Order F26-05

COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA

Allison J. Shamas
Adjudicator

January 23, 2026

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Summary: The College of Physicians and Surgeons of British Columbia (College) requested that the adjudicator re-open Order F25-48 and reconsider parts of that order requiring the College to disclose certain information to the applicant. The adjudicator determined that as a result of the College's mistake, the original order did not reflect her manifest intention, and she had not completed her statutory duty. As a result, the adjudicator re-opened the inquiry and issued a new order requiring the College to withhold additional information under s. 22(1) (third party personal privacy) and authorizing the College to withhold additional information under s. 14 (solicitor-client privilege).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165 ss. 14, 22(1), and 22(2)(e).

INTRODUCTION

[1] In Order F25-48 I considered the applicant's request for a review of the College of Physicians and Surgeons of British Columbia's (College's) decision to refuse to disclose information on the basis of ss. 14 (solicitor-client privilege) and 22(1) (third party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).[1] I determined that ss. 14 and 22(1) applied to some of the information in dispute and ordered the College to disclose the balance to the applicant. I will refer to Order F25-48 as the Original Order.

[2] This decision concerns the parties' request that I re-open and/or reconsider the Original Order.

[1] The College also refused to disclose information in these records on the basis of s. 13 and initially s. 15 (though it subsequently withdrew its decision concerning s. 15). As these provisions are not relevant to the matter at issue in this decision, I will not refer to them further.

[3] The College asks that I reopen the Original Order and reconsider my decision to order it to disclose some of the information in dispute on the basis that its mistake prevented the Original Order from reflecting my manifest intention.

[4] The applicant asserts there is no basis to reopen the Original Order, but says that if decide to reopen it, I should reconsider two procedural determinations I made in relation to the evidence relevant to the s. 14 issue in the inquiry. Specifically, I decided not to order the College to produce its s. 14 records for my review or to permit the applicant to cross examine the College's affiant on their affidavit evidence (the s. 14 evidentiary issues).

[5] Both parties made detailed submissions and provided additional evidence about the College's request to reopen and the merits of both reconsideration requests.[2] I have considered those materials in reaching my decision.

[6] For the reasons detailed below, I have decided to reopen the Original Order to reconsider my decision to order the College to disclose information, but not to reconsider the applicant's arguments about the s. 14 evidentiary issues.

ISSUES AND BURDEN OF PROOF

[7] The issues I must decide are whether the inquiry should be re-opened and on what basis. The burden is on the party seeking to re-open to establish both. Only if I decide to reopen the inquiry on one of the bases identified by the parties, will I consider the parties' submissions about reconsideration on that basis. Furthermore, if I decide to reopen and reconsider on one of the bases identified by the parties, I will address the burden of proof then.

COLLEGE'S REQUEST TO REOPEN AND RECONSIDER

[8] I begin with the College's request to reopen and reconsider parts of the order requiring it to disclose certain information.

Relevant legal principles - functus officio

[9] There is no provision in FIPPA that empowers the OIPC to reopen an inquiry where an order has been issued under s. 58 of FIPPA. As a result, the OIPC applies the common law doctrine of *functus officio* when considering applications to re-open inquiries.

[10] The legal principle of *functus officio* provides that when an administrative tribunal or court has rendered a final decision in a matter, subject to certain

[2] See my letter of August 25, 2025 and the parties' submissions dated September 23, 2025, November 12, 2025, and November 21, 2025.

exceptions, the court or tribunal ceases to have any authority to deal again with the matter that has been decided.[3] This principle is based on the policy ground which favours finality of proceedings.[4]

[11] The doctrine of *functus officio* applies to the OIPC, but with greater flexibility than it does for courts.[5] The OIPC has recognized exceptions to the doctrine of *functus officio*, including where there has been a breach of procedural fairness, where the test for admitting new evidence is met, where a mistake (including a mistake by the parties) prevents the decision from reflecting the decision maker's manifest intention, and where the decision maker has some unspent jurisdiction, for instance where the decision maker has not completed their statutory duty.[6]

Relevant Background

[12] The College regulates the practice of medicine in the province of British Columbia under the *Health Professions Act* (*HPA*).[7] As part of its processes, the College governs the hearing and disposition of complaints against physicians.

