



Order P26-17

PROTECT INTERNATIONAL RISK AND SAFETY SERVICES INC.

Rene Kimmett
Adjudicator

September 29, 2026

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Summary: An individual (applicant) made a request under the *Personal Information Protection Act* (PIPA) to Protect International Risk and Safety Services Inc. (Protect International) for access to his personal information related to a threat assessment it conducted on behalf of the University of British Columbia. The adjudicator found that the records containing the requested personal information were subject to the *Freedom of Information and Protection of Privacy Act*. As a result, she found, per s. 3(2)(d) of PIPA, that PIPA does not apply to the requested personal information and, therefore, Protect International is not required, under PIPA, to give the applicant access to this personal information.

Statutes Considered: *Personal Information Protection Act*, [SBC 2003] c. 63, s. 3(2)(d); *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165, ss. 3(1) and Schedule 1 (definitions of “employee” and “service provider”).

INTRODUCTION

[1] An individual (applicant) made a request under the *Personal Information Protection Act* (PIPA) to Protect International Risk and Safety Services Inc. (Protect International) for access to his personal information related to a threat assessment that Protect International conducted about the applicant on behalf of the University of British Columbia (the University).

[2] In response, Protect International told the applicant that it would not be providing responsive records to him because it had created these records while acting as an agent for the University. Protect International directed the applicant to make an access request to the University under the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[3] The applicant followed Protect International's direction and forwarded his request to the University. However, the applicant remained unsatisfied with

Protect International's response and asked the Office of the Information and Privacy Commissioner (OIPC) to review Protect International's decision to not provide him with records responsive to his access request.

[4] The OIPC's mediation process did not settle the issue, and the matter proceeded to this inquiry.

[5] In accordance with s. 48 of PIPA, the OIPC notified the University of the inquiry and invited it to participate. The University did not provide a submission for the inquiry, but it did provide evidence to support Protect International's position and that evidence was included with Protect International's submissions.

ISSUE AND BURDEN OF PROOF

[6] Based on my review of the parties' submissions and the relevant statutory provisions, I conclude the issue I must decide in this inquiry is whether, under s. 3(2)(d) of PIPA, PIPA does not apply to the personal information requested by the applicant because FIPPA applies to that information.¹

[7] PIPA does not say which party has the burden to prove that a provision under s. 3 of PIPA applies. However, when there is no statutory burden, previous decision makers have considered the following factors to determine which party has the burden of proof:

- (a) Who raised the issue or invoked the relevant statutory provision to refuse access?
- (b) Who is in the best position to meet the burden of proof, including which party has the relevant expertise, evidence and knowledge to establish a provision applies?
- (c) What is fair in the circumstances?²

[8] I agree with and adopt that approach here. In this case, Protect International is asserting that PIPA does not apply to the requested personal information and it is also in the best position to provide evidence supporting its

¹ The Notice of Inquiry states that the issue in dispute is whether the personal information requested by the applicant is in the control of the organization in accordance with PIPA. However, I do not find this statement to be an accurate description of the issue between the parties. The parties' submissions centre around the threshold question of whether PIPA applies to the requested personal information by virtue of s. 3(2)(d) of PIPA. If s. 3(2)(d) of PIPA applies, then it is not necessary to consider whether the organization has control of the requested records in accordance with PIPA. For this reason, I have reframed the issue listed in the Notice of Inquiry to better reflect the dispute between the parties.

² Order F21-35, 2021 BCIPC 43 (CanLII) at para 20.

position. I also find it fair for Protect International to have to support its viewpoint regarding the inapplicability of PIPA to the requested personal information. For these reasons, I find Protect International has the burden to prove that s. 3(2)(d) applies to the requested personal information.

DISCUSSION

Section 3(2)(d) – does PIPA or FIPPA apply?

[9] The relevant parts of PIPA read:

3(1) Subject to this section, this Act applies to every organization.

(2) This Act does not apply to the following:

[...]

(d) personal information if the *Freedom of Information and Protection of Privacy Act* applies to the personal information;

[...]

[10] The relevant part of FIPPA reads:

3 (1) Subject to subsections (3) to (5), this Act applies to all records in the custody or under the control of a public body [...]

[11] The purpose of s. 3(2)(d) of PIPA is to avoid overlap between FIPPA and PIPA. Section 3(2)(d) ensures that only FIPPA applies to personal information that is held by a private sector organization but in the custody or under the control of a public body.³

[12] Protect International is a private organization under PIPA and the University is a public body under FIPPA.

[13] To determine whether FIPPA applies, rather than PIPA, I must determine whether the records responsive to the applicant's access request are in the custody or under the control of the University. In this case the parties' submissions relate only to the question of whether the University has control of the responsive records.

[14] Previous OIPC orders have set out the following non-exhaustive list of factors for determining whether a public body has control of a record for the purposes of FIPPA:

³ Order P05-02, 2005 CanLII 18158 (BC IPC) at para 8.

