Order F25-96

MINISTRY OF HEALTH

Allison J. Shamas
Adjudicator

December 12, 2025

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Summary: An individual requested records from the Ministry of Health (Ministry) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). They complained to the OIPC that the Ministry had not conducted an adequate search as required by s. 6(1) of FIPPA. At the inquiry the adjudicator considered whether the Ministry reasonably interpreted the request and whether it conducted a thorough and comprehensive search for records. Finding that the answer to both questions was yes, the adjudicator held that the Ministry conducted an adequate search within the meaning of s. 6(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165 s. 6(1).

INTRODUCTION AND BACKGROUND

[1] This inquiry is about a complaint that the Ministry of Health (Ministry) did not conduct an adequate search for records as required by s. 6(1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The complainant who is a representative of a health justice advocacy organization (the Organization) made two requests for records to the Ministry under FIPPA. The two requests have a protracted history dating back to December of 2020. I will not recount that history here, except as necessary to understand the dispute before me.

[3] Both requests seek information about the exercise of powers under the *Mental Health Act*.[1] The *Mental Health Act* is British Columbia legislation that establishes rules concerning when persons may be admitted to designated mental health facilities in the province.[2] The *Mental Health Act* authorizes health

[1] RSBC 1996, c 288.
[2] Sections 18, 22, and 23-25.

professionals to involuntarily admit people to those facilities.[3] It also authorizes police to apprehend people.[4] Police apprehensions under the *Mental Health Act* may or may not lead to involuntary admissions.[5]

[4] In December of 2020 the complainant made a request for various information related to exercises of authority under the *Mental Health Act* (First Request).[6]

[5] The parties resolved most of the First Request, leaving only the part of that request relating to involuntary admissions under the *Mental Health Act* where the patient was accompanied to a designated facility by police (Amended First Request).[7]

[6] In November of 2022 the complainant made a second request for information about involuntary admissions under the *Mental Health Act* where the patient was accompanied to a designated facility by police for a different time period (Second Request).[8]

[7] The Ministry's response to both requests was that it did not have responsive records in its custody or under its control. The complainant complained to the Office of the Information and Privacy Commissioner (OIPC)

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[3] Section 22.
[4] Section 28.
[5] Section 28.
[6] *First Request:* The complainant's first request read: "Copy of annual unique patient counts, annual case counts of involuntary and voluntary admissions pursuant to the Mental Health Act, broken down by all available subcategories, such as facility, geographic region, health authority, length of stay, patient age, patient gender, patient race, or patient diagnosis; Annual unique patient or case counts of involuntary admissions pursuant to the Mental Health Act broken down by legislative admission mechanism - ie. the number of involuntary admissions pursuant to s. 22 involuntary admissions, s. 28 emergency procedures, s. 29 prisoners and youth custody centre inmates, or s. 42 transfer from another province; Annual unique patient or case counts of involuntary admissions pursuant to the Mental Health Act where the patient was accompanied by police to designated facility; Data on the length of extended leave periods, number of involuntary patients or case counts of involuntary patients recalled from extended leave, or other available data on extended leave pursuant to the Mental Health Act; Data on the number of second medical opinions requested by involuntary patients pursuant to s. 31(2) of the Mental Health Act and any related data on second medical opinions, such as the length of time to complete a second medical opinion or the outcome of the second opinion; Data on the use of restraints or seclusion rooms/secure rooms/solitary confinement/quiet rooms with involuntary patients pursuant to the Mental Health Act, and any related data, such as the length of time for which restraints or seclusion were used." (Date Range for Record Search: From 1/1/2016 To 12/3/2020).
[7] *Amended First Request:* Annual unique patient or case counts of involuntary admissions pursuant to the Mental Health Act where the patient was accompanied by police to designated facility. (Date range of 1/1/2016 – 12/3/2020).
[8] *Second Request:* Annual case counts of involuntary admissions pursuant to the Mental Health Act where the patient was accompanied by police to designated facility, if possible, disaggregated by the Health Authority. (Date range of 4/1/2016 to 3/31/2022).

that the Ministry had not conducted an adequate search as required by s. 6(1) of FIPPA. The OIPC opened the two complaint files that are the subject of this inquiry.

