



Order F26-13

MINISTRY OF ATTORNEY GENERAL

Michael Harvey
Information and Privacy Commissioner for BC

February 26, 2026

CanLII Cite: 2026 BCIPC 17
Quicklaw Cite: [2026] B.C.I.P.C.D. No. 17

Summary: An applicant requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to records regarding a criminal matter. The Ministry of Attorney General (Ministry) withheld a responsive record in its entirety under ss. 15(1)(g) (exercise of prosecutorial discretion), 16(1)(b) (harm to intergovernmental relations), and 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA. The Ministry declined to produce the responsive record for the purposes of OIPC review. In Order F25-53, an adjudicator acting as the Commissioner's delegate ordered the Ministry under s. 44(1)(b) to produce the record to the OIPC so she could determine whether ss. 15(1)(g), 16(1)(b), or 22(1) apply. In response, the Ministry provided the record to the Commissioner directly and, under s. 49(1.1), requested that he not delegate the power to examine the record. The Commissioner examined the record and determined that the Ministry may withhold some, but not all, of the disputed record under ss. 15(1)(g), 16(1)(b), and 22(1). The Commissioner required the Ministry to disclose the information that it was not required or authorized to withhold.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 15(1)(g), 15(4), 15(4)(a), 16(1)(b), 22(1), 22(2)(a), 22(2)(c), 22(2)(f), 22(3)(a), 22(3)(b), 22(4)(b), 22(4)(c), 49(1.1) and Schedule 1 (definition of "exercise of prosecutorial discretion").

INTRODUCTION

[1] An individual applicant requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to records about a criminal matter. The Ministry of Attorney General (Ministry) initially withheld the responsive record under ss. 14 (solicitor client privilege), 15(1)(g) (exercise of

prosecutorial discretion), 16(1)(b) (harm to intergovernmental relations), and 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA. The Ministry subsequently reconsidered its severing decision and withdrew its reliance on s. 14.¹

[2] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the Ministry's decision. The OIPC's investigation and mediation process did not resolve the matter and the applicant requested it proceed to an inquiry.

[3] Before the inquiry began, the Ministry requested the OIPC not hold an inquiry on the basis that the applicant was abusing FIPPA's processes. My delegate assigned to decide that application, Adjudicator Kraft, concluded there was no abuse of process and the matter would proceed to inquiry.²

[4] At the inquiry, the Ministry and the applicant both provided written submissions and evidence, but the Ministry did not provide the OIPC with the responsive record. Adjudicator Pakkala, my delegate assigned to decide the inquiry, concluded that the Ministry's affidavit evidence alone was insufficient to decide whether ss. 15(1)(g), 16(1)(b) and 22(1) applied and that she need to review the disputed information. Ultimately, she issued Order F25-53, ordering the Ministry to produce the record for her review pursuant to s. 44(1)(b).³

Preliminary Matter – Non-Delegation of Power to Examine Information

[5] After my delegate issued Order F25-53, the Ministry requested under s. 49(1.1) that I not delegate my power to examine the disputed record.⁴ This provision states as follows:

- (1.1) The commissioner may not delegate the power to examine information referred to in section 15 if the head of a police service within the meaning of section 1.1 of the Police Act or the Attorney General
 - (a) has refused to disclose that information under section 15, and
 - (b) has requested the commissioner not to delegate the power to examine that information.

[6] After considering the circumstances of this matter and the fact that the Ministry relies on s. 15(1)(g) to withhold the disputed information, I am satisfied that the requirements of s. 49(1.1) are met. Consequently, I have not delegated

¹ This took place at the outset of the inquiry that resulted in Order F25-53.

² Order F24-89, 2024 BCIPC 101 (CanLII).

³ Order F25-53, 2025 BCIPC 61 (CanLII).

⁴ Ministry's letter, July 15, 2025.

my power to examine the record containing the disputed information, which the Ministry provided to me in a sealed envelope.

[7] During this inquiry I issued Order F25-62, which considered the meaning and effect of ss. 15(1)(g), 15(4), 16(1)(b), and 22 in the context of prosecutorial discretion. Therefore, I offered the parties an opportunity to provide submissions about the application of Order F25-62 to the records at issue in this matter.⁵ As a result, both parties provided a supplemental submission.

ISSUES AND BURDEN OF PROOF

[8] In this inquiry, I must determine whether the Ministry is authorized to refuse to disclose the disputed information under ss. 15(1)(g) or 16(1)(b). In addition, I must determine whether the Ministry is required to refuse to disclose the disputed information under s. 22(1).

[9] Section 57(1) places the burden on the Ministry, which is a public body, to prove that it is authorized to refuse access to the disputed information under ss. 15(1)(g) or 16(1)(b).

[10] Under s. 57(2), the applicant has the burden of proving that disclosure of personal information withheld under s. 22(1) would not be an unreasonable invasion of a third party's personal privacy. However, the Ministry has the initial burden of proving that information is personal information.⁶

DISCUSSION

Background⁷

[11] The British Columbia Prosecution Service (Prosecution Service) operates within the Criminal Justice Branch, which is an independent branch of the Ministry. The Prosecution Service conducts prosecutions of offences pursuant to the *Crown Counsel Act*.⁸

[12] Crown counsel are lawyers with the Prosecution Service who are authorized to decide whether and how to prosecute offences in accordance with the Prosecution Service's charge assessment standard. This standard applies

⁵ Commissioner's letter to the parties, August 15, 2025.

⁶ Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

⁷ The information in this background section is based on information provided in the parties' submissions and evidence. It is not information that is in dispute.

⁸ *Crown Counsel Act*, RSBC 1996, c. 87.

throughout a prosecution to ensure its continuation is warranted in the interests of justice.

[13] In the prosecution context, a stay of proceedings is a decision by Crown counsel to stop the prosecution of previously approved charges. Crown counsel may stay a prosecution any time after proceedings begin and before the court renders a judgement. After entering a stay, crown counsel may recommence the prosecution proceedings within one year or before the expiration of the time within which the proceedings could have been commenced, whichever is earlier. If this period of time lapses, then the prosecution proceedings are deemed to never have been commenced in the first place.⁹

[14] In this matter, Crown counsel approved criminal charges against the applicant (Charges). Some time later, Crown counsel decided to stay its prosecution in respect of the Charges. Meanwhile, the applicant was convicted of a crime in another country and subsequently incarcerated. The allegations that led to the applicant's conviction and incarceration are substantially the same as those that supported the Charges in British Columbia.

[15] The applicant requested the Ministry provide him with access to all Crown counsel and RCMP records relating to his criminal law matter.¹⁰ The applicant received some responsive records, but one record was withheld in its entirety.

Record and Information in Dispute

[16] In this inquiry, there is only one record in dispute. The disputed record is a two-page memorandum prepared by the BC Prosecution Service (the Crown Memo). The information in the Crown Memo is about the applicant's criminal law matter and the Crown counsel's decision to enter a stay of proceedings in respect of the Charges.

Disclosure Harmful to Law Enforcement – s. 15

[17] The Ministry relies on s. 15(1)(g) to withhold the disputed information. The applicant argues that the Ministry has not established that s. 15(1)(g) applies, and in any case, that s. 15(4)(a) nonetheless requires the Ministry to disclose the disputed information to him.

