible escape routes would harm the *security* of the video surveillance system itself. For example, the Ministry has not said that disclosure of the Videos would make the video surveillance system itself more vulnerable to hacking or other manipulation.

[53] The Ministry says, and I accept, that the Videos show procedures and protocols for opening doors, the response times of COs in some situations, staffing levels used for certain activities, and procedures used when extracting the applicant from his cell.[53] I also accept that the Videos show how ERTs and other staff performed routine cell extractions. However, I am not persuaded, based on the Ministry's arguments and evidence, that there is a reasonable expectation – well beyond mere possibility – that anyone could use the information in the Videos to undermine or circumvent this system of procedures and protocols. For example, the Ministry says that if ERTs' techniques were widely known, "it would be far easier for individuals to circumvent ERTs' techniques and continue to display aggressive and non-compliant behaviour."[54] On my review of the Videos, and in the absence of specific explanation from the Ministry, I cannot see how this circumvention might be accomplished, nor how the Videos would provide new information not already known to the inmates on whom those procedures would be used.

[54] The Ministry lays much stress on the fact that its affiants have long experience and considerable expertise in corrections and law enforcement, and I accept that they do. However, in my view, their evidence has not established a clear and direct connection between disclosure of the Videos and the harms the

[52] Ministry's initial submission at paras 48-49.
[53] *Ibid* at paras 51-52.
[54] *Ibid* at para 56.

Ministry foresees under s. 15(1)(l). The affiants have said what they think will happen if the Videos were disclosed, but have not explained with sufficient specificity how the harms contemplated by s. 15(1)(l) could reasonably be expected to result.

[55] To summarize, I accept that the Videos contain information about the physical properties of the Jails, their video surveillance systems, and their employees' protocols and training. However, I find that the Ministry has not provided sufficient evidence and explanation to establish that there is a clear and direct connection between disclosure of the Videos in this case and harm to any property or system. I am therefore not persuaded that disclosure of the Videos could reasonably be expected to cause the type of harm contemplated by s. 15(1)(l). It is therefore not authorized to withhold the Videos under that section.

Harm to the proper custody or supervision of a person – s. 15(2)(c)

[56] Section 15(2)(c) provides that a public body may refuse to disclose information 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.

[57] The Ministry says that the Videos are unquestionably about the history and supervision of the applicant while he was in custody. It says he has "a history of demonstrating unpredictable and aggressive behaviour toward correctional staff", and that disclosure of the Videos could undermine the ability of COs to successfully use the necessary protocols when dealing with the applicant, which would harm his custody and supervision.[55]

[58] The applicant says that s. 15(2)(c) does not apply because the applicant is no longer in custody, and because the Ministry has failed to establish a direct connection between disclosure of the Videos and the harm the Ministry anticipates.[56]

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

i) that the disputed information is about the history, supervision, or release of a person who is in custody or under supervision; and

ii) that disclosure of the disputed information could reasonably be expected to harm the proper custody or supervision of that person.

[55] Ministry's initial submission at paras 70-73; Affidavit of Deputy Warden at paras 30-32; Affidavit of Assistant Deputy Warden at paras 31-36.
[56] Applicant's response submission at paras 157-161.

For the reasons given below, I find that the second part of this test is not met.

Is the information about the history or supervision of a person who is in custody or under supervision?

[60] The parties advance differing interpretations of this part of s. 15(2)(c). The applicant says that s. 15(2)(c) relates to harm to BC Corrections' ability to manage someone who *is* in custody or under supervision, and that since the applicant is no longer in custody or under supervision, the provision cannot apply.[57] The Ministry rejects the applicant's interpretation, saying that in light of high rates of recidivism among former inmates, the Legislature cannot have intended s. 15(2)(c) to stop applying the moment a person leaves custody or supervision.[58] However, I do not find it necessary to decide this interpretive question in this case, given my finding on the reasonable expectation of harm below.

Could disclosure reasonably be expected to harm the person's custody or supervision?

[61] I accept the Ministry's evidence about the applicant's sometimes violent, unpredictable, and non-compliant behaviour while in custody, which the applicant does not dispute. However, I cannot see, and the Ministry does not sufficiently explain, what new information or advantage the applicant would gain from the Videos that could reasonably be expected to undermine the ability of staff to handle this behaviour or otherwise harm the Ministry's proper custody or supervision of him. He was present for, and intimately involved in, all the uses of force and other methods of control used on him that are depicted in the Videos.

[62] To conclude, I find that the Ministry has not established a clear and direct connection between the disclosure of the Videos and a reasonable expectation of harm to the proper custody or supervision of the applicant. Therefore, I find the Ministry is not authorized to refuse to disclose any portion of the Videos under s. 15(2)(c).

Disclosure harmful to safety or mental or physical health – s. 19

[63] Section 19(1)(a) provides that a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to threaten anyone else's safety or mental or physical health. I have dealt above[59] with the standard of proof required to engage s. 19(1).

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[57] *Ibid* at para 158.
[58] Ministry's reply submission at paras 29-32.
[59] At paras 13-19.