[13] The applicant submitted a complaint to the College about a physician. The College resolved the complaint by way of a consent agreement. The applicant then applied to the Health Professions Review Board (HPRB) for review of the College's disposition. The HPRB confirmed the College's decision to approve the agreement. The applicant has now sought judicial review of the HPRB's decision and filed a civil claim relating to the issues raised in his complaint. The application for judicial review remains open and ongoing. I will refer to these matters collectively as the applicant's legal proceedings.

[14] The College employs a chief legal counsel (Chief Counsel). The College also hired an external lawyer to investigate and advise it about the applicant's complaint (the Investigating Lawyer). Both lawyers assisted the College in respect to some of the applicant's legal proceedings.

[15] The information that is the subject of the College's request to reopen is found in 250 pages of records the College described in the inquiry as the

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[3] C*handler v. Alberta Association of Architects*, 1989 SCC 41 at p. 860; and *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33 at paras. 32–35.
[4] *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33 at paras. 32–35.
[5] C*handler v. Alberta Association of Architects*, 1989 SCC 41 [*Chandler*] at para 21 and Order 01-16, 2001 CanLII 21570 (BC IPC) at para. 15. See also *Doucet-Boudreau v Nova Scotia (Minister of Education),* 2003 SCC 62 (CanLII) and *Reekie v Messervey*, 1990 CanLII 158 (SCC) at para 7.
[6] Former Commissioner Loukidelis' May 10, 2002 Decision regarding a request to reopen Order 01-52, the May 2002 Decision is available on the OIPC's website at https://www.oipc.bc.ca/decisions/140; Decision F10-04, 2010 BCIPC 16 (CanLII). See also Decision P12-02, 2012 BCIPC 19 (CanLII); Order F20-25, 2020 BCIPC 30 (CanLII); and Decision P12-02, 2012 BCIPC 19 (CanLII).
[7] RSBC 1996, c. 183.

Investigating Lawyer's file (the lawyer's file).[8] The College withheld the lawyer's file in its entirety on the basis of s. 14. It did not assert that any other FIPPA exceptions to disclosure applied to the records in the lawyer's file. It also did not provide the lawyer's file for my review, instead relying on affidavit evidence to support its application of s. 14 to the lawyer's file.

[16] In the inquiry, the College described the records in the lawyer's file as communications between its Chief Counsel and the College, communications between the Investigating Lawyer and the College, notes of such communications, investigative documents, notes to file, draft documents, and legal research.

[17] In the Original Order, I found that the College had a solicitor-client relationship with both the Investigating Lawyer and its Chief Counsel with respect to the applicant's legal proceedings, and that the College and the lawyers kept their communications about the proceedings confidential.[9] Relying on these findings, I held that s. 14 applied to the communications between the Chief Counsel and the Investigating Lawyer and the College as well as to the documents that would reveal those communications.[10] However, I held that s. 14 did not apply to the investigative documents, notes to file, draft documents, and legal research because there was insufficient evidence before me to establish that these records were or would reveal privileged communications.[11]

[18] The College also withheld information from other records based on s. 22(1). Unlike the records that it withheld on the basis of s. 14 (such as the records in the lawyer's file), the College provided unredacted copies of the records containing the information it sought to withhold on the basis of s. 22(1) for my review.

[19] In the Original Order, I determined that s. 22(1) applied to, among other information, a third party's College ID number and medical service plan ID numbers,[12] a third party's financial information,[13] assessments about a third party,[14] and procedural information about a third party's compliance with the terms of the consent agreement.[15] In several instances, I required the College to withhold the entire body of letters and other records because disclosing any part of those documents would reveal the information described above.

[8] See Order F25-48 at paras 79–81.
[9] Order F25-48 at paras 83, 87 and 88.
[10] Order F25-48 at paras 87 and 88.
[11] Order F25-48 at paras 90-95.
[12] Order F25-48 at paras 199 and 203.
[13] Order F25-48 at paras 199 and 203.
[14] Order F25-48 at paras 199 and 203.
[15] Order F25-48 at paras 199 and 203.

Parties' submissions

[20] The College asks me to reopen the Original Order and reconsider my decision to require it to disclose information located in the lawyer's file (the Materials in Dispute). It asserts that ss. 22(1) and 14 apply to the Materials in Dispute.

[21] The Materials in Dispute fall into three categories. The first category are materials the College says it unintentionally misdescribed by failing to identify that they were identical to information I authorized or required it to withhold in the Original Order (Identical Materials). It says the Original Order is inconsistent given that I made different decisions about the same information, and that requiring it to disclose the Identical Materials would not reflect my intention in the Original Order, which was to authorize or require it to refuse access to that same information. It describes the Identical Materials as a report which it says s. 14 applies to,[16] and a third party's College ID number and Medical Services Plan ID number,[17] the body of a referral request[18] and three letters[19] which it says s. 22(1) applies to.