[18] Section 15 is a discretionary exception that allows the head of a public body to withhold information on the basis that disclosure could be harmful to law enforcement. The relevant portions of s. 15 state as follows:

⁹ *Criminal Code*, RSC 1985, c C-46, at s. 579.

¹⁰ Applicant's letter to the Ministry, June 18, 2015.

- 15 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to . . .
- (g) reveal any information relating to or used in the exercise of prosecutorial discretion, . . .
- (4) The head of a public body must not refuse, after a police investigation is completed, to disclose under this section the reasons for a decision not to prosecute
- (a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim, or . . .

[19] I will first consider whether s. 15(1)(g) applies to the disputed information, before considering the parties' arguments under s. 15(4)(a).

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

[20] Section 15(1)(g) authorizes a public body to refuse to disclose information that could reasonably be expected to reveal any information relating to or used in the exercise of prosecutorial discretion.

[21] The Ministry submits that s. 15(1)(g) authorizes it to withhold all of the disputed information. Specifically, the Ministry argues that disclosing this information can reasonably be expected to reveal information that is directly related to Crown counsel's exercise of prosecutorial discretion when it stayed the applicant's criminal proceedings.¹¹

[22] In response, the applicant argues that the Ministry has not established how disclosure creates a reasonable expectation of probable harm to prosecutorial discretion. The applicant says that the requested disclosure would not harm prosecutorial discretion because the applicant's request does not impact the objectives underlying prosecutorial discretion, namely, the division of powers between the judicial and executive branches of government and avoidance of political pressure in Crown counsel's prosecutorial discretion.¹²

Analysis, s. 15(1)(g)

[23] In order for s. 15(1)(g) to apply, the Ministry must establish that disclosure could reasonably be expected to reveal any information relating to or used in the exercise of prosecutorial discretion. The phrase "could reasonably be expected

¹¹ Ministry's initial submission at paras 46 and 61.

¹² Applicant's initial submission at paras 27-32, and 35-38.

to,” imposes a standard that is “a middle ground between that which is probable and that which is merely possible.”¹³

[24] At the outset, I reject the applicant’s argument that the Ministry must establish that disclosure can reasonably be expected to *harm* the exercise of prosecutorial discretion. The language of s. 15(1)(g) only requires that disclosure could reasonably be expected to *reveal* information relating to or used in the exercise of prosecutorial discretion.

[25] The legislature’s decision to use the word “reveal” means that the mere act of revealing information related to or used in the exercise of prosecutorial discretion is sufficiently harmful to engage s. 15(1)(g).¹⁴ There is no requirement for the Ministry to establish a reasonable expectation of other harms flowing from disclosure.¹⁵ Relatedly, the applicant’s intended use of this information after disclosure is not relevant to the s. 15(1)(g) analysis.

[26] Next, to determine whether disclosure would reveal information related to or used in the exercise of prosecutorial discretion, I will consider what precisely is meant by the terms “prosecutorial discretion” and its “exercise”.

[27] The term “prosecutorial discretion” is an expansive term that covers all “decisions regarding the nature and extent of the prosecution and the Attorney General’s participation in it. Prosecutorial discretion does not include any decisions that do not go to the nature and extent of the prosecution, such as the decisions that govern a Crown prosecutor’s tactics or conduct before the court.”¹⁶

[28] Schedule 1 of FIPPA defines the term “exercise of prosecutorial discretion” as follows:

"exercise of prosecutorial discretion" means the exercise by

- a) Crown counsel, or a special prosecutor, of a duty or power under the *Crown Counsel Act*, including the duty or power
 - (i) to approve or not to approve a prosecution,
 - (ii) to stay a proceeding,
 - (iii) to prepare for a hearing or trial,
 - (iv) to conduct a hearing or trial,

¹³ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31, para 54, citing *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, paras 94 and 195-206.

¹⁴ Ministry’s reply submission at paras 41-47.

¹⁵ For similar reasoning in the context of s. 15(1)(e), see Order F17-56, 2017 BCIPC 61 at paras 62-66.

¹⁶ *R v. Anderson*, 2014 SCC 41, para 44 citing *Krieger v. Law Society of Alberta*, 2002 SCC 65, para 47; See also: Order F25-62, 2025 BCIPC 72 (CanLII), at para 57.

(v) to take a position on sentence, and

(vi) to initiate an appeal, or ...

[29] Based on my review, I can see that all of the Crown Memo is about Crown counsel's exercise of discretion when it decided to stay the applicant's prosecution. For clarity, the disputed information includes information about the actual exercise of Crown counsel's discretion as well as other information that Crown counsel considered before deciding to stay the prosecution.

[30] I find that disclosing the disputed information can be reasonably expected to reveal information related to and used in the exercise of prosecutorial discretion. Consequently, s. 15(1)(g) applies to all of the information in the Crown Memo.

Reasons for a Decision Not to Prosecute, s. 15(4)(a)

[31] As noted above, s. 15(4)(a) says that the head of a public body must not refuse, after a police investigation is completed, to disclose under s. 15 the reasons for a decision not to prosecute, to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim.

[32] The applicant says that the Ministry cannot withhold the disputed information under s. 15(1)(g) because the requirements of s. 15(4)(a) are met in this case.¹⁷

[33] The Ministry provides two arguments to support its position that s. 15(4)(a) does not apply. I will address each argument under the separate headings below.

Section 15(4) as an Exception to s. 15(1)(g)

[34] First, the Ministry says that s. 15(4) is not an exception to s. 15(1)(g). The Ministry argues that s. 15(4) creates a standalone obligation to provide reasons for a decision not to prosecute as opposed to creating an exception to the application of s. 15(1)(g). The Ministry says that it has already discharged this duty by providing the applicant with material it considers to be the "reasons" for its decision not to prosecute the applicant. To support its position, the Ministry points to the language of other FIPPA provisions which, unlike s. 15(4), include the qualifying statement "subsection . . . does not apply if . . .".¹⁸

¹⁷ Applicant's response submission at paras 17, 23, and 45-48.

¹⁸ Ministry's initial submission at paras 95-97; Ministry's reply submission at paras 35 and 36.

[35] The Ministry recently made this same argument in the inquiry that resulted in Order F25-62.¹⁹ In that matter, I considered the evidence of legislative debates regarding the interplay between ss. 15(1)(g) and 15(4)(a),²⁰ as well as the language of s. 15(4) which expressly refers to s. 15 by clarifying that the head of a public body “must not refuse . . . to disclose under this section. . .” [emphasis added].

[36] Ultimately, I determined that the variation of wording in exceptions to FIPPA disclosure exceptions was not enough to support the Ministry’s proposed interpretation of ss. 15(3) and (4). These provisions use the words “under this section” which is an explicit reference to s. 15 as a whole. To adopt the Ministry’s proposed interpretation would require me to ignore this unambiguous language. Instead, ss. 15(3) and (4) must be understood as exceptions to the disclosure exceptions set out at ss. 15(1) and (2).

[37] The Ministry does not identify any special circumstances or arguments in its submissions that persuade me to take a different approach in this case. I find that s. 15(4)(a) is an exception to the application of s. 15(1)(g), therefore, I will consider whether s. 15(4)(a) applies to any of the disputed information.

