



Order F26-18

VANCOUVER BOARD OF PARKS AND RECREATION

David S. Adams
Adjudicator

March 9, 2026

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Summary: An applicant requested records from the Vancouver Board of Parks and Recreation (the Park Board). The Park Board advised the applicant that the requested records no longer existed, and in any event did not relate to the Park Board's business. The adjudicator found that the Park Board did not have custody or control of the records, and that the Park Board had performed its duty to assist the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 3(1), 3(5)(b), 6(1), and s. 65.3.

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), a journalist (the applicant) requested access to messages sent and received on a messaging app (the Chat) by three named commissioners of the Vancouver Board of Parks and Recreation (the Park Board). The Park Board replied that there were no records in its custody or under its control that were responsive to the request, and that in any event, the requested records did not relate to the Park Board's business under s. 3(5)(b) of FIPPA.

[2] The applicant complained to the Office of the Information and Privacy Commissioner (OIPC) that the Park Board did not make every reasonable effort to assist him and to respond without delay, openly, accurately, and completely, as was required under s. 6(1) of FIPPA. He also requested a review of the Park Board's response that there were no responsive records in existence. Mediation by the OIPC did not resolve the issues and they proceeded to inquiry.

[3] Both the applicant and the Park Board provided submissions and evidence in this inquiry. One of the elected commissioners of the Park Board, who was named in the applicant's request (the Park Board Commissioner), was

also invited to participate in the inquiry as an appropriate person under s. 54 of FIPPA, and provided submissions and evidence.

Preliminary matters

Were the requested records deleted?

[4] I understand the applicant's position to be that the Park Board commissioners named in his request were using the Chat to conduct Park Board business out of sight of the public, and that each named commissioner, anticipating access requests, improperly deleted their copy of the Chat.¹

[5] The Park Board Commissioner's evidence on this point is that she deleted her copy of the Chat on December 11, 2023 after the Park Board's meeting, according to her usual practice of deleting "unimportant communications...on an ad hoc but continuous basis".² The Park Board provided an affidavit from the FOI case manager in the City of Vancouver's access to information and privacy division (the FOI Manager)³ whose evidence is that the other two named commissioners advised his office that the "requested records were not retained and were no longer in existence at the time the [applicant's] request was received".⁴ One of the named commissioners advised the FOI office that "chats do delete immediately and nothing is retained".⁵

[6] I find that the named commissioners each deleted their copy of the Chat, either manually or as an automatic operation of the messaging app they used to create the Chat. As a result, I find that records responsive to the applicant's request no longer exist. Further, based on the evidence provided, I am satisfied that by December 12, 2023, the date of the applicant's access request, at least one of the named commissioners had already deleted their copy of the Chat. However, there is insufficient information for me to determine whether the copies of the Chat on the other two commissioners' personal phones still existed at the time of his request.

Applicant's request for investigation

[7] The applicant takes the position that an inquiry is the wrong OIPC process for this matter. He says I should discontinue this inquiry and refer it back for investigation, and that the Commissioner or his delegate should use the powers given under ss. 44(1) and (2) of FIPPA to examine witnesses under oath, to

¹ Applicant's response submission at paras 7, 9, and 19.

² Affidavit of Park Board Commissioner at para 8.

³ The City of Vancouver's access and privacy office also provides its services to the Park Board: Affidavit of FOI Manager at paras 4-7.

⁴ Affidavit of FOI Manager at paras 24-26.

⁵ *Ibid*, Exhibit I.

compel the production of documents, and to undertake a “forensic examination of the related software and hardware”. He also says the Commissioner should enforce the offence provision in s. 65.3, which makes it an offence to wilfully conceal, destroy, or alter any record to avoid complying with an access request. He concludes: “Now is the time for the OIPC to be the watchdog that it was created to be, to enforce the laws against destruction of public records.”⁶

[8] In reply to these statements, the Park Board says that given the applicant’s apparent lack of interest in proceeding with this inquiry, it should be cancelled.⁷ The Park Board Commissioner did not object to the applicant’s request to “halt the inquiry”.⁸

[9] I wrote to the applicant to advise him that my role was limited to deciding the issues set out in the Notice of Inquiry and to ask whether, in light of his position that it “would be a mistake to carry on with this inquiry”, it was necessary for me to proceed with it and decide the issues on the merits. The applicant, although maintaining his position on the inappropriateness of the inquiry process for the dispute, did not agree to cancel the inquiry.⁹

[10] The issues in this inquiry have already been investigated by the OIPC, though not to the applicant’s satisfaction. Since I have been delegated to conduct this inquiry and decide the issues, and the applicant has not agreed to cancel the inquiry, I am going to proceed with that task.