[8] During the OIPC's mediation of the complaints, the parties agreed to combine the two requests into a single request (the Revised Request) that would be considered at an inquiry. Again, the Revised request related to involuntary admissions under the *Mental Health Act* where the patient was accompanied to a designated facility by police.[9]

[9] After the matter was referred to inquiry, the Ministry created a record for the complainant (the Created Record) that it said was responsive to the Revised Request,[10] and asked the OIPC to cancel this inquiry because there was no longer any dispute between the parties. The complainant took the position that the Created Record did not resolve the inquiry because it was incomplete and therefore did not fully respond to the Revised Request. In a decision letter dated April 23, 2025, I dismissed the Ministry's cancellation request on the basis that there remained a live dispute between the parties, and that given the protracted history of the complaints, it would not be fair to the complainant to cancel the inquiry without resolving that dispute.[11]

[10] During their correspondence about the cancellation issue, parties discussed the Created Record itself. The Ministry provided information about the data it used to create that record. Based on that information, the complainant understood that the Ministry has in its custody, data reflecting the number of police apprehensions under the *Mental Health Act*. This understanding underpins much of the complainant's submissions in this inquiry.

PRELIMINARY MATTERS

Submissions filed outside the usual submission process

[11] Both parties filed additional submissions after the close of the regular submission process and without invitation from the OIPC. Ordinarily the OIPC does not consider submissions outside its ordinary submission process unless fairness considerations so require, for instance where a party raises new issues in its reply submission or the adjudicator requires additional submissions to fairly decide the issues in dispute.

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[9] *Revised Request:* Annual unique patient or case counts of involuntary admissions pursuant to the Mental Health Act where the patient was accompanied by police to designated facility. Disaggregated by the Health Authority if possible. (Date range of 1/1/2016 to 3/31/2022).
[10] The Ministry acknowledged in the Created Record that there were some limitations because the Ministry did not have all the data requested in the Revised Request in its custody or under its control.
[11] See my April 23, 2025 decision letter.

[12] In this case, the Ministry's reply submission appropriately responds to issues raised by the complainant, and the parties fully addressed the issues I need to decide in the submissions they made during the regular submission process. Furthermore, the uninvited submissions relate to the preliminary issues discussed below and do not materially assist me in deciding those issues. In the circumstances, I see no reason to depart from the OIPC's usual practice. I will not consider the uninvited submissions further.

Affidavit evidence that contains argument, opinion, and subjective feelings

[13] The Ministry asks that I exclude parts of an affidavit filed by the complainant because it contains argument, opinion, and subjective feelings. The Ministry submits that this kind of evidence is improper and highly prejudicial.

[14] Section 56(1) of FIPPA authorizes the commissioner to decide all matters of fact and law during an inquiry, which includes matters regarding the admissibility of evidence. As an administrative tribunal, the OIPC is generally not bound by the formal rules of evidence that govern judicial proceedings.[12] Thus, the commissioner has the authority to admit evidence that they consider relevant or appropriate for the purposes of deciding the matters at issue in an inquiry, whether or not that evidence would be accepted in a court of law.[13]

[15] I can see that some of the complainant's affidavit evidence contains argument, opinion, and subjective feelings. However, I am capable of distinguishing between fact and opinion, and I have the benefit of the Ministry's submissions which clearly identify the parts of the affidavit it believes are improper. In the circumstances, any prejudice caused by this information is limited and I see no need to exclude it. The weight and attention I give to this information is a separate matter from its admissibility and will be evident from my analysis in this order.

Mediation material

[16] The Ministry also asks me to exclude parts of the complainant's submissions because they contain mediation material and are thus contrary to the OIPC's *Instructions for Written Inquiries – FIPPA* (FIPPA Guide or the Guide).[14]

[17] The FIPPA Guide states that the commissioner will not consider mediation material in reaching a decision and issuing an order.[15] The Guide describes

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[12] *Cambie Hotel (Nanaimo) Ltd v British Columbia (General Manager, Liquor Control and Licensing Branch),* 2006 BCCA 119 at paras 28-36.
[13] *British Columbia Lottery Corporation v. Skelton,* 2013 BCSC 12 (CanLII) at para 64.
[14] FIPPA Guide (https://www.oipc.bc.ca/resources/guidance-documents/).
[15] FIPPA Guide at pp 6 (https://www.oipc.bc.ca/resources/guidance-documents/).

mediation material as communications that relate to offers or attempts to resolve a matter during mediation. The Guide also provides that while any opinions or recommendations an investigator expressed during mediation are mediation material, an investigator's decisions are not.