Reasons for a Decision Not to Prosecute

[38] The Ministry’s second argument is that s. 15(4)(a) does not apply because the Ministry already provided the applicant with “the reasons for a decision not to prosecute,” and that the term “reasons” within s. 15(4)(a) is not the same thing as the specific information contained in the disputed record.²¹

[39] The Ministry says that I do not have the jurisdiction or authority to determine the adequacy of the reasons it already provided to the applicant for Crown counsel’s decision not to prosecute. Instead, the Ministry says that my jurisdiction is limited to confirming whether the applicant has already received written reasons for the decision not to prosecute.²²

[40] In response, the applicant says that s. 15(4) requires the Ministry to disclose the reasons for Crown counsel’s decision to stay his prosecution, which he argues would be accomplished by disclosing the Crown Memo. The applicant argues that he has a sufficient interest in the related criminal proceeding because he is the accused. Additionally, the applicant argues that the material the Ministry

¹⁹ Order F25-62, 2025 BCIPC 72 (CanLII) at paras 22-28

²⁰ Official Report of the Debates of the Legislative Assembly (Hansard). Monday, June 22, 1992, Afternoon Sitting, Volume 4, No. 24 at p. 2876- [https://www.leg.bc.ca/hansard-content/Debates/35th1st/19920622pm-Hansard-v4n24.htm#2867]; and Official Report of the Debates of the Legislative Assembly (Hansard). Tuesday July 27, 1993, Afternoon Sitting, Volume 12, No. 19, pages 9283-84.

²¹ Ministry’s initial submission at paras 97-112.

²² Ministry’s reply submission at paras 6 and 20-23; Ministry’s reply submission at paras 38-39.

already provided to him is insufficient to constitute the reasons for Crown counsel's decision not to prosecute him.²³

[41] To begin with, the s. 15(4)(a) analysis is not concerned with records or information that the Ministry has provided to the applicant in the past. Whether the Ministry already provided the applicant with "reasons" for Crown counsel's decision not to prosecute has no bearing on whether s. 15(4)(a) requires the Ministry to disclose the specific information at issue in the Crown Memo. Therefore, I reject the Ministry's argument that my jurisdiction is limited to confirming that written reasons have already been provided to the applicant.

[42] Similarly, the s. 15(4)(a) analysis does not require me to consider the adequacy of any reasons for Crown counsel's decision not to prosecute, regardless of where those reasons appear. Naturally, the analysis requires me to consider whether the Crown Memo includes relevant justifications or explanations that constitute "reasons" for Crown counsel's decision not to prosecute the applicant. However, the analysis does not entail a qualitative assessment of the logic and comprehensiveness of the reasons given.

[43] Turning to the information at issue in this matter, I am satisfied that some of the Crown Memo constitutes the reasons for Crown counsel's decision to stay the applicant's prosecution. I draw this conclusion because certain paragraphs of the Crown Memo contain justifications and explanations of Crown counsel's decision to enter a stay, with references to various supporting facts and principles. For clarity, this finding does not apply to the entirety of the Crown Memo. Only two sections comprising a few paragraphs are sufficiently explanatory in nature to constitute the reasons for Crown counsel's decision not to prosecute.

[44] Finally, I must determine whether the applicant is a person who knew of and was significantly interested in the investigation.

[45] The applicant clearly knows of the investigation that led to his prosecution because the investigation also led to him being arrested. Furthermore, I am satisfied that the applicant is significantly interested in that investigation because he is the accused person who underwent an arrest and had the Charges laid against him. In my view, the reputational harm of his arrest and the Charges establish that the applicant has a sufficient interest in the investigation to meet the requirements of s. 15(4)(a).

Conclusion, s. 15

[46] For the reasons given above, I find that disclosing the Crown Memo can be reasonably expected to reveal information related to and used in the exercise

²³ Applicant's initial submission at paras 45-48.

of prosecutorial discretion. Therefore, s. 15(1)(g) applies to the entirety of the Crown Memo. Subject to my findings with respect to s. 15(4)(a), the Ministry may withhold all of the disputed information under s. 15.

[47] On the other hand, I determined that two sections of the Crown Memo constitute the “reasons” for Crown counsel’s decision not to prosecute the applicant. Given that the applicant knows of the underlying investigation and is significantly interested in it, I find that s. 15(4)(a) applies to these two sections and the Ministry may not refuse to disclose them to the applicant under s. 15.

[48] The Ministry is also refusing to disclose the information in these two sections under s. 16(1)(b). Therefore, I will now determine whether the Ministry may withhold this information under s. 16(1)(b), which I will refer to as the “Remaining Information”.

Disclosure harmful to intergovernmental relations – s.16(1)(b)

[49] Section 16(1)(b) allows the head of a public body to withhold information if disclosure could reasonably be expected to reveal information received in confidence from certain government organizations. The relevant portions of s. 16 state as follows:

16 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm the conduct by the government of British Columbia of relations between that government and any of the following or their agencies: . . .

(i) the government of Canada or a province of Canada; . . .

(b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies, or . . .

[50] The purpose of s. 16(1)(b) is to “promote and protect the free flow of information between governments and their agencies for the purpose of discharging their duties and functions.”²⁴

[51] At this juncture, I will address the applicant’s argument that the Ministry has failed to articulate why disclosure would be harmful to intergovernmental relations. The applicant says that without establishing that disclosure would be

²⁴ Order F19-38, 2019 BCIPC 43, at para 107, citing Order No. 331-1999, 1999 CanLII 4253 (BC IPC) at p 7.

harmful to intergovernmental relations or negotiations, there is no basis to conclude that disclosure could reasonably be expected to reveal information received in confidence.²⁵

[52] However, the applicant's approach is not the correct way to understand s. 16(1)(b). Section 16(1)(b) only requires that disclosure be reasonably expected to *reveal* information received in confidence. The language of s. 16(1)(b) does not require the Ministry to establish that a specific type of harm may result from disclosure. The applicant raised the same argument under the s. 15(1)(g) analysis above, and I am not persuaded to draw a different conclusion regarding the interpretation of s. 16(1)(b).

[53] I will now consider the specific requirements of s. 16(1)(b). In order for s. 16(1)(b) to apply, the Ministry must establish two things. First, the Ministry must show that disclosing the Remaining Information could reasonably be expected to reveal information the Ministry received from an entity contemplated by s. 16(1)(b). Second, the Ministry must show that it received the information in confidence.²⁶ I will consider each of these requirements under their respective headings below.

Can disclosure be reasonably expected to reveal information received from a government agency?

[54] I will first determine whether disclosing the Remaining Information can be reasonably expected to reveal information received from an entity contemplated by s. 16(1)(b), which includes a government, council or organization listed in s. 16(1)(a), or their agencies.²⁷

Parties' Positions

[55] The Ministry argues that disclosing the Crown Memo would reveal "criminal investigative information" contained in a Report to Crown Counsel (RCC) that the Ministry received from the Surrey Royal Canadian Mounted Police (Surrey RCMP). The Ministry explains that the Surrey RCMP is a federal agency which provided the RCC to the Ministry through an electronic justice case management system. In addition, the Ministry says that disclosing the Crown Memo would indirectly reveal the criminal investigative information in the RCC, because it includes Crown counsel's analysis of that information.²⁸

²⁵ Applicant's submission at para 82.

²⁶ Order F17-30, 2017 BCIPC 32 (Can LII), at para 35, citing Order 02-19, 2002 CanLII 42444 (BC IPC), at para 18; and Order No. 331-1999, 1999 CanLII 4253 (BCIPC) at pp 6-9.

²⁷ FIPPA, at ss. 16(1)(a) and (b).