[11] The applicant is correct that s. 44(1) allows me to order witnesses to attend and answer questions, and to order the production of documents. However, I have not found it necessary to do so in this case. The evidence provided by the parties was sufficient for me to decide all the issues in this inquiry.

[12] As for the wilful evasion of FIPPA’s access provisions under s. 65.3, prosecution of offences under FIPPA is the responsibility of the Attorney General. I have no jurisdiction to determine whether an offence occurred or to prosecute such an offence.¹⁰

Applicant’s submission and attachments

[13] The applicant provided me with a submission and a wide range of supporting material. In particular, he refers to several reports of the Integrity Commissioner for the City of Vancouver and the Park Board. In one of these

⁶ Applicant’s response submission at paras 1, 4-6, 10, and 21.

⁷ Park Board’s reply submission at para 3.

⁸ Park Board Commissioner’s reply submission at para 2.

⁹ My February 4, 2026 letter to the applicant, and the applicant’s email response of the same day.

¹⁰ Order F23-55, 2023 BCIPC 64 (CanLII) at para 65.

reports, dated February 21, 2025, the Integrity Commissioner found that in 2023, several Park Board commissioners, including those named in the applicant's access request, breached the "open meeting" requirement of the Vancouver Charter on several occasions by meeting as a quorum and materially moving Park Board business ahead, sometimes in person and sometimes by the use of a messaging app.¹¹

[14] While I have read and considered all this material, in this order I will refer only to those portions of it that I have found necessary to decide the issues in dispute in this inquiry.

ISSUES AND BURDEN OF PROOF

[15] The issues I must decide in this inquiry are:

1. Whether the responsive records related to the business of the Park Board pursuant to s. 3(5)(b); and
2. Whether the Park Board's response and the deletion of those responsive records constitute a failure to make every reasonable effort to assist the applicant and to respond without delay, openly, accurately, and completely, as is required by s. 6(1).

[16] FIPPA does not specify who has the burden of proof under ss. 3 and 6, but previous orders have established that the burden is on the public body to establish that records are outside the scope of FIPPA under s. 3 and that it has performed its duties under s. 6(1).¹²

DISCUSSION

Background

[17] The Park Board is a public body established by the Vancouver Charter.¹³ It is made up of commissioners who are elected to four-year terms. The current commissioners were elected in 2022. Commissioners serve on a part-time basis, with the Park Board holding its regular meetings in the evening. At the material times, the three Park Board commissioners named in the access request were members of the ABC Vancouver political party.

¹¹ At 37 and 42.

¹² See, e.g., Order F20-13, 2020 BCIPC 15 (CanLII) at paras 8 and 13.

¹³ SBC 1953 c 55, s. 485; FIPPA's definitions of "local government body", "local public body", and "public body".

[18] On December 6, 2023, the mayor of Vancouver, who is also affiliated with the ABC party, issued a press release stating that he would bring a motion before Vancouver City Council asking the province to remove the requirement for an elected Park Board under the Vancouver Charter and to transfer the Park Board's powers to City Council.

[19] On December 11, 2023, the Park Board held a meeting at which the mayor's proposed motion was discussed. An attendee of this meeting took a photo of the screen of the personal cell phone of one of the Park Board commissioners and posted it on social media. The screen displayed a portion of the Chat, which was titled "Transition Team".

Records at issue

[20] There are no currently-existing records at issue. The record the applicant is seeking is the Chat, which has been deleted.

Application of FIPPA – ss. 3(1) and 3(5)(b)

[21] Section 3(1) of FIPPA provides that FIPPA applies to all records in the custody or under the control of a public body, subject to certain exceptions set out in ss. 3(3) to 3(5). I understand the Park Board's position to be that:

1. no copies of the Chat existed at the time the Park Board was preparing its response to the access request;
2. when the Chat existed, it was never in its custody or under its control; and
3. in any event, the Chat did not relate to the business of the Park Board, so s. 3(5)(b) applied to it.

[22] Section 3(5)(b) provides that Part 2 of FIPPA (which sets out the access rights of an applicant) does not apply to records that do not relate to the business of the public body.