Parties' positions

[64] The Ministry says that s. 19(1)(a) applies to all of the information in the Videos because their disclosure could threaten the safety and mental or physical health of BC Corrections employees. It relies on its arguments under ss. 15(1)(f), saying that disclosure would reveal gaps in the video surveillance systems at the Jails, which could be exploited by inmates to assault others, engage in self-harm, use drugs, or plan effective escape routes – thereby threatening inmates' and others' safety and physical health.[60]

[65] The Deputy Warden deposes that disclosure of the Videos could threaten the mental health of BC Corrections employees depicted in them because "some staff may fear retaliation" by the applicant, either in custody or in the community.[61] The Assistant Deputy Warden deposes that in his opinion, which is based on overseeing staff at correctional centres, if the applicant were able to identify which employees interacted with him, this "would greatly increase" their fear and anxiety, and therefore threaten their mental health.[62]

[66] The applicant says that s. 19(1)(a) does not apply to any of the information in the Videos because the Ministry has not demonstrated a link between disclosure and a reasonable expectation that anyone's safety or health would be threatened.[63]

[67] In reply, the Ministry says the applicant has not provided any evidence to counter that of its experienced affiants.[64]

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

[68] The Ministry says, and I agree, that a public body may apply s. 19(1)(a) where disclosure can reasonably be expected to cause serious mental distress or anguish, as distinct from mere upset.[65]

[69] I have already found that the Ministry has not discharged its burden of establishing a reasonable expectation that any person's life or physical safety would be endangered by disclosure of the Videos under s. 15(1)(f). For the reasons set out under that section, I likewise find here that disclosure could not reasonably be expected to threaten anyone's safety or physical health. What remains to be considered is whether disclosure could reasonably be expected to threaten anyone's mental health.

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[60] Ministry's initial submission at para 82.
[61] Affidavit of Deputy Warden at para 33.
[62] Affidavit of Assistant Deputy Warden at paras 37-38.
[63] Applicant's response submission at paras 162-163.
[64] Ministry's reply submission at paras 10-13.
[65] Ministry's initial submission at para 80, citing Order F20-54, 2020 BCIPC 63 at para 16.

[70] With respect to the Ministry's evidence that "some staff may fear retaliation" by the applicant, I find that this is insufficient to ground a reasonable expectation of serious mental distress or anguish. With respect to the Ministry's evidence that the applicant's ability to identify which employees interacted with him "would greatly increase the fear and anxiety" of those employees, I find that this evidence does not rise above speculation. The Assistant Deputy Warden does not say he spoke to the employees who might be affected, nor does he provide any detail beyond the assertion that such an increase in fear and anxiety will result from disclosure.

[71] Ultimately, I find that the Ministry's evidence and arguments do not establish a reasonable expectation of a threat to anyone's safety or physical or mental health, so I find that s. 19(1)(a) does not apply to any of the information in the Videos.

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

[72] Section 22(1) provides that a public body must refuse to disclose personal information whose disclosure would be an unreasonable invasion of a third party's personal privacy. Schedule 1 of FIPPA defines a "third party" as "any person, group of persons, or organization other than" the person who made the access request or a public body.

The analytical framework for s. 22 is well established:

> This section only applies to "personal information" as defined in FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy.[66]

[73] The Ministry says that disclosure of the Videos would be an unreasonable invasion of the privacy of third parties (including COs and medical staff) depicted in them. The applicant says that disclosure would not unreasonably invade any third party's personal privacy.

Is the information at issue personal information? – s. 22(1)

[66] Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.

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

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

[75] Previous orders have established that information is "personal information" if it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.[67]

[76] The Ministry says that the Videos contain the personal information of COs, medical staff, and sheriff's department staff.[68] The applicant says that the COs' facial images are the only personal information in the Videos.[69]

[77] As I said above, the Ministry bears the burden of establishing that the information in dispute is personal information. For the reasons that follow, I find the information at issue is reasonably capable of identifying particular individuals and none of that information is contact information. To begin with, I find that some of the images of BC Corrections employees, including nurses and COs wearing their normal uniforms, are those employees' personal information because they are reasonably capable of identifying those individual employees.

[78] Many of the Videos depict COs who are part of the ERT moving around and interacting with the applicant. In most cases, these COs wear helmets and masks that obscure their faces. At first glance, these images do not seem to be personal information because alone, they do not permit individual team members to be identified. However, the ERT members' helmets are marked with small identifying numbers. In other Videos, the ERT members appear unmasked and state their names and helmet numbers. I therefore find that the images of the masked ERT members are their personal information, because they are reasonably capable of identifying those members when combined with information in certain other Videos.

[79] I will refer to depictions of BC Corrections employees in the Videos as "employees' personal information".

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[67] Order F18-11 2018 BCIPC 14 (CanLII) at para 32.
[68] Ministry's initial submission at para 93.
[69] Applicant's response submission at para 166.

[80] Notably, the parties do not mention the personal information of inmates other than the applicant (in fact, the applicant says that no other third parties appear in the Videos),[70] but I find that a large number of the Videos do contain the personal information of other inmates.[71] Their images are clearly visible and I have no doubt that these inmates can be identified based on them. In addition, one of the Videos contains correctional staff's discussion about two inmates other than the applicant and an extensive interaction with one of those inmates; I find that this is the personal information of those inmates.[72] I will refer to this information collectively as "inmate personal information".

[81] Finally, many of the Videos – those recorded on a handheld camcorder – include audio recordings of BC Corrections employees and other inmates. Neither party directly addresses this aspect of the Videos. However, I find that the audio recordings are the personal information of third parties, because when combined with the images in the Videos which they accompany, they are reasonably capable of identifying those third parties.

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

[82] The next step in the s. 22 analysis is to consider whether disclosure of any of the personal information would *not* be an unreasonable invasion of a third party's personal privacy because a circumstance set out in s. 22(4) applies. The Ministry says that none of these circumstances apply, while the applicant says that s. 22(4)(e) applies to the images of Ministry employees.