[18] Some of the information identified by the Ministry discloses the opinions, advice, and recommendations provided by OIPC investigators during mediation.[16] I find that this information is mediation material, and I will not consider it in reaching a decision in this inquiry.

[19] The balance of the information concerns procedural next steps, OIPC processes, and outcomes.[17] Although this information came from an OIPC investigator, it discloses nothing about attempts to resolve the matters or the investigator's opinions about them. Rather it is basic information that provides the background of how the complainant's requests proceeded to inquiry. I am not persuaded that this information is mediation material, and I will not exclude it from the inquiry. As above, the weight and attention I give to this information is a separate matter from its admissibility and will be evident from the analysis below.

ISSUE

[20] The issue before me is whether the Ministry fulfilled its duties under s. 6(1). FIPPA does not assign the burden of proof under s. 6(1), but past orders place the burden on the Ministry to establish that it fulfilled those duties.[18]

DUTY TO ASSIST - SECTION 6(1)

[21] Section 6(1) requires a public body to make "every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely." It includes a duty to conduct an "adequate search."[19]

[22] In their inquiry submissions, the parties raise two components of the duty to conduct an adequate search: the obligation to reasonably interpret the scope of the complainant's request; and the obligation to conduct a thorough and comprehensive search. For the reasons set out below, I find that the Ministry fulfilled its obligations under both.

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[16] Complainant's response submission at paras 34 and 35; affidavit of the complainant's Executive Director (Affidavit of the ED) at para 31, and exhibits G and I to the Affidavit of the ED.
[17] Affidavit of ED at paras 20, 22, 23, and 24.
[18] See for example Order F20-13, 2020 BCIPC 15 (CanLII) at para 13.
[19] Order 02-18, 2002 CanLII 42443 (BCIPC) at para 7; and Order F20-05, 2020 BCIPC 5 (CanLII) at para 15.

The Ministry reasonably interpreted the request

[23] The first step in conducting an adequate search is to reasonably interpret the scope of the complainant's request because the interpretation will determine the nature and scope of the public body's search for records.[20]

[24] In terms of what is required, past orders make clear that where the scope of the request is unclear, a public body is not entitled to "interpret the request strictly and not seek any further clarification from the complainant."[21] Rather, the duty to assist may "require a public body to ensure it understands clearly what information a complainant seeks, including by contacting the complainant where practicable, in order to clarify the request."[22]

Parties' submissions

[25] As discussed above, police apprehensions that lead to involuntary admissions under the *Mental Health Act* are a subset of police apprehensions under the *Mental Health Act*. The complainant acknowledges that the words of the Revised Request are restricted to police apprehensions that led to involuntary admissions under the *Mental Health Act* (subset data). However, the complainant submits that considering the circumstances of the inquiry, it was unreasonable for the Ministry to limit its response to only that subset of data without first inquiring and clarifying whether the complainant was also interested in police apprehension data in general (broader data).

[26] In support of its position, the complainant relies on affidavit evidence from the Organization's Executive Director (the ED) and from the legal assistant to its legal counsel.

[27] The ED deposes that the complainant was always interested in the broader data. The ED explains that the reason the complainant requested subsets of the broader data rather than the broader data itself was that based on conversations with Ministry staff and publicly available documents, the Organization understood that the only way to obtain the broader data was by requesting subsets of it. In this regard, the ED emphasizes that Ministry officials participated in the framing and reframing of the requests and did not clarify what data was available during those processes. Referring to the parties' communications about the Created Record, the complainant says that it was not until four years after the First Request that the Ministry told the complainant that

[20] Order F20-05, 2020 BCIPC 5 (CanLII) at para 31; and Order 01-41, 2001 CanLII 21595 (BCIPC) at para 23.
[21] Order 00-33, 2000 CanLII 14398 (BC IPC).
[22] *Ibid.*

the broader data existed.[23] Thus, according to the complainant, it is the Ministry who is responsible for the complainant's misunderstanding and resulting decision to frame the requests in terms of subsets of data rather than the broader data the complainant really wanted.