[22] The second category is a letter the College seeks to withhold based on s. 14 (the Letter).[20] The College does not assert that the Letter is identical to one I authorized it to withhold. Instead, it says it unintentionally misdescribed the Letter by failing to properly identify it and by failing to explain that it was similar to other communications I authorized it to withhold based on s. 14. The College did not provide the Letter for my review. However, its Chief Counsel describes the Letter as a communication from the Investigating Lawyer to the College, provided as part of the lawyer's legal advice, that was treated as confidential by the College.

[23] The third category are three kinds of information that were not addressed in the Original Order. The College now asserts that s. 22(1) applies to this information (the New s. 22 Information). The College says that it unintentionally misdescribed this information by failing to properly identify it and by failing to assert that s. 22(1) applied to it. Again, the College says that if it is required to disclose this information, that would not reflect my intention in the Original Order which was to require it to withhold information to which s. 22(1) applied. The College describes the New s. 22 Information as a third party's address,[21] a third

[16] Located on page 1988 of the records.
[17] Located on pages 1938, 1941, 1946, 1959, 1961, and 1962 of the records.
[18] Located on pages 1948-1949 of the records.
[19] Located on pages 1939,1950, and 1951-1952 of the records.
[20] Located on pages 1822-1826 of the records.
[21] Located on page 1840 of the records.

party's email address,[22] and a third party's credit card number and its expiry date.[23]

[24] The College asserts that s. 22(1) applies to all the Materials in Dispute except the report and the Letter. The College provided the information it is now seeking to withhold based on s. 22(1) for my review, but not the information it is seeking to withhold under s. 14. Instead, in support of its position about the Letter and the report, the College relies on affidavit evidence from its Chief Counsel. Chief Counsel states that the report is identical to one that I authorized the College to withhold on the basis of s. 14 and describes the Letter as a communication from the Investigating Lawyer to the College, provided as part of the lawyer's legal advice, that was treated as confidential by the College.

[25] The applicant submits that none of the exceptions to the general principle of *functus officio* apply here.[24]

[26] The applicant emphasizes that during the inquiry the College did not ask the OIPC to consider the application of s. 22(1) to the records it withheld on the basis of s. 14 or inform the OIPC that the Materials in Dispute were the same as other records and information found elsewhere in the records. Thus, he says granting the College's request to reopen would be to allow the College to reargue an issue on reconsideration simply because it overlooked raising it during the inquiry.[25] Relying on the BC Court of Appeal's statements in *Vandale v. Workers' Compensation Appeal Tribunal*, the applicant argues that it would be a reviewable error for the OIPC to grant the College's request to re-open in the circumstances.[26] The statement on which the applicant relies is as follows:

> … [T]he fact remains that Mr. Vandale could have raised it not only before the original panel but also before the reconsideration panels. In my view, this militates strongly against his now being given the opportunity to re-argue his claim on that basis. To allow a party a new hearing before an administrative tribunal because it overlooked raising an issue or making an argument at the original hearing would unduly interfere with the role entrusted to such tribunals: *Alberta Teachers' Association* at para. 24. In effect, the tribunal's decision would be set aside not because it failed to pass scrutiny under the applicable standard of review, but because it did not address a point it was not asked to address.[27]

[27] The applicant also submits that the College's failure to comply with the part of the Original Order requiring it to disclose the Materials in Dispute to him,

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[22] Located on pages 1806, 1807, 1811, 1812, and 1813 of the records.
[23] Located on page 1987 of the records.
[24] Applicant's submission dated November 12, 2025 at paras 4–17.
[25] Applicant's submission dated November 12, 2025 at paras 18–20.
[26] Applicant's submission dated November 12, 2025 at para 20.
[27] 2013 BCCA 391 at para 54.

and failure to contact him to attempt to resolve its non-compliance should weigh against its request to re-open the inquiry.

[28] Finally, the applicant argues that the College's Chief Counsel provided false evidence about the s. 14 records during the inquiry. In this regard, he says that some of the information the College withheld is clearly not privileged because it is communications in which he was involved, and that it is now clear that the College did not identify all the records in its evidence.