²⁸ Ministry's initial submission at paras 25, 30-33, and 116-118.

[56] The applicant does not dispute that the Crown Memo contains information that Crown counsel received from the Surrey RCMP or that the Surrey RCMP is a federal agency under s. 16(1)(a)(i).

Analysis

[57] Past orders of my office have consistently found that the RCMP is an agency of the Government of Canada for the purposes of s. 16(1).²⁹ This conclusion is founded on the RCMP's duties and functions as a national police force under the *Royal Canadian Mounted Police Act*,³⁰ as well as the significant degree of control exercised over it by the Solicitor General of Canada.³¹ I agree with the reasoning of those past orders and find that the Surrey RCMP is an agency of the Government of Canada. Furthermore, the Ministry's affidavit evidence and explanations satisfy me that the Surrey RCMP electronically transmitted certain information in the RCC to Crown counsel.³²

[58] While I accept that the Surrey RCMP is a Government of Canada agency which provided some information to the Ministry through the RCC, further analysis is necessary to determine whether disclosing the Remaining Information would reveal any information contained in that RCC.

[59] Having reviewed the Remaining Information, I find it falls into three different categories:

- Information the Ministry received from an agency of a foreign government;
- Information the Ministry received from an individual; and
- Information related to the Surrey RCMP's investigative activities.

[60] I will discuss each of these sources in turn.

[61] First, it is clear on the face of the Crown Memo that some of the Remaining Information was received from an entity that is not the Surrey RCMP. While the Ministry did not make this argument in its submissions, I am satisfied by the content of this information that disclosing it can be reasonably expected to reveal information received from an agency of a foreign government. An agency of a foreign government is an entity that meets the requirements of s. 16(1)(b), therefore, I will include this part of the Remaining Information in the rest of the s. 16(1)(b) analysis that follows.

²⁹ See, for example, Order 02-19, 2002 CanLII 42444 (BC IPC), paras 55 and 58; Order F05-24, 2005 CanLII 28523 (BC IPC), paras 23-26; Order F17-56, 2017 BCIPC 61 (CanLII), para 85.

³⁰ *Royal Canadian Mounted Police Act*, RSC 1985, c R-10.

³¹ Order 02-19, 2002 CanLII 42444 (BC IPC), at paras 55-58; Order F17-56, 2017 BCIPC 61 (CanLII), at para 85.

³² Ministry's initial submission at paras 30-33; Affidavit #2 of ST at paras 24-27.

[62] Secondly, I can see that some of the Remaining Information is a discussion of information that Crown counsel collected directly from an individual third party. I can see that this individual is not associated with the Surrey RCMP or any other entity described in s. 16(1)(b). Therefore, I find that disclosing this part of the Remaining Information cannot be reasonably expected to reveal information received by the Surrey RCMP and s. 16(1)(b) does not apply to it.

[63] Finally, the third and final part of the Remaining Information is a discussion of facts that appears to be related to the Surrey RCMP's investigative activities. The Ministry provided affidavit evidence from a Crown counsel lawyer who attests that disclosing the information withheld under s. 16(1)(b) "would indirectly reveal the RCC Information or allow accurate inferences to be drawn about [it] . . . because the [Crown Memo] is comprised of the Prosecuting Crown Counsel's analysis of [that information]."³³ I cannot compare the RCC to the Remaining information because the Ministry did not provide a copy of the RCC in this inquiry.³⁴ However, having considered the nature of this information and the Crown counsel lawyer's affidavit evidence, I find that disclosing this third part of the Remaining Information can be reasonably expected to reveal information that the Surrey RCMP provided to Crown counsel.

[64] In summary, I find that disclosing the Remaining Information that the Ministry received from an individual would not reveal information received by an entity contemplated by s. 16(1)(b), so the Ministry may not withhold that information under s. 16(1). At the same time, however, I find that the rest of the Remaining Information was received from a foreign government agency or the Surrey RCMP, so disclosing it would reveal information received by an entity contemplated by s. 16(1)(b).

Was the information was received in confidence?

[65] Next, I must determine whether the Ministry received the information from the foreign government agency and the Surrey RCMP *in confidence*.

Parties' Positions

[66] The Ministry argues that a reasonable person would view any information the RCMP shared with Crown counsel as being confidential in nature, in

³³ Affidavit #2 of ST at para 43.

³⁴ The Ministry could have, but did not, request permission to submit the RCC *in camera* (i.e., the OIPC will see the information but not the applicant). Section 56 of FIPPA allows the OIPC to consider *in camera* materials during an inquiry. In general, the OIPC will permit material to be submitted *in camera* if it would reveal the actual information in dispute in the inquiry or it is information that a public body would be required or authorized to refuse to disclose under FIPPA.

particular when the information at issue relates to the type of criminal activity that was alleged in the applicant's case.³⁵ The Ministry further argues that:³⁶

- The information in the RCC (i.e., the information I found was received from the Surrey RCMP) was not compiled for a purpose that would ordinarily be expected to lead to its disclosure to the general public;
- The Ministry never releases records like the Crown Memo, whether to the public or to an accused; and
- The electronic system used to transmit the RCC to Crown counsel is only accessible by authorized users whose activity is tracked.

[67] The applicant says: "It is well known that criminal investigations will contain information that comes from law enforcement. Clearly, some of that will contain information that was supplied in confidence."³⁷ While the applicant does not specifically argue that the information in the RCC was *not* supplied in confidence, I understand his position to be that the Ministry has generally not provided sufficient evidence to support that conclusion.

Analysis

[68] In order for information to be "received in confidence", there must be an implicit or explicit agreement or understanding of confidentiality between those supplying and receiving the information.³⁸ Past orders have identified a non-exhaustive list of factors to consider when deciding if the information was received in confidence, including:³⁹

- the nature of the information,
- the purpose for which the record was prepared,
- explicit statements or markings of confidentiality,
- evidence of an agreement or understanding of confidentiality, and
- objective evidence of an expectation of or concern for confidentiality, such as the current actions or past practices of the parties.

[69] For the reasons that follow, I find that all the information that the Ministry received from an agency of a foreign government, and some of the information received from the Surrey RCMP, is information that was received in confidence. I draw these conclusions based on the nature of the information, the circumstances under which that information was supplied to the Ministry and

³⁵ Ministry's initial submission at para 120.

³⁶ Ministry's initial submission at paras 121-125.

³⁷ Applicant's submission at paras 80-82.

³⁸ Order No. 331-1999, 1999 CanLII 4253 (BC IPC), at p 7.

³⁹ Order No. 331-1999, 1999 CanLII 4253 (BC IPC), at pp 8-9; Order F19-38, 2019 BCIPC 43 (CanLII), at para 117; Order F23-07, 2023 BCIPC 8 (CanLII), at para 76.

others, and the current and past actions of the Ministry in respect of that information.

[70] I will begin with the information that I determined may reveal information the Ministry received from a foreign government agency. This information was shared in the context of two related, extremely serious and sensitive criminal investigations. The integrity of those investigations, in my view, required a heightened level of confidentiality over the information that was shared. These circumstances satisfy me that this category of information was received by the Ministry in confidence.

[71] Next, I will consider the information that the Ministry's Crown counsel received from the Surrey RCMP. I determined that information could be reasonably expected to reveal information which the Ministry received through the RCC.