[28] Furthermore, emphasizing that the First Request sought a broad swath of information on a range of powers under the *Mental Health Act*, the complainant submits that a reasonable person in the Ministry's position would have concluded that they may have been interested in accessing the broader data.

[29] The complainant also submits that the Organization expressly told the Ministry that it was interested in the broader data in a letter the Organization sent to the Ministry (the Letter). The complainant relies on a statement in the Letter that the complainant "seeks data pertaining to issues … such as the involvement of police in apprehending individuals under the *Mental Health Act*."[24]

[30] Finally, the complainant details the lengthy history of the two access requests, the complainant's efforts to move the matters forward, the Ministry's role in the delay, and the complainant's frustration with the process. Evidence in support of these submissions is found in the affidavits and exhibits of the ED and the legal assistant.

[31] The Ministry submits that in the circumstances of this case, the duty to inquire and clarify was not triggered. It submits that it reasonably believed that the complainant was specifically seeking the subset data not the broader data. It says this belief was based on the specific wording of the Revised Request, the complainant's sophistication, and the fact that the complainant did not take steps to verify their own assumptions about what data the Ministry collected despite having ample opportunity to do so.

[32] Addressing the complainant's submissions about what it should have understood from the breadth of the First Request and the Letter, the Ministry submits that it was not required to interpret the Revised Request in light of either document, and that even if it was, neither provides a sufficiently clear basis to alter the meaning of the Revised Request.

[33] The Ministry also disputes some of the complainant's submissions about the history of the complaints and the causes of the delays, asserting that those submissions unfairly imply the Ministry acted capriciously or in bad faith.

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[23] The parties do not agree about whether the Ministry has the broader data, or just data about instances where police accompanied persons to designated facilities. I do not need to resolve this question to decide the issue before me. I will not comment on it further.

[24] The complainant's May 26, 2021 letter is Exhibit D to the affidavit of the Organization's Executive Director which forms part of the complainant's response submission.

Findings and analysis

[34] At its core, the parties' dispute concerns whether, in all the circumstances of this case, the Ministry was required to inquire and clarify whether the complainant was actually seeking the broader data (i.e., data about all police apprehensions under the *Mental Health Act*), before interpreting the complainant's request as limited to the subset data (i.e., data about police apprehensions under the *Mental Health Act* that resulted in involuntary admissions).

[35] The obligation to reasonably interpret a request, as the description suggests, is about interpretation. The obligation to inquire and clarify only arises where there is some ambiguity that requires clarification. In determining whether there is such an ambiguity, past orders have considered the words of the request informed by the circumstances as a whole.[25] I agree with this approach, and I adopt it here.

[36] While the complainant's requests have a long and complex history, ultimately it is the Revised Request that is before me. It states as follows:

> Annual unique patient or case counts of involuntary admissions pursuant to the *Mental Health Act* where the patient was accompanied by police to designated facility. Disaggregated by the Health Authority if possible. (Date range of 1/1/2016 to 3/31/2022).

I find that the words of the Revised Request are clear on their face. They request a count of patients who were involuntary admitted under the *Mental Health Act* following a police apprehension – that is, they are clearly limited to the subset information. Considering the words of the Revised Request alone, I can see no reasonable basis for the Ministry to inquire or clarify whether the complainant was also seeking the broader data before interpreting the Revised Request as limited to the subset data.

[37] I now turn to the surrounding circumstances to consider whether there is some basis in those circumstances to find that the Ministry was obligated to inquire and clarify the scope of the Revised Request in order to fulfill its obligation to conduct a reasonable request.