Findings and analysis

[29] For the reasons that follow, I find that it is appropriate to reopen the Original Order and reconsider my decision to require the College to disclose the Materials in Dispute.

Functus officio – valid legal basis to reopen

[30] The first question is whether the College has established that there is a valid legal basis to reopen the Original Order as it relates to the Materials in Dispute. For the reasons below, I find that there is.

Identical Materials

[31] In the Original Order I required the College to withhold the information on pages 35, 37, 41-42, 43, 44-45, 51, 52, 55, and 57 of the records on the basis that disclosing this information would be an unreasonable invasion of a third party's personal privacy under s. 22(1). I have compared the information the College now seeks to withhold from the referral request,[28] the three letters,[29] and the third party's College ID number and Medical Services Plan ID number.[30] I can see that the information the College now seeks to withhold on the basis of s. 22(1) is identical to the information I required it to withhold in the Original Order.

[32] Similarly, in the Original Order I required the College to withhold a report located on page 31 of the records on the basis that it was a privileged communication from the Chief Counsel to the College and therefore covered by solicitor-client privilege.[31] I accept the Chief Counsel's sworn statement that the report in the Materials in Dispute[32] is identical to the one I authorized it to withhold on page 31.

[28] Located on 1948-1949 of the records.
[29] Located on page 1939, 1950, and 1951-1952 of the records.
[30] Located on pages 1938, 1941, 1946, 1959, 1961, and 1962 of the records.
[31] Order F25-48 at paras 78–88.
[32] Located on page 1988 of the records.

[33] In making this finding about the report, I am cognizant of the applicant's arguments about the College's s. 14 evidence during the inquiry. However, the applicant's submissions concern a different affidavit that dealt with 600 pages of complex records and relate to the specificity of the College's evidence and the legal conclusions to be drawn from that evidence. In this case, the Chief Counsel's evidence is a simple, straightforward and factual statement that two records are identical. Nothing the applicant says about the Chief Counsel's evidence in the inquiry persuades me that I should disregard the Chief Counsel's evidence in the context of the College's request to reopen. To do so, I would have to be persuaded that Chief Counsel is intentionally lying to the OIPC about a very simple fact, and I am not persuaded that this is the case.

[34] The College's evidence about the Identical Materials now demonstrates to me that the Original Order required the College to disclose the very same information I authorized or required it to withhold. Furthermore, all the information at issue appears in the very same context as the identical information I authorized or required the College to withhold. For this reason, I also conclude that my findings in the Original Order apply equally to the Identical Materials.

[35] This office and the Alberta OIPC have re-opened inquiries in substantially the same circumstances, reasoning that not reopening would fail to give effect to the original order[33] as it would require the public body to reveal the very information the order was intended to protect.[34] In my view, the reasoning in these orders applies equally to the circumstances before me.

[36] The College's evidence in its request to reopen demonstrates that, due to the College's mistake, the Original Order does not reflect my manifest intention as it relates to the Identical Materials. For this reason, I find there is a legal basis to reconsider my decision about the Identical Materials.

The Letter

[37] I make the same finding about the Letter.[35] In the Original Order I found that there was a solicitor-client relationship between the Investigating Lawyer and the College with respect to the investigation into the applicant's complaint,[36] and that all communications between the Investigating Lawyer and the College were privileged.[37] In the College's request to reopen, Chief Counsel describes the letter as a communication from the Investigating Lawyer to the College, provided as part of the Investigating Lawyer's legal advice, that was treated as confidential by the College.

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[33] Order F20-25, 2020 BCIPC 30 (CanLII) at para 31.
[34] See Addendum to Order F2010-026, 2011 CanLII 96620 (AB OIPC) at para. 14.
[35] Located on pages 1822-1826 of the records.
[36] Order F25-48 at para 84.
[37] Order F25-48 at paras 84–88.

[38] Again, while I have considered the applicant's submissions about the Chief Counsel's evidence in the inquiry, nothing the applicant says persuades me that I should not accept this straightforward description of the Letter in the context of the College's request to re-open. In this regard, I note that Chief Counsel's evidence is direct, specific, factual evidence that concerns a single record. Again, I am not prepared to accept that Chief Counsel is intentionally lying to the OIPC, and accordingly, I accept Chief Counsel's evidence about the Letter.