Position or functions of public body employee – s. 22(4)(e)

[83] Section 22(4)(e) provides that disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where the information is

[70] Applicant's response submission at paras 13 and 166.
[71] Namely, the Videos with the filenames FR225-SegMedicalCell2021-11-04, FR225-SegMedicalCell2021-11-16, FR225SegMedicalCell2021-07-23, FR096-SegHCCorridorWA&DFrontDoor2021-11-29, FR097-SegHCCorridorWEast2021-11-29, FR098-SegHCCorridorEHCEntrance2021-11-29, FR100-A&DEntranceInterior2021-11-29, FR150-Level2SegHCCExitHall2021-11-29, FR225-SegMedicalCell2021-10-28, FR225-SegMedicalCell2021-11-26, FR225-SegMedicalCell2021-11-29, FR227-SegOutsideCells#11,12,132021-11-29, FR333-A&DChangeroomtoFrontDesk2021-11-29, FR334-A&DinnerHallway2021-11-29, FR145-SegEastYear2021-06-30, FR215-CellCamera#72021-06-30, FR219-CellCamera#112021-06-30, FR220-CellCamera#122021-06-30, FR227-SegOutsideCells#11,12,132021-06-30, FR210-LU4DCommonAreaShower2022-03-17, FR413-AssociationSpace4C252022-03-17, FR416-4D-6AssociationSpace2022-03-17, FR419-4D-FCBAssociationSpace2022-03-17, ADW briefing & 24 min [name] CEE, SP136-RECFloortoEffectsCorridor(AD11)_2021-09-07, FR402-AssociationSpace4C25_2022-03-17, FR217-CellCamera92021-11-11, and FR225-SegMedicalCell2021-11-11.
[72] This is the Video with the filename ADW briefing & 24 min [name] CEE, at the times 00m20s-01m50s and 03m30s-24m45s.

about the third party's position, functions, or remuneration as an employee of a public body.

[84] The Ministry says that s. 22(4)(e) does not apply to any of the withheld personal information. It says that video footage reveals a vast amount of additional information beyond what an individual is doing to perform their work duties. The Ministry argues that video footage reveals much more personal information about third parties than do written records:

> …a video depicts an individual's exact body shape, size and features, as well as its unique motion – a video captures the sway of hips, the movement of an individual's hands, any unique physical habits they might have such as routinely tucking hair behind their ear, fidgeting, cracking their knuckles, pushing their glasses up the bridge of their nose, or stretching. A video reveals a person's emotions and reactions as demonstrated through facial expression and body language. A video shows whether an employee is obese or fit, young or old, tall or short, fully mobile or not, whether they present as male or female, wear glasses, have long or short hair or perhaps no hair at all, or appear to be of a certain racial or ethnic origin. None of this is information about an employee's functions, position, or remuneration.[73]

[85] The Ministry says further that the Videos show how individual employees defend themselves in response to threats or assaults, and how they walk, stand, and interact with each other. It says that information of this kind cannot be what the Legislature intended to catch with the words "position, functions, or remuneration".[74]

[86] The applicant says that the Videos consist of objective, factual information about what BC Corrections employees did in the normal course of their employment; therefore, s. 22(4)(e) applies and disclosure of the Videos would not be an unreasonable invasion of those employees' privacy.[75]

[87] The Ministry relies on Order F12-12 for the proposition that s. 22(4)(e) does not apply to video footage that shows public body employees engaging in their work because video footage captures the employees' facial and body images, which are not information about the employees' positions, functions, or remuneration.[76] However, in the passage the Ministry cites for this proposition, I find the adjudicator did not make nearly so broad a finding as the Ministry argues. The adjudicator found that in the circumstances of that case, s. 22(4)(e) did not apply to the *facial* image of a CO.[77] In that case, the images of the CO's

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[73] Ministry's initial submission at paras 97-98; emphasis in original.
[74] *Ibid* at para 99.
[75] Applicant's response submission at paras 174-178.
[76] Ministry's initial submission at paras 96 and 101.
[77] Order F12-12, 2012 BCIPC 17 (CanLII) at para 30.

body had already been disclosed to the applicant, so the only pieces of information remaining in dispute were the images of the CO's face. I remarked in Order F25-46 that the adjudicator in Order F12-12 seemed satisfied that if footage of the CO's body had been withheld, s. 22(4)(e) would have applied to it because it was produced as a result of the routine recording of the everyday operations of a correctional centre, and depicted the CO's tangible activities in the normal course of their work.[78]

[88] The Ministry also argues that I should adopt the reasoning of Order F15-42.[79] The adjudicator in that case was of the view that in general, audio and video footage of a public body employee was "more likely to be 'about' that specific employee, their actions and how they do their job compared to a written record created in the course of an employee's ordinary functions, tasks and activities" largely because of the additional detail that characterizes such footage compared to written records. In that case, the adjudicator concluded that s. 22(4)(e) did not apply to the audio and video recordings of several public body employees that were collected in a classroom as part of a special educational program.

[89] However, the circumstances in Order F15-42 were somewhat different from those of the present case. The adjudicator in that order noted that it was "highly unusual" for the activities of school district employees to be subject to video surveillance.[80] Here, the recordings were made in the ordinary course of the Jails' operation. While I agree with the general proposition that audio recordings and/or video footage of a public body employee may be *more likely* to be about the particular employee than about their position or functions, each case turns on its own facts, and I do not think the highly specific facts of Order F15-42 are of much assistance here.

[90] The Ministry also asks me not to rely on the reasoning in Order F24-10.[81] In that case, the adjudicator found s. 22(4)(e) to apply to certain video footage of public body employees because the footage contained "no more personal information than would a dry, written narrative" of the employees' actions. The adjudicator also found s. 22(4)(e) to apply to the employees' facial images, since these were in focus for only a few seconds at a time and conveyed "no specific emotion or information".[82]

[91] I agree with the reasoning in Order F24-10, but in my view this case is distinguishable. The images of public body employees in the Videos here are in

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[78] Order F25-46, *supra* note 18 at para 88, citing Order F12-12, *supra* note 77 at paras 29-30.
[79] Ministry's initial submission at paras 102-103; Order F15-42, 2015 BCIPC 45 (CanLII).
[80] Order F15-42, *supra* note 79 at paras 31 and 64.
[81] Ministry's initial submission at paras 97-100.
[82] Order F24-10, 2024 BCIPC 14 (CanLII) at paras 52-58.

focus for much longer than a few seconds and contain a great deal of information that is unrelated to their position or functions.

[92] On one hand, I agree with the Ministry that video and audio recordings capture much more information than written records would. Much of the information captured relates more to who an employee is, and what their personal characteristics are, than to a bare description of their functions as employees. On the other hand, I agree with the applicant that the Videos contain objective, factual descriptions of what public body employees did in the course of their employment.