[38] I am not persuaded by complainant's argument that the Ministry is responsible for the complainant's failure to request the broader data. Even if I were to accept that the Ministry bears 100 percent of the responsibility for the complainant's misunderstanding, it is not clear to me how that fact could impact how a reasonable party in the Ministry's position would interpret the clear

[25] See for example Order F20-05, 2020 BCIPC 5 (CanLII) at para 31; and Order 01-41, 2001 CanLII 21595 (BCIPC) at para 23.

language of the Revised Request, and the complainant does not explain. That the Ministry may have contributed to the framing of the Revised Request does not, on its own, introduce ambiguity.

[39] I come to the same conclusion about the complainant's submissions about the lengthy and frustrating history of the complaints. I accept that the Ministry's actions contributed to the delay in getting the Requests to an inquiry and I acknowledge the complainant's frustration. However, as above, it is not clear, and the complainant does not explain, how the circumstances the complainant describes could impact how a reasonable party in the Ministry's position would interpret the clear language of the Revised Request. I do not find these submissions to be particularly relevant to the issue I must decide.

[40] I am also not persuaded by the complainant's argument about the breadth of the First Request. To start, I agree with the Ministry that once the parties agreed to revise the First Request, the Ministry was entitled to rely on those revisions and interpret the Revised Request independent of all past requests, including the First Request.

[41] Furthermore, the First Request is drafted in terms of extremely specific and clearly defined information relating to the exercise of specific powers under the *Mental Health Act*, many of which do not concern police apprehensions. The original version of the First Request was as follows:

> Copy of annual unique patient counts, annual case counts of involuntary and voluntary admissions pursuant to the Mental Health Act, broken down by all available subcategories, such as facility, geographic region, health authority, length of stay, patient age, patient gender, patient race, or patient diagnosis; Annual unique patient or case counts of involuntary admissions pursuant to the Mental Health Act broken down by legislative admission mechanism - ie. the number of involuntary admissions pursuant to s. 22 involuntary admissions, s. 28 emergency procedures, s. 29 prisoners and youth custody centre inmates, or s. 42 transfer from another province; Annual unique patient or case counts of involuntary admissions pursuant to the Mental Health Act where the patient was accompanied by police to designated facility; Data on the length of extended leave periods, number of involuntary patients or case counts of involuntary patients recalled from extended leave, or other available data on extended leave pursuant to the Mental Health Act; Data on the number of second medical opinions requested by involuntary patients pursuant to s. 31(2) of the Mental Health Act and any related data on second medical opinions, such as the length of time to complete a second medical opinion or the outcome of the second opinion; Data on the use of restraints or seclusion rooms/secure rooms/solitary confinement/quiet rooms with involuntary patients pursuant to the Mental Health Act, and any related data, such as the length of time for which restraints or seclusion were used." (Date Range for Record Search: From 1/1/2016 To 12/3/2020).

Whatever the complainant's intention, in my view, a reasonable person reviewing the First Request would conclude that the complainant wanted access to the specific information the complainant painstakingly described in the request, not that the complainant's goal was to get access to police apprehension data more broadly.

[42] Finally, I am not persuaded by the complainant's argument about the statement in the Letter through which they claim expressly told the Ministry that the Organization was interested in the broader data. The statement is found in an eight-page letter the complainant sent to the Ministry in May of 2021, in respect of a fee dispute related to the First Request. The letter predates the Revised Request, and the fee dispute has since been resolved. Furthermore, there is no language in the Letter to suggest that the complainant was seeking to alter, define, or even comment on the scope of the First Request. In these circumstances, it is my view that it would be unreasonable to find that the Ministry's obligation to reasonably interpret the Revised Request included the obligation to interpret that request in light of statements made in the Letter.

[43] Furthermore, even if I were to interpret the Ministry's obligation as broadly as the complainant suggests, in my view, the statement that the complainant "seeks data pertaining to issues … such as the involvement of police in apprehending individuals under the *Mental Health Act*," is not nearly clear enough to express an intention to alter the meaning of the Revised Request.

[44] Ultimately, I find the language of the Revised Request was clear, and there was nothing in the surrounding circumstances to introduce ambiguity or to otherwise require the Ministry to inquire and clarify the scope of the complainant's request before interpreting it as a request for the subset data. For these reasons, I find that the Ministry's duty to inquire and clarify was not engaged and that the Ministry reasonably interpreted the Revised Request.