[39] The College's evidence now demonstrates that the Letter is clearly captured by my reasoning about the other communications between the Investigating Lawyer and the College. As a result, I conclude that the College's mistake in failing to properly describe the Letter prevented the Original Order from reflecting my manifest intention. For this reason, I find there is a legal basis to reconsider my decision about the Letter.

The New s. 22 Information

[40] During the inquiry the College only sought to withhold the lawyer's file on the basis of s. 14 of FIPPA. It did not assert that any other exceptions to disclosure applied to these materials, and it did not provide the records in the lawyer's file for my review. As a result, I did not consider whether s. 22(1) applied to any information in the lawyer's file before ordering the College to disclose some of it on the basis that it was not subject to solicitor-client privilege.

[41] However, s. 22(1) is a mandatory exception to the right of access under FIPPA. Under s. 22(1), a public body "must" refuse to disclose personal information where the disclosure would be an unreasonable invasion of a third party's personal privacy. The BC Supreme Court has recognized that even where s. 22(1) is not raised in an inquiry, "in order to discharge the competing duties of permitting an applicant access to her personal information and protecting the privacy interests of third parties, the Commissioner must ensure that all mandatory exceptions have been considered."[38]

[42] In Order F14-14, the adjudicator decided to reopen an inquiry to accept submissions on s. 21(1) of FIPPA, another mandatory exception to disclosure. While the order turned on several issues, the adjudicator emphasized the mandatory nature of s. 21 in concluding that they were not *functus officio* because by not considering the application of s. 21 to the records, they had not completed their statutory duty.

[38] *British Columbia (Public Safety and Solicitor General) v Stelmack*, 2011 BCSC 1244 (CanLII) at para 537, citing Order F14-14, 2014 BCIPC 17 (CanLII) at para 33 favourably.

[43] The College has now provided the New s. 22 Information for my review. It is a third party's address,[39] a third party's email address,[40] and a third party's credit card number and expiry date.[41] It is clear to me that the New s. 22(1) Information is personal information in the sense that it is clearly recorded information about identifiable individuals. I did not consider the application of s. 22(1) to this information during the inquiry. Given the mandatory nature of s. 22(1), I find that I have not completed my statutory duty with respect to this information. In the circumstances, I find there is a legal basis to reconsider my decision about the New s. 22 Information.

[44] In summary, I find that I am not *functus officio* with respect to my decision to order the College to disclose any of the Materials in Dispute.

Discretion to reopen

[45] The next question is whether, in all the circumstances, I *should* reopen the Original Order. For the reasons below, I find that it is appropriate to do so in the circumstances of the College's request.

[46] Several considerations weigh against reopening the inquiry. I begin with the College's statement that it unintentionally misdescribed the Materials in Dispute. The College did not furnish the s. 14 records for my review in the inquiry. Instead, I relied on the College's affidavit evidence, which I carefully reviewed in coming to my decision. Where a public body does not provide the responsive records for the OIPC's review, it is essential that that public body furnish their best evidence from the outset. Failing to do so constrains both the Commissioner's ability to make an accurate and informed decision and the applicant's ability to respond. In short, a public body's duty to provide the best evidence from the outset impacts the fairness of the entire proceeding.

[47] In addition, during the inquiry I gave the College an additional opportunity to provide evidence and argument about the s. 14 records after the close of the regular submission process. In addition to its obligation to furnish its best evidence from the outset, the College should have taken the additional opportunity to provide a fulsome and accurate description of the information in the lawyer's file when it filed its supplementary affidavit.

[48] Finally, I agree with the applicant that the College's failure to comply with the timelines in the Original Order with respect to the Materials in Dispute and its failure to work with him to resolve its request regarding the Materials in Dispute (despite my suggestion to do so) weighs against granting its request to reopen.

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[39] Located on page 1840 of the records.
[40] Located on pages 1806, 1807, 1811, 1812, and 1813 of the records.
[41] Located on page 1987 of the records.

[49] However, in this case I am not persuaded that these circumstances outweigh the significant countervailing interests favouring reopening.

[50] To start, I am not persuaded by the applicant's argument that I am precluded from considering the submissions the College failed to make during the inquiry. The *Vandale* decision on which the applicant relies concerns whether a court should order a tribunal to conduct a new hearing to consider an argument that a party did not put before that tribunal either during the original hearing or on reconsideration. That is not the issue before me. Unlike in *Vandale,* here the College is seeking to put its argument before the OIPC. Furthermore, the principles relevant to an appeal differ from those relevant to a request to re-open an administrative proceeding. The applicant is correct that a party should put its best foot forward from the outset. However, as I have found that two established exceptions to the principle of *functus officio* apply, I am not persuaded that the College's failure to raise its arguments during the inquiry precludes me from considering them now.