[72] As discussed above, the Ministry did not provide a copy or summary of the RCC for my review, *in camera* or otherwise. Therefore, I must consider the implicit circumstances to determine whether the Ministry received the RCC's contents in confidence.

[73] As a starting point, I note that the applicant has already received and reviewed the RCC, therefore, on a practical level he is aware of the information in it.⁴⁰ The RCC was provided to the applicant more than 18 years ago in accordance with Crown counsel's obligation to disclose information to an accused person.

[74] The Ministry points out that Crown counsel's disclosure obligations in the criminal law context carries a continuing implied undertaking of confidentiality. The Ministry explains that this undertaking restrains the applicant from using the information he learned through the criminal law disclosure process for any other purpose other than to defend himself against his prosecution.⁴¹ I understand this to be an argument that I should consider all information in the RCC to be received by Crown counsel under a strict expectation of confidentiality notwithstanding its eventual disclosure to the applicant and subsequent use to discontinue his prosecution.

[75] In my view, the fact that information is placed into an RCC does not mean that s. 16(1)(b) will automatically apply wherever there is information that reveals something in an RCC. To rigidly apply such a rule would lead to absurd results, for example, by preventing any meaningful application of the exception

⁴⁰ Affidavit #2 of ST at para 30 and Exhibit C.

⁴¹ Affidavit #2 of ST at paras 31-32; referring to *R. v. Stinchcombe*, [1995] 1 S.C.R. 754, 1995 CanLII 130 (SCC), *R. v. Basi*, 2011 BCSC 314 at para 42; and *R. v. Henry*, 2012 BCSC 1878 at para 46.

established by s. 15(4). Instead, what is required is a careful analysis of the supplying and receiving entities' reasonable expectations of confidentiality over the various pieces of information that were included in the RCC.

[76] For clarity, I acknowledge that undertakings of confidentiality associated with an RCC may be relevant to the s. 16(1)(b) analysis because such restrictions on an accused's use of that information would have informed the recipient's expectations of confidentiality at the time the information was received. However, a fulsome analysis of the recipient's expectations of confidentiality must also be informed by the nature of the information itself and whether that information had or would become known to the applicant by other means.

[77] In this matter, not all of the information that the Surrey RCMP compiled into the RCC was revealed to the applicant only by reading the RCC under its associated undertaking of confidentiality. I can see that the applicant came to know some of that information through other avenues, which weakens the Ministry's claim that it received all of the information under a reasonable expectation of confidentiality.

[78] First, some of the information describes the nature of the applicant's relationship to the third-party complainant and witness. It is plain and obvious that the applicant and others knew how he was associated with these individuals long before he viewed this information in the RCC. It seems to me that the applicant's relationship to these individuals is background information that was included in the RCC merely to explain how the relevant individuals came to know one other before the purported offences occurred. Under these circumstances, I am not persuaded that the Ministry received this information in confidence when the Surrey RCMP transmitted the RCC to Crown counsel.

[79] Secondly, some of the information that I am considering describes the inadequacy of available evidence as a reason for staying the applicant's prosecution. When Crown counsel received the RCC from the Surrey RCMP, Crown counsel would have known that the nature of this evidence could not be kept confidential as the prosecution progressed. Ultimately, the court would have adjudicated the adequacy of the evidence to support its decision, or the reasons for a stay would have become disclosable to the applicant under FIPPA.

[80] When the applicant made his access request under FIPPA, the Ministry told the applicant that his prosecution was stayed because Crown counsel determined that evidence corroborating his criminal charges was lacking, and because Crown counsel "determined that there were potential credibility issues of the complainant and witness."⁴² In my view, this communication further indicates that the Ministry always understood it could not keep all information about the

⁴² Ministry's letter to the applicant, August 18, 2015; Affidavit #2 of ST at Exhibit F.

adequacy of available evidence confidential in light of its obligations under FIPPA and the fact that the prosecution could be stayed.

[81] For these reasons, I conclude that almost all of the disputed information which discusses credibility concerns and the adequacy of evidence described in the RCC, is not information that was received in confidence.

[82] Finally, some of the disputed information that I am considering in this stage of the s. 16(1)(b) analysis would, if disclosed, reveal highly specific details about a source of evidence from the RCC and considered by Crown counsel. The material before me does not indicate that the Ministry has separately disclosed this information to the applicant or that he has become aware of it by another means. Furthermore, having considered the highly sensitive nature of this information and the circumstances under which Crown counsel received it, I am satisfied that this specific information was received under the expectation that the Ministry would keep this information confidential.

Conclusion, s. 16(1)(b)

[83] Taking the parties' submissions and everything discussed above into account, I determined that some of the Remaining information was supplied by an individual third party which is not an entity that meets the criteria for the s. 16(1)(b) exception to disclosure, so the Ministry may not withhold it under s. 16(1)(b).

[84] On the other hand, most of the Remaining Information can be reasonably expected to reveal information received from an entity that meets the requirements of s. 16(1)(b). Of this information, I determined that some of it was received by the Ministry in confidence. Specifically, I am referring to all of the information that the Ministry received from an agency of a foreign government and some of the information that the Ministry received from the Surrey RCMP through the RCC.

[85] Finally, I also determined that some of the information from the Surrey RCMP was not received in confidence. Specifically, this information includes information in the RCC about the relationship between the applicant and the third-party witness and complainant, as well as information that indicates the adequacy of the available evidence to sustain a prosecution. Consequently, the Ministry may not withhold under s. 16(1)(b), any of the Remaining Information in the Crown Memo which reveals this information.

Unreasonable Invasion of Third-Party Personal Privacy – s. 22

[86] The Ministry withheld all of the disputed information under s. 22. However, I do not need to consider whether s. 22 requires the Ministry to withhold the information that I determined may be withheld under either ss. 15(1)(g) or 16(1)(b). Therefore, in the analysis below I will only consider whether s. 22 requires the Ministry to withhold the information that I determined could not be withheld under either ss. 15(1)(g) or 16(1)(b). For clarity, I will refer to this information as the “Residual Information”.

[87] The Ministry says that disclosing any of the information it withholds under s. 22 would be an unreasonable invasion of third-party personal privacy.⁴³ In response, the applicant raises several circumstances in support of his position that s. 22 should not prevent disclosure.

[88] The analytical approach to the s. 22 analysis has been established by numerous past orders.⁴⁴ My analysis will apply each step of this approach under the headings below.

Personal Information

[89] The first step in the s. 22 analysis is to determine whether the Residual Information in dispute is “personal information” within the meaning of FIPPA.

[90] Schedule 1 of FIPPA defines personal information as “recorded information about an identifiable individual other than contact information” and contact information as “information to enable an individual at a place of business to be contacted [including] the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”

[91] In this matter, it is clear on the face of the Crown Memo that all of the Residual Information is personal information. Specifically, the Residual Information is identifiable as the applicant’s personal information because it is about his criminal proceedings. Furthermore, most of the Residual Information is simultaneously about one or more third parties. None of the Residual Information is contact information.

Not an Unreasonable Invasion of Privacy, s. 22(4)

[92] The second step of the analysis is to consider s. 22(4), which sets out circumstances where disclosure is not an unreasonable invasion of a third party’s personal privacy. If the information falls into one of the circumstances listed in

⁴³ Ministry’s initial submission at para 170.

⁴⁴ Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.

s. 22(4), then s. 22 does not apply and the Ministry cannot withhold it on that basis.