[93] Section 22(4)(e) applies to information that is about a public body employee's position or functions. As the orders noted above demonstrate, determining what personal information is "about" is not always a straightforward proposition, especially where the information is contained in video footage. Previous orders have found that s. 22(4)(e) applies to information that relates to a public body employee's job duties in the normal course of events, including objective, factual information about what the employee said or did while discharging their job duties. However, if the information at issue appears in a context such that it reveals more than just the employee's name, job title, duties, functions, remuneration, position, or what they did in the normal course of their work, then it is possible that s. 22(4)(e) may not apply.[83]

[94] While in this case the employees' personal information *does* consist of objective, factual information about what the employees did in the normal course of their jobs, and was recorded in the normal course of operations at the Jails, it also reveals much more than this about who the employees are as individuals. I agree with much of what the Ministry says about what kind of information the Videos reveal about the employees. I also find that it would be premature at this stage of the s. 22 analysis to conclude that s. 22(4)(e) applies and disclosure of the employees' personal information is not an unreasonable invasion of their personal privacy. In view of the way in which both aspects of their personal information (i.e., information about their job duties and about their physical characteristics) are combined, deciding whether disclosure of that information would (or would not) be an unreasonable invasion of their personal privacy warrants consideration under the other steps of the s. 22 analysis.

[95] Given the sheer amount of additional personal information in the Videos beyond what a "dry, written description" of the employees' duties would provide, I am not persuaded that s. 22(4)(e) applies to the employees' personal information in this case.

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[83] Order F23-28, 2023 BCIPC 32 (CanLII) at paras 41-43; Order F25-58, 2025 BCIPC 67 (CanLII).

[96] I also do not find that s. 22(4)(e) applies to any of the inmate personal information (including portions of audio relating to other inmates), since the other inmates are not officers, employees, or members of a public body as is required under s. 22(4)(e).

Conclusion on s. 22(4)

[97] To summarize, I have found that s. 22(4)(e) does not apply to any of the personal information at issue in this case. I have also considered the other s. 22(4) provisions and find that none of them apply.

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

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

Investigation into a possible violation of law – s. 22(3)(b)

[99] Section 22(3)(b) provides that disclosure of personal information is presumed to be an unreasonable invasion of privacy if the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[100] The Ministry submits that s. 22(3)(b) applies to the employees' personal information in one of the Videos[84] because that Video depicts the applicant assaulting a CO. It says that this assault became the subject of a disciplinary charge, as well as an investigation under the *Criminal Code* (for which the RCMP issued a police file number), which carries the sanction of a criminal sentence.[85]

[101] The applicant says that s. 22(3)(b) cannot apply because he is not a third party depicted in the Video in question. I understand him to mean that s. 22(3)(b) cannot apply where the investigation is aimed at the applicant himself, rather than at a third party.[86] The Ministry says in reply that in addition to the applicant's personal information, the Video in question contains the personal information of three COs, who *are* third parties, so s. 22(3)(b) applies to their personal information.[87] To be clear, the Ministry is only arguing that s. 22(3)(b) applies to

[84] The Video with the filename FR225-SegMedicalCell_2021-10-02.
[85] Ministry's initial submission at paras 105-107.
[86] Applicant's response submission at paras 172-173.
[87] Ministry's reply submission at para 37.

the personal information of the third parties depicted in the video footage; it did not argue that s. 22(3)(b) applies to the applicant's image in the Video.

[102] First, I do not think it is relevant for the purposes of s. 22(3)(b) that the subject of the investigation was the applicant himself, and not the COs. Section 22(3)(b) addresses third-party personal information; it says nothing about whether the investigation must have a third party as its subject.[88] There is no dispute that the Video in question contains the personal information of third parties.

Investigation into a possible violation of law

[103] Next, I must decide whether there was an investigation into a possible violation of law. In Order 01-12, former Commissioner Loukidelis found that the term "'law' refers to (1) a statute or regulation enacted by, or under the statutory authority of, the Legislature, Parliament or another legislature, (2) where a penalty or sanction could be imposed for violation of that law".[89]

[104] The applicant says that the disciplinary charge he faced was brought under s. 21(1)(w) of the BC *Correction Act Regulation*[90] (assaulting or threatening another person). I am satisfied that the *Correction Act Regulation* is a "law" for the purposes of s. 22(3)(b), and that a disciplinary charge investigation pursuant to that regulation was underway during the applicant's incarceration. Similarly, I have no difficulty concluding that the *Criminal Code* is a "law" for the purposes of s. 22(3)(b), and I accept the Ministry's undisputed assertion that an investigation under the *Criminal Code* was underway during the applicant's incarceration.

Compiled and identifiable

[105] Finally, I must decide whether the personal information of third parties in this specific Video was compiled and is identifiable as part of an investigation into a possible violation of law. Previous orders have held that information will have been "compiled" for the purposes of s. 22(3)(b) if it was gathered or assembled using judgment, knowledge, or skill.[91] Little has been written about the

[88] In Order F21-57, 2021 BCIPC 66 (CanLII) at para 54, the adjudicator found that s. 22(3)(b) did not apply to certain personal information of a third party who was not the subject of an investigation. It seems to me that the adjudicator in that case introduced a requirement that is not found in the words of the statute, without providing reasons for doing so. In the circumstances, I decline to follow the reasoning of Order F21-57. Also see Order No. 305-1999, 1999 CanLII 1817 (BC IPC) at 6.
[89] Order 01-12, 2001 CanLII 21566 (BC IPC) at para 17.
[90] BC Reg 58/2005.
[91] See, e.g., Order F19-02, 2019 BCIPC 2 (CanLII) at paras 37-40.