[51] In considering whether to grant the College's request to reconsider my decision about the information it now says is subject to s. 14 (the report and the Letter), I am mindful of the importance of solicitor-client privilege. In this regard, the Supreme Court of Canada has recognized this privilege as "an important civil and legal right and a principle of fundamental justice in Canadian law"[42] that is of central importance to the legal system as a whole,[43] which "should only be set aside in the most unusual circumstances."[44] Recognizing this importance, the BC Supreme Court has, in certain circumstances, required the OIPC to re-open an inquiry to consider additional evidence in support of an assertion of solicitor-client privilege.[45]

[52] Of even greater concern is that the College now asserts that s. 22(1) applies to the balance of the Materials in Dispute – that is, it asserts that disclosure of this information would result in an unreasonable invasion of a third party's personal privacy. Section 22(1) is a mandatory exception to disclosure that protects the privacy rights of third parties. It is an important balance to the access rights in FIPPA. The fact that refusing to reopen the Original Order could jeopardize the privacy rights of third parties favours reopening the Original Order.

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[42] *Alberta IPC supra* note 14 at para 41, citing *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, 2002 SCC 61 at para 49.
[43] *R. v. McClure*, 2001 SCC 14 (CanLII) at para 2 [*McClure*]; cited in *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 at para 17 [*Pritchard*].
[44] *Pritchard* supra note 17 at para 17.
[45] See *British Columbia (Minister of Finance) v British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 (CanLII). However, this is not always the approach. See also *British Columbia (Minister of Public Safety) v British Columbia (Information and Privacy Commissioner),* 2024 BCSC 345 (CanLII).

[53] Furthermore, the nature of some of the information itself weighs in favour of reopening. I have already decided that ss. 14 and 22(1) apply to the same or similar information to the Identical Materials and the Letter, and it is my preliminary view that s. 22(1) clearly applies to at least some of the New s. 22(1) Information. By way of example, it seems quite clear that it would be an unreasonable invasion of a third party's privacy to disclose their credit card number and its expiry date.

[54] Finally, I find that there is significant value in ensuring that my ultimate decision reflects my manifest intention and fulfills my statutory duty to consider the application of s. 22(1) to all the information in dispute.

[55] Ultimately, the College erred by failing to adequately describe some of the information in the lawyer's file and to consider whether s. 22(1) applied it. The negative repercussions of this failure were compounded by the College's decision not to provide the information in the lawyer's file for my review. Although, as the applicant notes, the College was obliged to put its best foot forward, considering the circumstances as a whole, I am persuaded that these are appropriate circumstances in which to reopen the Original Order to reconsider my decision about all the Materials in Dispute.

Reconsideration decision

[56] The final issue is whether to reconsider my decision with respect to the Materials in Dispute. For the reasons below, I find that it is appropriate to do so.

Identical Materials

[57] I have already decided that ss. 14 and 22(1) apply to information that is identical to the Identical Materials, and that my findings in the Original Order apply directly to these materials. Accordingly, for the reasons discussed above, I find that it is appropriate to authorize or require the Ministry to withhold the Identical Materials under ss. 14 and 22(1).

The Letter

[58] In the Original Order I determined that s. 14 applied to all confidential communications between the Investigating Lawyer and the College relating to the applicant's complaint to the College.[46] I have now found that the Letter is a communication from the Investigating Lawyer to the College, provided as part of the Investigating Lawyer's legal advice, that was treated as confidential by the College.[47] It is clear that my findings in the Original Order apply directly to the

[46] See para 37, above.
[47] See paras 38 and 39, above.

Letter. Accordingly, I find that s. 14 applies to the Letter and I authorize the Ministry to withhold it.

New s. 22 Information

[59] I did not address the New s. 22 Information in the Original Order, and my reasons in that order cannot be extended to this information.

[60] Section 22 of FIPPA requires a public body to refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy.[48]

[61] While under s. 22(1) the College has the initial burden to establish that the information in dispute is personal information, s. 57(2) of FIPPA places the burden on the applicant to prove that disclosure of any personal information would not be an unreasonable invasion of a third party's personal privacy.[49]

[62] The approach to applying s. 22(1) of FIPPA has long been established.