[23] In my view, it is necessary first to decide whether the records at issue were in the custody or under the control of a public body. If they were not, FIPPA did not apply to them, whether or not any s. 3(5) exceptions apply.

Parties' positions on custody and control – s. 3(1)

[24] The Park Board says it never had custody or control of the Chat.¹⁴ In support of its position, the Park Board provided evidence from the FOI Manager and the manager responsible for its executive office and Board relations (the

¹⁴ Park Board's initial submission at paras 62-71.

Board Relations Manager). The Park Board Commissioner makes submissions that are substantially similar to those of the Park Board.¹⁵

[25] I take the applicant's position to be that the Park Board had a duty to prevent the deletion of the Chat because it may have related to City of Vancouver or Park Board business. He doubts the Park Board Commissioner's statement to the contrary.¹⁶ In reply, the Park Board Commissioner says there is nothing in the applicant's submission that supports a conclusion that the Chat was ever subject to FIPPA under s. 3(1).¹⁷

Analysis - custody and control

[26] Either custody or control of a record will suffice to bring it into FIPPA's scope; both are not required.¹⁸ If a record is neither in the custody nor under the control of the Park Board, then it is outside the scope of FIPPA and an applicant does not have a right to access it. FIPPA does not define "custody" or "control", but many previous orders have interpreted those terms, and I will apply those interpretations below.

Custody

[27] To have custody of a record, a public body must have both a) physical possession of it and b) some legal rights or responsibilities related to it.¹⁹

[28] The Park Board says it never had physical possession of the Chat or the right to deal with it. It says the Park Board never made use of the Chat, and that the Board has no ability to compel individual commissioners to produce records from their personal phones. It says there is no evidence that the Chat related to its core function.²⁰

[29] The Park Board Commissioner gives the following evidence:

I use two cellphones: a personal cellphone and a Parks Board business cellphone. My practice is to use the Parks Board business cellphone for business and communications in my capacity as Parks Board Commissioner. To my knowledge, all such business records are available to the Parks Board and City [of Vancouver] record keeping through that cellphone and my City email account. This also includes my work in relation to the Parks Board transition committee, which was formed after December 11, 2023...

¹⁵ Park Board Commissioner's submission at paras 44-69.

¹⁶ Applicant's response submission at paras 7-11.

¹⁷ Park Board Commissioner's reply submission at para 7.

¹⁸ Order F18-45, 2018 BCIPC 48 (CanLII) at para 15.

¹⁹ Order F25-16, 2025 BCIPC 20 (CanLII) at paras 61-63.

²⁰ Park Board's initial submission at para 62.

I do not recall who created the Chat. My recollection is that other people included in the Chat were (a)...([a] Communications staff member for [the] ABC [political party] at the time); and (b)...([a] current Parks Board Commissioner). I very much consider this Chat to be a private and internal party discussion. One of the participants was an ABC party staffer with no role in municipal government whatsoever.

The Chat was about personal and party-related communications between the participants and did not relate to the execution of my public duties. The Chat was not about or for the purpose of the Parks Board or City business. As I understood and used it, the Chat was for personal and political chat, about minor non-substantive matters, between the participants which were transitory, at most. To my recollection, the Chat consisted of a few messages and was not a substantial discussion of anything.

I attended in person the Parks Board meeting of December 11, 2023...It appears to me that the photographs taken of the Chat on my personal cellphone were taken before the meeting started.²¹

[30] An officer or member of a public body may do something (such as create a record) in their official capacity as an officer or member, or in their personal capacity.²² I accept the Park Board Commissioner's evidence on these points and find that, given her description of the nature of the Chat, the named commissioners created the Chat in their personal capacities. Given this finding, I have no difficulty accepting the Board Relations Manager's evidence that the Park Board never had physical possession of the Chat.²³

[31] Since both physical possession and some legal rights and responsibilities with respect to a record are required to ground a finding of custody, I find that the Park Board never had custody of the Chat.

Control

[32] Previous orders have examined a number of factors to determine whether a public body has control of a record, including:

- Whether the record was created by an officer or employee of the public body in carrying out their duties;
- Whether the public body has statutory or contractual control over the record;

²¹ Affidavit of Park Board Commissioner at paras 4-6.

²² See, e.g., Order F23-68, 2023 BCIPC 79 (CanLII) at paras 20-27, where a city councilor was held to have created online chats in both capacities, depending on the circumstances and contents of the chats.

²³ Affidavit of Board Relations Manager at para 32.