"identifiable" requirement, but one recent order has held that, at minimum, the information must be somehow recognizable as connected to an investigation.[92]

[106] The Ministry does not expressly say how the Video meets these requirements.[93] The applicant says he was convicted of the disciplinary charge and suffered a penalty.[94] The applicant's first access request was for video evidence related to this same disciplinary charge.[95] However, in the absence of any explanation from the Ministry, I am not prepared to conclude that the personal information in the Video in question was compiled and is identifiable as part of the Ministry's investigation into the disciplinary charge. In the context in which it appears in this inquiry – it was recorded in the ordinary course of operations at one of the Jails, and compiled into a package of records in response to an access request – I do not think it can be characterized as compiled and identifiable as part of the Ministry's disciplinary charge investigation. For the same reason, I also do not find that the Video was compiled and is identifiable as part of the RCMP investigation.

[107] Because the personal information in the Video in question does not meet the "compiled and identifiable" requirement, I find that s. 22(3)(b) does not apply to it.

Third parties' employment or occupational history – s. 22(3)(d)

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

[109] The Ministry says that the Videos reveal how particular BC Corrections employees did their jobs on a particular day, including how they responded to physical threats, so s. 22(3)(d) applies to all of the employees' personal information.[96]

[110] The Ministry relies on Order F18-47 for the proposition that s. 22(3)(d) applies to information that provides "qualitative details about how each particular employee did his or her job" on a particular day.[97] The Ministry also relies on Order F15-42 for the proposition that s. 22(3)(d) applies to information that reveals how public body employees do their jobs.[98]

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[92] Order F25-24, 2025 BCIPC 30 (CanLII) at para 99.
[93] Ministry's initial submission at paras 105-107.
[94] Applicant's response submission at paras 67-72.
[95] Applicant's response submission at para 12; Ministry's initial submission at para 1.
[96] Ministry's initial submission at paras 108-111.
[97] *Ibid* at para 110.
[98] *Ibid* at para 109.

[111] I understand the applicant to be taking the position that s. 22(3)(d) does not apply to any of the employee personal information because the information is "about" the third parties' positions and functions under s. 22(4)(e) because it is an objective, factual record of what public body employees did in the course of their employment.[99]

[112] In Order F12-12, the adjudicator found video of a correctional officer's facial image was in the possession of the Ministry because of the circumstances of the correctional officer's employment with the Ministry. As a result, the adjudicator concluded that the CO's facial image related to her employment history and s. 22(3)(d) applied.[100]

[113] In Order F15-42, the adjudicator found s. 22(3)(d) applied to video footage of several public body employees because it was more detailed personal information than would be found in written records, which made it more likely to be "about" specific employees, and how they do their jobs, compared with written records created in the course of their ordinary activities and tasks.[101] In addition, the adjudicator found the images of the employees' bodies without their faces would not have been about the employees' positions or functions because the employees would have remained identifiable even if their faces were severed, "due to the unsevered portions of their bodies, their clothing, and the very specific context in which they were recorded".[102]

[114] In Order F18-47, the adjudicator considered the application of s. 22(3)(d) to the names of certain public body employees. Audio recordings of those employees' voices had already been disclosed to the applicant. The adjudicator found s. 22(3)(d) to apply to the employees' names because when combined with the audio recordings of those employees, reasonable inferences could be made about the employees' gender, native language, age, and emotional state. The audio recordings provided "qualitative details about how each particular employee did his or her job" on the day the recordings were made. In addition, the audio recordings contained the applicant's criticism of the employees, which the adjudicator found to be "not objective information about those employees' job duties in the normal course of work-related activities…[but instead] the applicant's qualitative assessment of the [employees'] job performance".[103] For these reasons, the adjudicator found s. 22(3)(d) applied to the employees' names.

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[99] Applicant's response submission at paras 174-179.
[100] Order F12-12, *supra* note 77 at para 33.
[101] Order F15-42, *supra* note 79 at paras 33-35.
[102] *Ibid* at paras 36-37.
[103] Order F18-47, 2018 BCIPC 50 (CanLII) at paras 24-26.

[115] I agree with what the adjudicator said in Order F23-56 about how s. 22(3)(d) applies. She reviewed the OIPC's jurisprudence on s. 22(3)(d) and summarized it in the following way:

> 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).[104]

[116] I do not think the cases discussed above support the Ministry's contention that information that shows how employees do their jobs will necessarily relate to their employment history for the purposes of s. 22(3)(d). None of the cases discussed above found s. 22(3)(d) to apply for that reason alone. There is no evidence that the Videos relate to a qualitative assessment of the employees' workplace conduct or performance because, for instance, there was a complaint, investigation, or other disciplinary matter related to how they did their jobs. There is likewise no evidence that the Videos relate to any other aspect of the administration of the employees' employment. For these reasons, I find that s. 22(3)(d) does not apply to the employees' personal information.

[117] I also do not find that s. 22(3)(d) applies to any of the inmate personal information, because none of the information is about the other inmates' employment, occupational, or educational history.

Third parties' racial or ethnic origin – s. 22(3)(i)

[118] Section 22(3)(i) provides that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's privacy if the personal information indicates the third party's racial or ethnic origin, sexual orientation, or religious or political beliefs or associations.

[119] The Ministry says that the images of all the third parties in the Videos "reveal" their racial or ethnic origins.[105] The applicant does not directly address the application of s. 22(3)(i).