> Numerous orders have considered the approach to s. 22 of FIPPA, which states that a "public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy." This section only applies to "personal information" as defined by 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.[50]

I will apply this same approach in reconsidering my decision about the application of s. 22(1) to the New s. 22 Information.

Is the information "personal information"

[63] Personal information is defined in FIPPA as "recorded information about an identifiable individual other than contact information." Information is "about an identifiable individual" when it is "reasonably capable of identifying an individual,

[48] A "third party" is defined in schedule 1 of FIPPA as any person other than (a) the person who made the request, or (b) a public body.
[49] Order 03-41, 2003 CanLII 49220 at paras 9–11.
[50] See for example Order F15-03, 2015 BCIPC 3 (CanLII), at para 58.

either alone or when combined with other available sources of information."[51] "Contact information" is defined in FIPPA as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual."[52]

[64] The New s. 22 Information is the address, email address, and credit card number and expiry date of three different third parties. The information appears beside the names of the third parties to whom it relates, and as such, it is clearly recorded information about identifiable individuals.

[65] It is clear from the applicant's submissions that his primary interest is in information about the physician who is the subject of a complaint he made to the College. The applicant argues that the physician's email address and business address are contact information and, therefore, are not personal information within the meaning of FIPPA. For the applicant's benefit, I wish to make clear that the physician's email address is part of the New s. 22 Information. In any event, it is clear from the content of the email address and address that they are a personal email address and home address. Accordingly, I find that they would not enable a third party to be contacted at a place of business, and therefore that they are not contact information.

[66] For the reasons above, I find that all the information in dispute is personal information for the purposes of FIPPA.

Section 22(4) – circumstances where disclosure of personal information is not an unreasonable invasion of personal privacy

[67] Neither party asserts that s. 22(4) applies, and having considered the circumstances listed in s. 22(4), I find that none apply.

Section 22(3) - circumstances where disclosure of personal information is presumed to be an unreasonable invasion of personal privacy

[68] The applicant does not address s. 22(3). While the College asserts that ss. 22(3)(a), (b), and (d) apply, its submissions do not relate to the New s. 22 Information. Rather, they relate to the s. 22(1) information that is part of the Identical Materials. As I have already decided that s. 22(1) applies to this information, I will not address the College's submissions about it further.

[69] It is not clear to me how ss. 22(3)(a), (b), or (d) could apply to home address, personal email address, or credit card number and expiry date, and the College does not explain. I find that they do not.

[51] Order F19-13, 2019 BCIPC 15 at para 16, citing Order F18-11, 2018 BCIPC 14 at para 32.
[52] Schedule 1.

[70] Having considered the remaining subsections in s. 22(3), I find that no others apply.

Section 22(2) – other relevant circumstances

[71] Again, the applicant does not address s. 22(2) and the College's submissions do not relate to how s. 22(2) applies to the New s. 22 Information.

[72] Section 22(2)(e) requires the public body to consider whether disclosure of personal information will unfairly expose a third party to financial or other harm. If so, this factor weighs in favour of withholding the personal information.

[73] I find that disclosure of the individual's credit card number and its expiry date will unfairly expose the third party to financial harm. I make this finding because together this information would allow a malicious actor to use the third party's credit card to make purchases using the third party's credit. In making this finding, I am not suggesting that the applicant has any such malicious intent. Rather, I rely on the well-established principle that, under FIPPA, disclosure of information to an applicant in response to an access request is, in effect, disclosure to the world.[53]

[74] Having considered the remaining circumstances in s. 22(2), I find that no others apply.

Conclusion s. 22(1)

[75] I found that s. 22(2)(e) weighed against disclosure of the third party's credit card number and expiry date. I also found that no circumstances favoured disclosure of this information. Accordingly, I find that it would be an unreasonable invasion of third party privacy to disclose the third party's credit card number and expiry date.

[76] I found that no presumptions or factors applied to the personal email address and the home address. The onus is on the applicant to establish that disclosure of this information would not be an unreasonable invasion of third party privacy, and I find that the applicant has not satisfied that onus. For this reason, I find that it would be an unreasonable invasion of third party privacy to disclose the home address and the email address.

[53] See for example Order F22-31, 2022 BCIPC 34, para 80.

Conclusion

[77] In summary, I am not *functus officio* with respect to the Materials in Dispute. These are appropriate circumstances in which to reopen and reconsider my decision as it relates to the Materials in Dispute. Having reconsidered my decision with respect to the Materials in Dispute, I require or authorize the College to refuse to disclose all the Materials in Dispute on the basis of ss. 14 and 22(1).