[93] The Ministry says that none of the s. 22(4) circumstances apply.⁴⁵ The applicant argues that s. 22(4)(b) justifies an order to produce the disputed information.⁴⁶

Compelling circumstances affecting health or safety, s. 22(4)(b)

[94] Section 22(4)(b) says that disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if there are compelling circumstances affecting anyone's health or safety and notice of the disclosure is mailed to the involved third party.

[95] The applicant argues that a broad interpretation of his health and safety includes the security of his person, which he says applies to his current circumstances as an incarcerated person outside of Canada.⁴⁷ I understand the applicant to be arguing that disclosure is justifiable under s. 22(4)(b) because his incarceration in a foreign country, which he characterizes as wrongful, is a compelling circumstance affecting his health and safety.

[96] Previous orders have consistently held that s. 22(4)(b) is a relevant consideration in the context of a complaint about the public body's decision to *disclose* personal information. This conclusion is based on the wording of s. 22(4)(b) which requires that the public body have mailed a "notice of disclosure" to a third party's last known address. If a public body has not decided to disclose the personal information and mailed notice of that decision to the relevant third party, then this requirement cannot be met. Therefore, s. 22(4)(b) is not relevant or applicable in a request for review of a public body's decision to *refuse* to disclose information.⁴⁸

[97] There is no information before me to suggest that the Ministry has already disclosed the disputed information or mailed a notice of disclosure to any third parties. Consequently, I find that s. 22(4)(b) does not apply. I will address the applicant's broader concerns about his personal liberty under the s. 22(2)(c) analysis below.

⁴⁵ Ministry's initial submission at para 138; Ministry's supplemental submission at para 2.

⁴⁶ Applicant's supplemental submission at para 21.

⁴⁷ Applicant's supplemental submission at paras 21-24.

⁴⁸ Order F19-02, 2019 BCIPC 2 (CanLII) at paras 27-28; Order F20-37, 2020 BCIPC 43 (CanLII) at para 92.

Disclosure authorized by enactment, s. 22(4)(c)

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

[99] The Ministry argues that s. 22(4)(c) does not apply to this matter because, unlike the circumstances that led to Order F25-62,⁴⁹ the access request in this case was made by an accused person. Therefore, the Ministry says that the provisions of the *Victims of Crimes Act* that I considered in Order F25-62 are not relevant.⁵⁰ The applicant does not argue that s. 22(4)(c) applies in this case.

[100] I agree with the Ministry's argument that the relevant provisions of the *Victims of Crime Act* are inapplicable in this case due to the applicant's status as an accused person. The applicant identifies no enactments that authorize disclosure in this matter; therefore, I find that s. 22(4)(c) does not apply.

Section 22(3) – Presumed to be an Unreasonable Invasion of Personal Privacy

[101] The third step in the s. 22 analysis is to consider whether any of the presumptions in s. 22(3) apply to the personal information at issue. Section 22(3) lists circumstances in which disclosure of personal information is presumed to be an unreasonable invasion of personal privacy.

[102] The Ministry says that ss. 22(3)(a) and (b) apply.⁵¹ The applicant does not discuss s. 22(3) in his submissions.

Medical, psychiatric or psychological history, s. 22(3)(a)

[103] Section 22(3)(a) creates a presumption that disclosure of personal information relating to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation is an unreasonable invasion of a third party's personal privacy.

[104] I understand that the Ministry raises s. 22(3)(a) because it plainly applies to some information in the Crown Memo. However, I determined that this information may be withheld under s. 16(1)(b). None of the Residual Information relates to anyone's medical, psychiatric or psychological history, therefore, I find that s. 22(3)(a) does not apply.

⁴⁹ Order F25-62, 2025 BCIPC 72 (CanLII), at paras 92-98.

⁵⁰ Ministry's supplemental submission at paras 9-10, in reference to *Victims of Crime Act*, RSBC 1996, c 478.

⁵¹ Ministry's initial submission at paras 142, 143, and 145.

Investigation Into a Possible Violation of Law, s. 22(3)(b)

[105] Section 22(3)(b) states that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal 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.

[106] There are two requirements for s. 22(3)(b) to apply. First, there must be an investigation into a possible violation of law. Second, the relevant information must have been "compiled" and must be identifiable as part of the investigation. For purposes of s. 22(3)(b) "compiling" information involves some exercise of judgment, knowledge, or skill on behalf of the public body and, in this way, is distinct from merely collecting or happening across the information in question.⁵²

[107] The Ministry's submissions and evidence in support of its s. 16(1)(b) arguments conclusively establish that the Surrey RCMP undertook an investigation into a possible violation of law. Furthermore, I can see that the Residual Information was compiled into the Crown Memo following the exercise of judgement, knowledge and skill of a Crown counsel lawyer.

[108] For these reasons, I find that s. 22(3)(b) applies to all of the Residual Information. Consequently, disclosing any of the Residual Information is presumed to be an unreasonable invasion of third-party personal privacy.

Section 22(2) – All Relevant Circumstances

[109] 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 listed in s. 22(2). It is at this stage that the applicant may rebut the presumption created by s. 22(3)(b).

[110] The Ministry and the applicant each raise several relevant circumstances in support of their positions, which I will consider below.

Public scrutiny of the activities of the public body, s. 22(2)(a)

[111] The Ministry argues that s. 22(2)(a) is not relevant because the applicant's focus is on the appeals process in a different legal jurisdiction, as opposed to the activities of a public body in British Columbia. The Ministry also says that the disputed information relates to the activities of the applicant and other individuals rather than the activities of a public body.⁵³ While the applicant does not

⁵² Order F19-02, 2019 BCIPC 2 at paras 33 and 39; Order F24-97, 2024 BCIPC 111 (CanLII), at para 59.

⁵³ Ministry's initial submission at paras 150-152.

expressly raise s. 22(2)(a), he does say that “[his] request for review goes directly to the issue of the accountability of public bodies.”⁵⁴

[112] Section 22(2)(a) requires a public body to consider whether disclosing the personal information is desirable for subjecting the activities of the government of British Columbia or a public body to public scrutiny. The purpose of s. 22(2)(a) is to foster accountability of a public body, as opposed to holding individual third parties accountable.⁵⁵

[113] The applicant’s comments about accountability of public bodies clearly relate to the Ministry’s initial decision to not provide a copy of the Crown Memo for my review in this inquiry. That issue was disposed-of by Order F25-53. In addition, the applicant’s submissions repeatedly emphasize his desire to use any information received for the limited purpose of appealing his conviction in a foreign country, which is not consistent with the purpose of holding a public body accountable.⁵⁶ Finally, I do not see how the Residual Information could be used to hold any public bodies accountable for their actions.

[114] Having considered the parties submissions and the nature of the Residual Information, I find that s. 22(2)(a) is not a circumstance that favours disclosure.

Relevant to a Fair Determination of the Applicant’s Rights, s. 22(2)(c)

[115] The applicant and the Ministry each discuss s. 22(2)(c) in their submissions.⁵⁷

[116] Section 22(2)(c) requires a public body to consider whether the personal information in dispute is relevant to a fair determination of an applicant’s rights. Past orders have found that s. 22(2)(c) applies where all of the following circumstances exist:

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 withheld personal information must have some bearing on, or significance for, determination of the right in question; and

⁵⁴ Applicant’s response submission at para 55.

⁵⁵ Order F16-14, 2016 BCIPC 16 (CanLII), at para 40.