[120] The skin colour and other physical features of the third parties are apparent to anyone who views the Videos. Is this enough to "indicate" their racial or ethnic origin for the purposes of s. 22(3)(i)? I found in Order F25-46 that there

[104] Order F23-56, 2023 BCIPC 65 (CanLII) at paras 70-71 and the cases cited therein.
[105] Ministry's initial submission at paras 112-113.

is no requirement under s. 22(3)(i) for information to "conclusively" indicate a third party's racial or ethnic origin; it is only necessary for the information to *indicate* their racial or ethnic origin. I went on to find that anyone viewing the video at issue in that case could discern the racial or ethnic origins of the third parties depicted, and concluded that s. 22(3)(i) applied for that reason.[106] However, I have now had the benefit of reviewing my colleague's reasons in Order F25-81.[107]

[121] In that order, the adjudicator found s. 22(3)(i) did not apply to video images of correctional officers, other Ministry employees, and inmates. She reasoned that since each of the categories of information in the presumptions under s. 22(3) has something about it that is sensitive or private in nature, so plainly connected to a person's privacy interests that the Legislature presumptively protected that information from disclosure, the Legislature cannot have intended for a person's skin colour, which is visible to anyone the person comes across, to be included in these sensitive categories of information. The adjudicator concluded that a finding that disclosure of a person's skin colour, which is visible to the world, is presumptively an invasion of their personal privacy would not strike the appropriate balance between FIPPA's dual purposes of giving applicants a right of access to records and protecting personal privacy.[108] I agree with and adopt this approach.

[122] On my review of the Videos, I can see that the employees' personal information and the inmate personal information show those third parties' skin colour and physical characteristics. I find that this information would be apparent to anyone those third parties encounter, so that its disclosure would not be a presumptively unreasonable invasion of their personal privacy. The Ministry did not argue, and I do not find, that any other consideration set out in s. 22(3)(i), apart from the racial or ethnic origin of third parties, applies here. I therefore find that s. 22(3)(i) does not apply, either to the employees' personal information or to the inmate personal information.[109]

Conclusion on s. 22(3)

[123] To summarize, I have found that ss. 22(3)(b), 22(3)(d), and 22(3)(i) do not apply to any of the withheld personal information. The parties do not address any other s. 22(3) presumptions, and I do not find that any apply.

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[106] Order F25-46, *supra* note 18 at para 101.
[107] Order F25-81, 2025 BCIPC 95.
[108] *Ibid* at paras 99-113.
[109] If I am mistaken in this conclusion and disclosure of the third parties' skin colour and physical characteristics *is* presumptively an unreasonable invasion of their personal privacy, I would have found the presumption rebutted by the lack of sensitivity of this information and the fact that, in most cases, the information is already known to the applicant.

Relevant circumstances – s. 22(2)

[124] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those set out in s. 22(2). The parties raise ss. 22(2)(a), (c), and (e), as well as several circumstances not set out in s. 22(2). I will address each circumstance below.

Subjecting the Ministry's activities to public scrutiny – s. 22(2)(a)

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

[126] The Ministry says that the applicant's representative has viewed the Videos, so disclosure of copies of the Videos to the applicant would not enhance the public's ability to scrutinize the Ministry's activities, or if it would, this factor has little weight compared to the applicable presumptions against disclosure.[110]

[127] The applicant says that disclosure of the personal information will allow for public scrutiny of COs' use of force and of BC Corrections' "inappropriate" viewing policy that allows lawyers, but not inmate-applicants themselves, to view video footage recorded in the Jails. The applicant also says disclosure would "expose [BC Corrections'] illegal use of segregation".[111] In reply, the Ministry says that the applicant has made complaints to the BC Human Rights Tribunal and to the BC Ombudsperson in connection with his time in the Jails; it says those processes, the results of which may be published, will allow adequate public scrutiny of the Ministry's actions.[112]

[128] I do not think disclosure of the personal information in the Videos would tell the public anything useful about the Ministry's video-viewing policy or about the use of segregation in the Jails. That policy is already public, and the applicant does not explain how disclosure of this personal information would add anything to enhance the public's existing ability to scrutinize and comment on the policy and the use of segregation.

[129] However, in my view, disclosure of some of the employee personal information would allow the public to scrutinize how BC Corrections employees used force against the applicant. I found in Order F25-46 that s. 22(2)(a) applied to favour disclosure of the images of the bodies of the Ministry's employees who were using force on an applicant. I found those images "would reveal something about the Ministry's policies and activities, the disclosure of which would contribute to the public's ability to scrutinize those policies and activities,

[110] Ministry's initial submission at paras 117-121.
[111] Applicant's response submission at paras 183-186.
[112] Ministry's reply submission at paras 42-46.

particularly where…the use of force has been found to be excessive".[113] While the use of force was not under investigation nor found to be excessive here, and that reduces the weight I assign to this circumstance, I find that s. 22(2)(a) applies and favours disclosure of the COs' body images.

[130] In contrast, I do not think disclosure of the employees' facial images would meaningfully assist or enable the public to scrutinize the activities of the Ministry in any way, so I find that s. 22(2)(a) does not apply to those facial images.

[131] I find that disclosure of the other inmates' images would allow the public to scrutinize the activities of those inmates rather than the activities of the public body, which is not the purpose of s. 22(2)(a). Therefore, I find that s. 22(2)(a) does not apply to the inmate personal information.

Personal information relevant to a fair determination of applicant's rights – s. 22(2)(c)

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

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.[114]

[133] The applicant does not expressly refer to s. 22(2)(c), but says that his "access to information about the repeated use of force against him by COs is a precondition of his ability to retain a lawyer on a contingency basis to initiate a civil suit" against BC Corrections.[115]

[134] The Ministry says that the applicant has not explained why his representative(s) at Prisoners' Legal Services cannot assist him with a civil suit, nor why a lawyer outside that organization could not arrange to view the Videos in the same manner as his representative did. The Ministry also says the

[113] Order F25-46, *supra* note 18 at para 110.
[114] Order 01-07, 2001 CanLII 21561 (BC IPC) at para 31.
[115] Applicant's response submission at para 187.

applicant has not described the legal right at issue, nor the nature of his potential civil suit, so the first branch of the s. 22(2)(c) test is not met.[116]

[135] The Ministry also says the applicant has not established that he is contemplating a civil suit, so that the second branch of the test is not met. The Ministry says that for a proceeding to be "contemplated" for the purposes of s. 22(2)(c), a decision to commence legal proceedings must already have been made.[117]

[136] Finally, with respect to the applicant's Human Rights Tribunal and Ombudsperson complaints, the Ministry says that the Human Rights Tribunal has its own disclosure process, and that the Ministry has agreed to arrange viewings of the Videos for the Ombudsperson in the course of that complaint. As a result, the Ministry says, disclosure of the personal information under FIPPA is not necessary for a fair determination of the applicant's rights in those proceedings.[118]

[137] With respect to the civil claim the applicant mentions, I agree with the Ministry that the applicant has not described in sufficient detail the legal right(s) he seeks to enforce, so the first branch of the test is not met for that civil claim.