- Whether the public body has relied on the record;
- Whether the record is integrated with the public body's other records;
- Whether the public body has the authority to regulate the use and disposition of the record; and
- Whether the contents of the record relate to the public body's mandate and functions.²⁴

[33] The Park Board says it never had control of the Chat: the Chat was not created by a public official in the course of carrying out their duties, it never had possession of the Chat, it never relied on the Chat, it never integrated the Chat with its other records, and it had no authority to regulate the use or disposition of the Chat.²⁵

[34] I found above that the Chat was created by the named commissioners in their personal capacities rather than their official capacities. It follows that I find that the Chat was not created by an officer or employee of the Park Board in the course of their duties. This factor weighs against a finding of control.

[35] I also accept the evidence of the Board Relations Manager, who says the Park Board never relied on the Chat in any way. I also find her evidence that the Park Board never had possession of the Chat, which I accept, means that it could not have been integrated into the Park Board's other records.²⁶ I find this factor weighs against a finding of control.

[36] With respect to whether the Park Board had the authority to regulate the use and disposition of the Chat, the Park Board submits that it did not. The Board Relations Manager deposes that she is not aware of any authority that the Park Board has to compel the production of records stored on commissioners' personal cell phones.²⁷ I find this factor to weigh against a finding of control.

[37] With respect to whether the contents of the Chat relate to the Park Board's mandate and functions, I accept the Park Board Commissioner's evidence that the Chat involved personal and partisan communications and was not about Park Board business.²⁸ The applicant suspects the Park Board Commissioner may not be telling the truth, and says that since the Chat was titled "Transition Team", it must be related to the Vancouver mayor's decision to transition the Park Board into an unelected body.²⁹ While I have considered the reports of the Integrity Commissioner the applicant provided, he does not provide a reasonable basis for

²⁴ Order F24-96, 2024 BCIPC 110 (CanLII) at para 22, citing Order F24-32, 2024 BCIPC 39 (CanLII) at paras 15-17.

²⁵ Park Board's initial submission at paras 63-71.

²⁶ Affidavit of Board Relations Manager at para 32.

²⁷ *Ibid* at para 33.

²⁸ Affidavit of Park Board Commissioner at paras 4- 5 and 9.

²⁹ Applicant's response submission at paras 9 and 12.

me to doubt the Park Board Commissioner's duly affirmed, detailed, specific evidence on this point. I find this factor to weigh against a finding of control. Even if the Chat were related to the mayor's decision, and if I accepted that this was sufficient to find it related to the Park Board's mandate and functions (a question about which I make no finding), I would have found this factor to weigh only modestly in favour of a finding of control.³⁰

[38] Weighing these factors together, I have no difficulty in finding that the Park Board never had control of the Chat.

Conclusion on the application of FIPPA

[39] Since the Park Board never had either custody or control of the Chat, it follows that FIPPA did not apply to the Chat under s. 3(1). Given this finding, it is unnecessary to consider whether s. 3(5)(b) also applies to exclude the application of Part 2 of FIPPA, and I decline to do so.

Public body's duty to assist applicants – s. 6(1)

[40] Section 6(1) describes a public body's duty to assist applicants:

The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

[41] The applicant made a complaint to the OIPC that the Park Board's "response and alleged deletion" of the responsive records constitutes a failure to make every reasonable effort to assist him with his access request and to respond without delay, openly, accurately and completely.³¹

Parties' positions

[42] I understand the applicant's position to be that the Park Board should not have allowed the commissioners to destroy the Chat, and that the destruction was improper. He says public officials should not "take liberties to hide their communication from citizens".³² However, he does not expressly say anything about the Park Board's duties under s. 6(1).

[43] The Park Board says it has met its duty to assist the applicant because it followed up with the three commissioners identified in the request on an expedited basis (advising them that they should retain all potentially responsive records), conducted an investigation that included reasonable follow-up

³⁰ See, e.g., Order F08-01, 2008 CanLII 1644 (BC IPC) at para 46.

³¹ Investigator's Fact Report.