- was the record created by an officer or employee of the public body in carrying out their duties?
- does the public body have statutory or contractual control over the record?
- does the public body have physical possession of the record?
- has the public body relied on the record?
- is the record integrated with the public body's other records?
- does the public body have authority to regulate the use and disposition of the record?
- do the contents of the record relate to the public body's mandate and functions?⁴

[15] Not every factor listed above will be relevant in every case. Further, a public body's control does not need to be exclusive for FIPPA to apply.⁵

[16] Protect International's position is that the University has control of the records responsive to the applicant's access request because Protect International compiled and collected the records while providing services to the University under contract.⁶ To support this position, Protect International provided affidavit evidence from the University's lawyer. The lawyer deposes that the University retained and compensated Protect International, under contract, to provide threat assessment support services to the University.⁷ She argues this means that Protect International is a "service provider" as defined in Schedule 1 of FIPPA. She argues that records held by service providers, on behalf of the University, are under the University's control and, therefore, the applicant's request for this information is governed by FIPPA rather than PIPA.

[17] The applicant submits that Protect International and the University's lawyer have not produced the contract as evidence in this inquiry or quoted any contractual term giving the University the right to direct Protect International's disclosure of its own file.⁸

[18] I agree with the applicant that it would have been useful for Protect International or the University's lawyer to provide the contract or explain whether the contract stipulated that the University had control of the records created or compiled under contract. However, the presence or absence of a contractual term is only one factor to consider and does not conclusively determine the question of whether the University has control of the records.

⁴ Order F24-82, 2024 BCIPC 94 (CanLII) at para 19.

⁵ Order P05-02, 2005 CanLII 18158 (BC IPC) at para 10, citing Order 04-19, 2004 CanLII 45529 (BC IPC) at para 46.

⁶ Protect International's initial submission at page 4, para 1.

⁷ Lawyer's affidavit #1 at para 7.

⁸ Applicant's response submission at paras 7 and 10.

[19] For the reasons below, I find the requested records are under the University's control and, therefore, FIPPA applies to the requested information and PIPA does not.

[20] I am satisfied the requested records were created by an "employee" of the public body in carrying out their duties to the public body. FIPPA's definition of an "employee" includes a "service provider", and a "service provider" is defined as "a person retained under a contract to perform services for a public body".⁹ I accept the lawyer's evidence that Protect International was retained under a contract to perform services for the University. As a result, I find Protect International is an employee of the University for the purposes of FIPPA. I also accept that Protect International created or compiled the responsive records as part of performing its contracted services to the University. For these reasons, I find Protect International created the relevant records while carrying out its duties as an "employee" of the University.

[21] I also find the University has physical possession of the requested records. The lawyer says, and I accept, that Protect International provided the University with a threat assessment report as it was required to do under the contract and that, upon request, Protect International gave the University a copy of the records in its possession that were responsive to the applicant's access request.¹⁰ This evidence also satisfies me that the University has the authority to regulate the use of the relevant records and those records are now integrated with the University's other records.

[22] To conclude, I find the records containing the personal information requested by the applicant are under the control of the University, which is a public body subject to FIPPA. Per s. 3(2)(d), FIPPA and not PIPA applies to the requested information; therefore, the applicant cannot obtain the requested information from Protect International through an access request made under PIPA.

How can the applicant get access to the records responsive to his access request?

[23] As explained in the introductory section of this order, the applicant followed Protect International's direction and forwarded his request for his personal information to the University. This was the appropriate course of action because, as explained above, the responsive records are subject to FIPPA, not PIPA.

⁹ FIPPA, Schedule 1.

¹⁰ Lawyer's affidavit #1 at paras. 7-8 and affidavit #2 at para. 6.

[24] The applicant submits he has not received the requested records from the University.¹¹ If the applicant has not received a response from the University regarding his access request or if he is unsatisfied with the University's response to his access request, he may make a complaint or a request for review to the OIPC.

How should organizations and public bodies respond to access requests involving records held by an organization but under a public body's control?

[25] In his access request to the University under FIPPA, the applicant informed the University that Protect International had refused to provide him with his personal information under PIPA because, in its view, the University needs to authorize disclosure of the records that Protect International created or compiled while under contract with the University. The applicant also asked the University to facilitate access to his personal information contained in the records held by Protect International.

[26] The applicant provides evidence that, in response to his access request, the University initially informed the applicant that it could not "collect any records that are solely held by Protect International."¹² Based on the findings in this order, I conclude the University's initial response was incorrect because the requested records were under the University's control for the purposes of FIPPA.

[27] For certainty, where an organization believes requested personal information is subject to FIPPA rather than PIPA because it is contained in records under the control of a public body, the organization should notify the applicant of this belief and direct them to make an access request to the relevant public body under FIPPA. It would also be helpful for the organization to connect the applicant directly with the public body and explain, to the public body, its belief that the personal information is subject to FIPPA.

[28] Where a public body receives a request for records that are held by a private organization, the public body must consider whether those records are under its own control. Public bodies should consider this issue regardless of whether it has been raised by an applicant or organization. If there are responsive records held by an organization but under the public body's control, the public body must direct the organization to send the public body these records so that it can meet its obligations under FIPPA to respond to each applicant openly, accurately and completely.

¹¹ Applicant's sur-reply.

¹² Applicant's response submission at PDF page 52.

CONCLUSION

[29] For the reasons given above, I find the personal information the applicant requested from Protect International is in records to which FIPPA applies. As a result, under s. 3(2)(d) of PIPA, PIPA does not apply to this personal information; Protect International is not required, under PIPA, to provide the applicant with access to the requested personal information.

September 29, 2026

ORIGINAL SIGNED BY

Rene Kimmitt, Adjudicator

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