[138] I do not agree with the Ministry's assertion that for a proceeding to be "contemplated", a decision to commence proceedings must have been made. This approach, advanced in Order F12-08,[119] on which the Ministry relies, has been rejected in later OIPC orders. These orders have found that an applicant need only establish that they are "intently considering the commencement of a proceeding".[120] However, in the absence of any explanation from the applicant about his contemplation of a civil suit, I cannot find that he has established that a civil claim is underway or contemplated. As a result, the second branch of the test is not met.

[139] With respect to the applicant's Human Rights Tribunal and Ombudsperson complaints, the applicant has not said why disclosure of the personal information in the Videos has any bearing on, or significance for, these complaints. He also has not said why disclosure is necessary to prepare for those complaints or to ensure a fair hearing. Without more, I am not satisfied that the third or fourth branches of the test are met with respect to those complaints.

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[116] Ministry's reply submission at paras 56-57.
[117] *Ibid* at para 58.
[118] *Ibid* at para 61.
[119] Order F12-08, 2012 BCIPC 12 (CanLII) at paras 29-32.
[120] See, e.g., Order F16-36, 2016 BCIPC 40 (CanLII) at paras 43-50; Order F25-33, 2025 BCIPC 41 (CanLII) at para 54.

[140] Since each element of the test set out above must be met in order for s. 22(2)(c) to apply, I find that it does not apply to any of the personal information at issue.

Unfair exposure of third parties to harm – s. 22(2)(e)

[141] Section 22(2)(e) asks whether the disclosure of personal information will expose one or more third parties unfairly to financial or other harm. The Ministry says that disclosure of the personal information in the Videos – specifically, the identities of the employees who used force against him – will expose BC Corrections staff to unfair harm because the applicant might retaliate against them in custody (should he return there) or in the community.[121] The applicant does not directly address s. 22(2)(e).

[142] For s. 22(2)(e) to apply, a party must establish that disclosure of personal information will expose a third party to harm, and that such exposure would be unfair. I considered harm to third parties above under ss. 15 and 19 and found that the Ministry had not made out a reasonable expectation of harm if the Videos were disclosed. The Ministry has also not explained how, if such exposure existed, it would be unfair. Therefore, as was the case in Order F25-46, I am unable to find that disclosure *will* expose third parties to unfair harm.[122] I find that s. 22(2)(e) is not a relevant factor in this case.

Applicant's existing knowledge

[143] Previous orders have established that an applicant's existing knowledge of the contents of withheld personal information can be a factor favouring disclosure.[123]

[144] The Ministry says that the applicant's knowledge (through his representative) of the contents of the Videos should not weigh in favour of disclosure in this case because disclosure to him under FIPPA amounts to disclosure to the world.[124]

[145] The applicant does not expressly address this point, but I find it reasonable to conclude that he has detailed knowledge of the interactions involving him that are depicted in the Videos. I agree with the Ministry that disclosure to the applicant under FIPPA amounts to disclosure to the world, but the applicant can already tell the world about the information he knows – though not with the amount of detail that is captured in the Videos. There are, however, many portions of the Videos which would be outside his knowledge because he

[121] Ministry's initial submission at paras 128-130.
[122] Order F25-46, *supra* note 18 at paras 119-120.
[123] See, e.g., Order F17-05, 2017 BCIPC 6 (CanLII) at paras 54-60.
[124] Ministry's initial submission at paras 131-133.

was not present when they were recorded or he was incapacitated by pepper spray. Almost all of the inmate personal information falls into this latter category.

[146] For these reasons, I find that this factor weighs somewhat in favour of disclosure of the portions of the Videos that depict events in which the applicant was involved, but does not apply to the other portions where he has no previous knowledge of or involvement in those events.

Joint personal information of applicant and third parties

[147] The Ministry also says that much of the personal information is the joint personal information of the applicant and its employees, not his sole personal information. It says that while the portions of the Videos depicting the use of force against the applicant contain his personal information, they also contain the personal information of the BC Corrections employees interacting with him, so the fact that some of the personal information is the applicant's does not favour disclosure in this case.[125] The applicant does not directly address this point.

[148] As is evident from its submissions, the Ministry did not withhold information under s. 22(1) that is solely the applicant's personal information. I agree with the Ministry that some of the applicant's personal information is intertwined with the personal information of third parties. For example, in portions of the Videos where the applicant and BC Corrections employees are in close contact such that severance of the employee personal information would necessarily involve severing some of the applicant's personal information, I find that this information is the joint personal information of the applicant and of the employees. Since it would not be possible to disclose these small portions of joint personal information without also disclosing the personal information of third parties, I do not find this to be a factor favouring disclosure of that specific personal information.[126]

Sensitivity of personal information

[149] Finally, the Ministry says that the sensitivity of the BC Corrections employees' personal information in the Videos is a relevant factor weighing against its disclosure. It says that the Videos show how the employees respond to violent behaviour and stressful situations in a way that provides much more detail than a written record. It says that depictions of individuals' responses to highly stressful situations, especially those involving the use of force, are "obviously sensitive". It also says that COs "sometimes must take medical or stress leave as a result of the assaults or other forms of violence they experience at work".[127] The applicant does not directly address this point.

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[125] *Ibid* at para 134-135.
[126] For a similar finding, see Order F25-25, 2025 BCIPC 31 (CanLII) at para 101.
[127] Ministry's initial submission at paras 136-137.