³² Applicant's response submission at paras 8-11 and 19-21.

questions, and responded to the applicant openly, accurately, and completely. It says the steps it took are what a fair and rational person would expect to be done or would find acceptable.³³ The Park Board says the applicant has led insufficient evidence to rebut its position in the s. 6(1) complaint, so the complaint should be dismissed.³⁴

[44] The Park Board Commissioner says the issue is moot since the public body does not have custody or control of the records, but does not otherwise make a submission directly on s. 6(1).³⁵

Analysis

[45] I first turn briefly to the issue of mootness. The Park Board Commissioner relies on Decision F10-01 for the proposition that whether a public body has conducted an adequate search for records under s. 6(1) is moot where the public body does not have custody or control of the records.³⁶ Here, the issue under s. 6(1) (as set out in the Notice of Inquiry) includes all aspects of its duty to assist the applicant. If I find that the Park Board's response to the applicant was deficient, I can order it to perform its duty. I do not find this issue to be moot.

What was required under s. 6(1)?

[46] Former Commissioner Loukidelis addressed the adequacy of a public body's search for records in these terms:

Although [FIPPA] does not impose a standard of perfection, it is well established that, in searching for records, a public body must do that which a fair and rational person would expect to be done or consider acceptable. The search must be thorough and comprehensive. The evidence should describe all potential sources of records, identify those searched and identify any sources that were not searched, with reasons for not doing so. The evidence should also indicate how the searches were done and how much time public body staff spent searching for records.³⁷

[47] Public bodies are also required to locate deleted emails that are retrievable without excessive efforts.³⁸

³³ Park Board's initial submission at paras 76-81.

³⁴ Park Board's reply submission at para 4.

³⁵ Park Board Commissioner's initial submission at paras 24-25.

³⁶ *Ibid* at paras 24-25; Decision F10-01, 2010 BCIPC 5 (CanLII) at para 33.

³⁷ Order 02-03, 2002 CanLII 42428 (BC IPC) at para 14.

³⁸ Order No. 121-1996, 1996 CanLII 755 (BC IPC) at 10; Order F19-04, 2019 BCIPC 5 (CanLII) at paras 14-25.

[48] A public body's response to an applicant that does not address or explain gaps in the responsive records identified by an applicant may fall short of its duty to respond openly, accurately, and completely.³⁹

How did the Park Board respond to the applicant?

[49] The Park Board says its normal practice is to respond to access requests within two business days, but that it expedited the applicant's request in view of the potentially transient nature of the records requested and the high degree of public interest in the matter.⁴⁰

[50] The FOI Manager provided evidence on the Park Board's response to the request. He says his office identified the three commissioners named in the request as potential record holders. He says his office clarified with a Park Board staff member that the request for records included responsive records on personal cell phones, and advised the staff member: "Commissioners should not be dele[t]ing any records that may be responsive to the request". He says his office corresponded with the commissioners, clarifying the commissioners' position that the Chat did not relate to Park Board business and had already been deleted. He provided me with copies of that correspondence. He says his office advised the applicant of the results of his office's investigation. He says he is not aware of any other avenues for investigation normally undertaken that were not undertaken in this case. He says the total time his office spent in processing the request was about 3.75 hours.⁴¹

[51] The applicant does not clearly identify any step the Park Board failed to take in searching for responsive records or in responding to his request. Based on the evidence before me, which I accept, I find that the Park Board's efforts to search for responsive records were thorough and comprehensive. It is clear to me that the Park Board was aware that responsive records could have been stored on commissioners' personal cell phones and acted appropriately based on that awareness. I also find the Park Board performed its duty to respond to the applicant openly, accurately, and completely. I cannot see what more the Park Board could have done for the applicant in the circumstances.

[52] As for the deletion of the Chat, I found above that the Park Board did not have custody or control of it. The Park Board commissioners' deletion of their copies of the Chat did not amount to a failure of the Park Board to assist the applicant under s. 6(1). While the applicant has concerns about the Park Board's failure to provide the Chat, the public body took reasonable steps to locate and provide the Chat and its response adequately explains why the Chat was not provided.

³⁹ Order F05-12, 2005 CanLII 11963 (BC IPC) at paras 28-31.

⁴⁰ Park Board's initial submission at para 21; Affidavit of FOI Manager at para 15.

⁴¹ Affidavit of FOI Manager at paras 8-28.

[53] For these reasons, I find the Park Board made every reasonable effort to assist the applicant and to respond openly, accurately, and completely.

CONCLUSION

[54] For the reasons given above, under s. 58(3) of FIPPA, I confirm that the requested records were outside of the scope of FIPPA under s. 3(1), and that the Park Board performed its duty to the applicant under s. 6(1).

March 9, 2026

ORIGINAL SIGNED BY

David S. Adams, Adjudicator

OIPC File No.: F24-96728