THE APPLICANT'S REQUEST TO RECONSIDER

[78] I now turn to the applicant's request that I reconsider my decisions during the inquiry not to order the College to produce its s. 14 records for my review and not to permit the applicant to cross examine the College's affiant on their affidavit evidence relating to the College's decision to withhold information on the basis of s. 14 (the s. 14 evidentiary issues).

[79] The applicant does not request that I reopen the Original Order. Instead, he says that there is no basis to reopen the Original Order, but that if I grant the College's request to reopen, I should then reconsider my decision about the s. 14 evidentiary issues.

[80] A decision to reopen an administrative decision does not open the floodgates to reconsider all aspects of that decision. Rather, a decision to reopen is specific to the subject matter of the reconsideration request. Therefore, in this case, my decision to grant the College's request to reopen does not determine whether I should consider the applicant's request that I reconsider my decision about the s. 14 evidentiary issues.

[81] On August 25, 2025, following communications from the parties about the Materials in Dispute, I wrote to the parties to advise that if they wished me to consider additional submissions, they were required to make a formal request to reopen the Original Order. In that letter, I specifically told the applicant that I would not consider his submissions about the procedural determinations I made in relation to the s. 14 evidentiary issues without a formal request to reopen the Original Order. I wrote:

> … the applicant's August 22, 2025 submissions do not relate to the College's compliance with my order and instead seek to relitigate arguments about the College's s. 14 evidence and the OIPC's process for considering that evidence. I have not considered these arguments because I am without jurisdiction to do so. If the applicant wishes me to consider these arguments, he may submit a formal request to re-open Order F25-48. The relevant principles and instructions for doing so are set out above. However, given the nature of the applicant's August 22, 2025 submissions, I wish to reiterate to the applicant that in order for me to

> consider his submissions about s. 14, I must first be satisfied that there is some basis that warrants re-opening the inquiry.

[82] Despite my direction, the applicant did not make a formal request to reopen the Original Order and has instead attached his very detailed submissions about why I should reconsider the s. 14 evidentiary issues to the College's request to reopen.

[83] The College did not address either argument because, it said, they were irrelevant to the College's request to reopen, and the applicant did not provide any legal basis for my granting his request.[54]

[84] Despite my clear instruction that I would not consider the applicant's submissions about the s. 14 evidentiary issues without a formal request to reopen the Original Order, the applicant did not make a formal request. Instead, he maintains that there is no basis to reopen the Original Order. As I made clear in my August 25, 2025 letter to the parties, it is my view that without first deciding that I should reopen the Original Order to consider the applicant's request for reconsideration of the s. 14 evidentiary issues, I am without jurisdiction to address his submissions on those issues.

[85] I also considered whether I should accept the applicant's submissions as a request to reopen notwithstanding his clear position that there is no basis to reopen the order. I decline to do so, in part because at this point no party has asked to reopen the Original Order to reconsider the s. 14 evidentiary issues, and in part because I find that doing so would be procedurally unfair.

[86] In this second regard, as an administrative decision maker, a fundamental part of my role is to ensure that parties who come before the OIPC have a full and fair opportunity to be heard. I do not have submissions from the College about the applicant's reconsideration request. In addition, I find that the College's decision not to address the applicant's submissions concerning the s. 14 evidentiary issues was reasonable given my clear direction to both parties that I would not consider their submissions further absent a formal request to reopen and the applicant's clear statement that there was no basis to reopen the Original Order.

[87] For the reasons given above, I have not considered the applicant's request that I reconsider the s. 14 evidentiary issues. This decision and the resulting order below concern only the College's request to reopen and reconsider.

ORDER

[88] For the reasons given above, under s. 58 of FIPPA:

1. I confirm the College's decision to refuse to disclose pages 1822-1826 and 1988 of the records under s. 14 of FIPPA, and

2. I require the College to refuse to disclose the information in dispute on pages 1806, 1807, 1811, 1812, 1813, 1840, 1938, 1939, 1941, 1946, 1948-1949, 1950, 1951-1952 1959, 1961, 1962, and 1987 of the records on the basis of s. 22(1) of FIPPA.

January 23, 2026

ORIGINAL SIGNED BY

Allison J. Shamas, Adjudicator

OIPC File Nos.: F22-90934
F22-91609
F22-91443