[150] Previous orders have established that where information is sensitive, that is a circumstance weighing against disclosure, and where information is not sensitive, that is a circumstance favouring disclosure.[128] I am not persuaded that any of the employees' personal information is especially sensitive. The Videos were recorded in the normal course of the operation of the Jails and depict employees carrying out their job duties, which clearly include dealing with non-compliant inmates. I am not persuaded the employees' personal information that shows their responses to handling the stressful situation of dealing with the applicant's non-compliant behaviour, is sensitive. The employees all behave in a matter-of-fact and businesslike way, and the Videos do not show them expressing any signs of strong emotions. The Ministry has not said that any of the employees depicted in the Videos have taken medical or stress leaves as a result of the events depicted in them, so I do not find the information sensitive on that basis. In the circumstances, I find that the non-sensitivity of the employees' personal information favours disclosure of that information.

Conclusion on s. 22

[151] I have found that the employee personal information and the inmate personal information in the Videos is the personal information of third parties. I have found that no s. 22(4) circumstance applies.

[152] With respect to the employees' personal information, I have found that no s. 22(3) presumptions apply to it, and that its disclosure would not be an unreasonable invasion of the employees' personal privacy.

[153] With respect to the inmate personal information, the applicant has not said anything that would discharge his burden of proving that its disclosure would not be an unreasonable invasion of the inmates' privacy. Accordingly, I find the Ministry must refuse to disclose the inmate personal information under s. 22(1).

Reasonable severing – s. 4(2)

[154] Section 4(2) of FIPPA provides that an applicant's right of access to a record does not extend to information that is subject to an exception to disclosure, but that if the excepted information can reasonably be severed from a record, the applicant has a right of access to the remainder of the record. Previous OIPC orders have clarified that the phrase "can reasonably be severed" under s. 4(2) means the remaining information after a record is severed should be intelligible, responsive and meaningful. If it is not, then that information cannot be reasonably severed under s. 4(2).[129]

[128] See, e.g., Order F21-69, 2021 BCIPC 80 (CanLII) at para 82.
[129] See, e.g., Order F24-40, 2024 BCIPC 48 (CanLII) at para 58.

[155] The Ministry takes the position that if the information that is subject to one or more exceptions to disclosure is removed from the Videos, the remainder would be "at most...disjointed parts of walls, floors and ceilings", which would be "meaningless snippets of information stripped of the details showing [the applicant's] interactions with correctional staff". It says that these pieces of information would be neither intelligible nor responsive to the applicant's request, which was for footage related to uses of force against him.[130]

[156] The applicant disputes that any exceptions to disclosure apply, and says that even if one or more did apply, the Ministry still could have severed information subject to an exception while disclosing the remainder of the information in the Videos.[131]

[157] I found above that none of the claimed ss. 15 and 19 harms-based exceptions to disclosure apply to the Videos. Therefore, the question I must consider at this point is whether the information that I found must be withheld under s. 22(1) can be reasonably severed from the Videos. I find that if the portions of the Videos I have found must be withheld under s. 22(1) (namely, the inmate personal information) were obscured or removed, the remainder of the information in the Videos would still be clearly intelligible, responsive, and meaningful for the purposes of the applicant's access requests. The amount of information that must be withheld under s. 22(1) is small, and consists of discrete pieces of information that could be obscured or removed without significantly impairing a viewer's ability to understand the remaining information. The remaining information would, in my view, provide a clear and comprehensive picture of the instances in which force was used on the applicant. Nothing in the Ministry's submission persuades me that severance of this particular information would render the remaining information unintelligible, unresponsive, or not meaningful for the applicant's access requests. I find that severance of the inmate personal information is reasonable in this case.

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

[158] Section 9(2) provides that if an applicant has asked a public body for a copy of a record 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.

[159] The applicant made a complaint that the Ministry has not performed its duty to him under s. 9(2) because he has a right of access to the Videos and the Ministry has not provided him with copies of them.[132] The Ministry says it did not

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[130] Ministry's initial submission at paras 141-156.
[131] Applicant's response submission at paras 195-203.
[132] *Ibid* at paras 188-194; Investigator's Fact Report.

provide copies of the Videos because it was authorized or required to withhold the entirety of all of the Videos.[133]

[160] The applicant's argument about s. 9(2) seems to me to amount to his disagreement with the Ministry's decision to apply exceptions to disclosure to the Videos. As I have dealt with the merits of the Ministry's withholding of all or parts of the Videos above, it is not necessary for me to make a finding on s. 9(2).[134]

[161] However, to provide the parties with some guidance about s. 9, I note that s. 9(2) applies only if "the applicant is told under section 8(1) that access will be given".[135] In this case, the Ministry refused the applicant's request for access to the Videos; therefore, the Ministry's obligations under s. 9(2) were not triggered and are not applicable here.

CONCLUSION

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

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

2. The Ministry is required, under s. 22(1), to refuse to disclose the following information in the Videos:

    a. the images of inmates other than the applicant in the Videos noted above at footnote 71; and

    b. the audio in the Video titled "ADW briefing & 24 min [name] CEE", at the following times:

        i. 00m20s-01m50s; and

        ii. 03m30s-24m45s.

3. The Ministry is not required under s. 22(1) to refuse access to the rest of the disputed information in the Videos and must disclose that information to the applicant.

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[133] Ministry's initial submission at paras 158 and 163.
[134] For a similar finding, see Order F25-46, *supra* note 18 at para 136.
[135] Sections 9(1) and 9(2) of FIPPA.

4. The Ministry must copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the Videos described at items 1-3 above.

[163] Pursuant to s. 59(1) of FIPPA, the Ministry is required to comply with this order by December 9, 2025.

October 27, 2025

ORIGINAL SIGNED BY

David S. Adams, Adjudicator

OIPC File Nos.: F22-90348
F23-93304
F22-91316
F23-92107