The Ministry's search was "adequate"

[45] The second component is that the search itself must be adequate. In this regard, past orders provide that a public body's search efforts must be "thorough and comprehensive"[26] and that the public body "must make a reasonable effort to explore all avenues in attempting to comply."[27] However, the standard is reasonableness, not perfection.[28]

[26] Order 00-15, 2000 CanLII 8853 (BC IPC) at para 9.
[27] *Ibid.*
[28] Order F23-38, 2023 BCIPC 45 (CanLII) at para 8; Order F22-34, 2022 BCIPC 38 (CanLII), at para 17; and Order 00-26, 2000 CanLII 14391 (BC IPC) at para 7.

[46] In terms of the evidentiary requirements to establish that a public body fulfilled its obligation under s. 6(1), a "public body's evidence should candidly describe all the potential sources of records, identify those it searched and identify any sources that it did not check (with reasons for not doing so). It should also indicate how the searches were done and how much time its staff spent searching for the records."[29] While sufficient evidence is required, s. 6(1) does not require public bodies to prove the non-existence of records to a degree of absolute certainty.[30]

Parties' submissions

[47] The Ministry's position is that it made every reasonable effort to locate records and later data that was responsive to the requests, and that its evidence satisfies the standard established in past orders.

[48] In support of its position, the Ministry relies on evidence from a senior data scientist and analytics manager (Analyst) who deposes that they were personally involved in the search for responsive records and personally identified, collected, and compiled the data in the Created Record. The Analyst describes in detail how they arrived at the conclusion that there were no responsive records in the Ministry's custody or under its control, as well as the search methodology they used to locate the responsive data that the Ministry included in the Created Record. The Analyst also explains that the Created Record does not fully respond to the Revised Request because the Ministry does not have all the data required to respond to the Revised Request and details the steps the Ministry took to ensure that the Created Record nonetheless accurately represents the data available.

[49] The Analyst deposes that they participated in at least two meetings with the complainant in an effort to understand the scope of the records requested by the complainant. They estimate that members of the Ministry's Health Analytics Team (including the Analyst) spent a total of 40 hours, among other things confirming and reconfirming that responsive information was not available in pre-existing records, identifying potential sources of responsive data, generating data tables, and identifying, discussing, and detailing the limitations of the data and its interpretations for inclusion in the Created Record.

[50] The complainant does not dispute the Analyst's evidence or suggest that the efforts the Analyst describes fail to satisfy the requirements of an adequate search.

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[29] Order 00-32, 2000 CanLII 14397 (BC IPC), at para 18.
[30] Order 00-32, 2000 CanLII 14397 (BC IPC), at para 36.

Findings and analysis

[51] The Ministry's Analyst provided detailed, firsthand evidence about the Ministry's extensive efforts to search for responsive records, and later data, and to ensure that the Created Record accurately reflected all responsive data the Ministry's Health Analytics Team was able to locate. I accept the Analyst's evidence. I also find that it clearly satisfies each of the evidentiary requirements that the OIPC's past orders identify as relevant to establishing that a search was thorough and comprehensive. Based on the Analyst's evidence, I find that the Ministry's search was adequate within the meaning of s. 6(1).

Remedy

[52] As I found that the Ministry conducted an adequate search in accordance with s. 6(1), no remedy is warranted in this case.

[53] In saying this, I note that while the complainant submitted extensive evidence and argument in support of its position about remedy, the only remedy the complainant requested was an order requiring the Ministry to disclose the broader data for a longer time-period than that in the Revised Request. The simplest way for the complainant to obtain this result is to make a request for this data from the Ministry using the knowledge they now have about what data the Ministry has in its custody.

CONCLUSION

[54] For the reasons given above, under s. 58 of FIPPA, I confirm that Ministry has conducted an adequate search for records in accordance with s. 6(1).

December 12, 2025

ORIGINAL SIGNED BY

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Allison J. Shamas, Adjudicator

OIPC Files: F22-89005 and F23-93018