⁵⁶ For example, see the Applicant’s response submission at para 84.

⁵⁷ Applicant’s response submission at para 86; Ministry’s reply submission at paras 80-82.

4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.⁵⁸

[117] I will apply the same analytical framework in this matter.

[118] Beginning with the right in question, the applicant raises the fact that he is currently incarcerated for an extended period of time in a different jurisdiction. The applicant explains that he wishes to appeal his conviction in that jurisdiction using information gained through the access request at issue in this inquiry.⁵⁹

[119] In reply, the Ministry says that the right in question is not a Canadian right and the information is not necessary for the applicant to prepare for his appeal.⁶⁰

[120] Section 22(2)(c) does not say that a fair determination of the applicant's rights must relate to a right drawn only from Canadian common law or statute. The Ministry does not identify any authority to support its argument that s. 22(2)(c) is limited in this way, nor am I aware of any.

[121] Moreover, the fact that the applicant's rights are being adjudicated by a non-Canadian court does not mean that his rights under Canadian law cease to exist. The applicant's right to liberty and security of his person are Canadian rights drawn from both common law and statute,⁶¹ and both of which are obviously engaged by his continued incarceration. For these reasons, I am satisfied that the applicant has met the first requirement of the s. 22(2)(c) analysis.

[122] Turning to the second requirement, the right in question must be related to a proceeding that is under way or reasonably contemplated, as opposed to a proceeding that has already been completed. To this end, the applicant discusses the possibility of an appeal of his conviction in a foreign country.⁶² Additionally, the applicant provides affidavit evidence from his wife and a statement from his attorney in the foreign country that support the fact he is actively contemplating, and in some cases pursuing, various appeal proceedings to overturn his conviction.⁶³

[123] I consider it reasonable that the applicant, who is sentenced to a long term of incarceration, would contemplate all possible appeal proceedings given his position that his conviction was incorrect. For this reason, and as supported by the material provided by the applicant, I find that the applicant has met the

⁵⁸ Order 01-07, 2001 CanLII 21561 (BCIPC) at para 31; Order F15-11, 2015 BCIPC 11 (CanLII) at para 24.

⁵⁹ Applicant's response submission at paras 7-9.

⁶⁰ Ministry's reply submission at para 82.

⁶¹ *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c 11 at s 7.

⁶² Applicant's response submission at paras 8, 9, 34,

⁶³ Affidavit #1 of applicant's wife, at paras 17-18; Declaration of NF, at paras 6-8.

second s. 22(2)(c) requirement because his rights are related to various appeal proceedings that he is reasonably contemplating.

[124] The third requirement is that withheld personal information must have some bearing on, or significance for, determination of the right in question. The applicant says that he seeks the disputed information to assist him in an appeal for exoneration because he wishes to understand “possible weaknesses or credibility issues in the case against him in the [foreign country].”⁶⁴

[125] Having carefully reviewed the Residual Information and considered the applicant’s intended use of it, I find that some of the Residual Information has some significance upon the determination of the applicant’s rights. I make this finding without drawing any conclusions about the exonerative value of the Residual Information or the prospect of the applicant successfully using it to appeal his conviction. I find that the third requirement of s. 22(2)(c) is satisfied.

[126] The final s. 22(2)(c) requirement is that the personal information at issue must be necessary in order to prepare for the proceeding or to ensure a fair hearing. For clarity, information that ensures a fair hearing is not necessarily information that supports an applicant’s position in that hearing. Similarly, information that is necessary to prepare for a proceeding does not mean that the information must support an applicant’s position or arguments.

[127] The Ministry says that the applicant admits that the Crown Memo is not an admissible document that can be directly used in a hypothetical appeal.⁶⁵

[128] In my view, the Ministry’s argument mischaracterizes the applicant’s submission. The applicant is not seeking to file a copy of the Crown Memo or any part of it in the course of his appeal in the foreign country. Instead, the applicant explains that he is seeking to access a record that “may set out specific issues identified with the reliability and credibility of an accuser whose evidence has been the primary basis for [the applicant’s] long-term incarceration.”⁶⁶

[129] My understanding is that the basis of the applicant’s contemplated appeals relates to the credibility of individuals who gave evidence during his prosecution in the foreign country. Furthermore, as discussed in the s. 16(1)(b) analysis above, the applicant already knows that his prosecution in Canada was stayed due to credibility issues and a lack of corroborating evidence. Finally, I determined in the s. 15(4)(a) analysis above that the Remaining Information (which fully encompasses the Residual Information) consists of Crown counsel’s reasons for its decision not to prosecute.

⁶⁴ Applicant’s response submission at paras 7-8.

⁶⁵ Ministry’s reply submission at para 82, in reference to para 8 of the Applicant’s response submission.

⁶⁶ Applicant’s response submission at paras 7-8, and 94.

[130] Taking all of these circumstances into consideration, I conclude that the applicant has established that the requirements of s. 22(2)(c) are met in this case. Some, but not all, of the Residual Information is necessary in order for the applicant to prepare for his contemplated appeals and to ensure a fair hearing of them.

[131] I find that some of the Residual Information is relevant to a fair determination of an applicant's rights, which weighs strongly in favour of disclosing that information.

Supplied in confidence, s. 22(2)(f)

[132] Section 22(2)(f) asks whether the personal information was supplied in confidence. If so, this will weigh against disclosure. Section 22(2)(f) requires evidence that an individual supplied the information under an objectively reasonable expectation of confidentiality, at the time they supplied the information.⁶⁷

[133] As explained in greater detail under the s. 16(1)(b) analysis above, I determined that some of the information that the Ministry received from the Surrey RCMP was not received in confidence. For the same reasons discussed in that analysis, I find that the Surrey RCMP did not supply that information to the Ministry under a reasonable expectation of confidentiality. Therefore, this factor does not weigh against disclosing the Residual Information that would reveal this information if disclosed.

[134] However, some of the Residual Information was supplied directly to the Ministry's Crown counsel by an individual third party. This information was supplied in the context of a third party providing sensitive personal information to a Crown counsel lawyer during an important stage of a prosecution proceeding. Under these circumstances, I am satisfied that the individual third party supplied this personal information under a reasonable expectation that the Ministry would keep it confidential. Therefore, I find that s. 22(2)(f) weighs against disclosing this information.

Applicant's own Personal Information

[135] The Ministry argues that "Past OIPC orders have also considered as a factor weighing in favor of disclosure under s. 22(1) whether the disputed personal information is solely the Applicant's personal information." The Ministry

⁶⁷ Order F23-66, 2023 BCIPC 77 (CanLII) at para 69 citing Order F11-05, 2011 BCIPC 5 (CanLII) at para 41, citing Order 01-36, 2001 CanLII 21590 (BCIPC) at paras 23-26.

explains that because none of the disputed information is solely about the applicant, this factor does not weigh in favour of disclosure.⁶⁸

[136] The Ministry did not cite any past orders of my office or another authority to support its position that this factor only favours disclosure if the disputed personal information is only about the applicant.

[137] I have a different understanding of what past orders say about this issue. If the withheld personal information of an applicant is inextricably intertwined with the personal information of third parties, then this circumstance continues to weigh in favour of disclosure but receives less weight than if the information was only about the applicant.⁶⁹ I agree with the reasoning of those past orders and reject the Ministry's argument that this circumstance is made irrelevant by the intertwining of the applicant and third parties' personal information.

[138] In this case, the Residual Information is simultaneously about the applicant and one or more third parties. Therefore, I find that this circumstance weighs somewhat in favour of disclosure.

Sensitivity

[139] Past orders have said that if the disputed information is particularly sensitive, this will weigh against disclosure.⁷⁰

[140] The Ministry argues that the disputed information in this matter is extremely sensitive due to the nature of the offences the applicant was charged with and due to the particular vulnerabilities of the relevant third parties.⁷¹

[141] I acknowledge that the Ministry intended this argument to apply to the entire Crown Memo and with regard to the most sensitive personal information in it. In this s. 22 analysis, however, I am only considering the Residual Information. After considering the nature of the Residual Information and what it reveals about third parties, I find that it is moderately sensitive and that weighs against disclosure.

Applicant's Pre-existing Knowledge

[142] In the s. 16(1)(b) analysis above, I determined that the applicant has a meaningful amount of knowledge about some of the withheld personal information, which includes the Residual Information. Past orders have confirmed

⁶⁸ Ministry's initial submission at paras 166-167.

⁶⁹ Order F24-31, 2024 BCIPC 38 (CanLII) at para 141; Order F15-52, 2015 BCIPC 55 at para 45, Order F22-31, 2022 BCIPC 34 (CanLII) at para 85.

⁷⁰ Order F19-15, 2019 BCIPC 17 (CanLII) at para 99; Order F16-52, 2016 BCIPC 58 at para 87.

⁷¹ Ministry's initial submission at paras 158-162.

that the fact an applicant already knows the personal information at issue is a circumstance that generally weighs in favour of disclosure.⁷²

[143] The Ministry raises several arguments on this point. First, the Ministry says that the applicant's pre-existing knowledge was gained through Crown counsel's duty to provide disclosure during his criminal law proceedings, so the applicant is subject to a continuing implied undertaking of confidentiality over the knowledge gained through that process.

[144] The Ministry draws a distinction between knowledge that is subject to an implied undertaking and knowledge gained in response to an access request under FIPPA. The Ministry argues that Part 2 of FIPPA is an instrument to provide individuals with access to information but that it is not an instrument for gaining access to restricted forms of information.⁷³

[145] Furthermore, the Ministry points to past OIPC orders which found that the fact that the disputed personal information is subject to a confidentiality undertaking is a factor that weighs against disclosure.⁷⁴

[146] At this juncture, I recognize that it is impossible to perfectly ascertain the applicant's pre-existing knowledge and compare the extent of that knowledge to the Residual Information. This process is further complicated by the fact that I do not have a copy of the disclosure provided to the applicant some 18 years ago during his criminal law proceedings.

[147] Despite these challenges, I can see that the applicant knows some of the Residual Information and that he gained this knowledge completely outside of the criminal law disclosure process that attracts an implied undertaking. For example, the applicant clearly knows the identity of the third-party complainant and witness due to the nature of his relationship with them. Similarly, the applicant already knows that Crown counsel stayed his prosecution due to evidentiary and credibility issues because Crown counsel communicated those reasons to him in a letter that responded to his information access request.

[148] Taking all of the circumstances discussed above into consideration, I conclude that the applicant's pre-existing knowledge weighs in favour of disclosing those parts of the Residual Information which reveal the identity of the third-party complainant and witness or the fact evidentiary and credibility issues led to the stay of his prosecution.

⁷² For example, see: Order F17-02, 2017 BCIPC 2 (CanLII) at paras 28-30; Order F15-14, 2015 BCIPC 14 (CanLII) at paras 72-74; and Order F05-13, 2005 CanLII 11964 (BC IPC), at para 28.

⁷³ Ministry's initial submission at paras 163-165, referring to Order 01-52, 2001 CanLII 21606 (BC IPC) at para 73 (upheld by *Guide Outfitters Assoc. v. British Columbia (Information and Privacy Commissioner)*, 2004 BCCA 210 (CanLII)).

⁷⁴ Ministry's initial submission at paras 168-169, referring to Order F20-12, 2020 BCIPC 14 (CanLII) at paras 50-51.

Conclusion – s. 22(1)

[149] I determined that all of the Residual Information is personal information. I also determined that disclosing any of the Residual Information is presumptively an unreasonable invasion of third parties' personal privacy because it was compiled and is identifiable as part of an investigation into a possible violation of law.

[150] Weighing in favour of disclosure is the applicant's pre-existing knowledge of some of the Residual Information and the fact that some of it is relevant to a fair determination of his rights.

[151] The fact that the Residual Information is the personal information of the applicant also weighs in favour of disclosure, however, I give this factor less weight because the Residual Information is also the personal information of third parties.

[152] Similarly, some of the Residual Information was supplied under a reasonable expectation of confidentiality which weighs against disclosure.

[153] Taking the entirety of the parties' submissions and everything discussed above into account, I find that most of the Residual Information would, if disclosed, result in an unreasonable invasion of a third-party's personal privacy.

[154] On the other hand, I find that the presumption has been rebutted with respect to some of the Residual Information. Disclosing this information would not be an unreasonable invasion of any third parties' personal privacy, so the Ministry may not withhold it under s. 22(1).

Conditional Release

[155] The applicant argues that there is no authority preventing me from ordering a conditional release of the Crown Memo, and that the Ministry's concerns about his use of the information can be addressed if I impose conditions on his use of it.⁷⁵ I understand this to be an argument that I should order the entire Crown Memo disclosed to the applicant while simultaneously ordering that he not use the Crown Memo for certain purposes.

[156] In reply, the Ministry argues that "there is no mechanism in relation to an access request under *FIPPA* for "an express or explicit undertaking" to be placed on the disclosure, nor does the OIPC have jurisdiction or authority to enter into or require the Ministry to enter into "an express or explicit undertaking."⁷⁶

⁷⁵ Applicant's submission at paras 93-94.

⁷⁶ Ministry's reply submission at para 84.

[157] The applicant has not directed me to any authority that would allow me to impose restrictions on his use of information that is properly disclosed to him under FIPPA. Similarly, the applicant has not raised any authority that enables me to order the disclosure of information that is properly withheld under FIPPA if I impose conditions on his use. I am not aware of any such authorities, under FIPPA or otherwise. Therefore, I decline to order a complete disclosure of the Crown Memo with the conditions proposed by the applicant.

CONCLUSION

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

1. Subject to item #4 below, the Ministry is authorized under s. 15(1)(g), in part, to withhold the information in dispute.
2. Subject to item #4 below, the Ministry is authorized under s. 16(1)(b), in part, to withhold the information in dispute.
3. Subject to item #4 below, the Ministry is required under s. 22(1), in part, to withhold the information in dispute.
4. I require the Ministry to give the applicant access to the information that it is not required or authorized to withhold under ss. 15(1)(g), 16(1)(b), or 22. I have highlighted in yellow, the information that the Ministry is required to disclose to the applicant in a copy of the Crown Memo which accompanies the Ministry's copy of this order.
5. The Ministry must concurrently provide the OIPC registrar of inquiries with a copy of its cover letter and the information identified in paragraph item #4 above when it sends the information to the applicant.

[157] Pursuant to s. 59(1) of FIPPA, the Ministry is required to comply with this order by **April 13, 2026**.

February 26, 2026

ORIGINAL SIGNED BY

Michael Harvey
Information and Privacy Commissioner for British Columbia

OIPC File No.: F23-93986