Court File No. VLC-S-S-259066
No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

In the Matter of a decision of the Office of Information and Privacy Commissioner dated October 21, 2025, in OIPC File Nos. F23-93727 and F23-94032, and in the matter of the *Judicial Review Procedure Act*, RSBC 1996, c 241

BETWEEN:

THE MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL OF BRITISH COLUMBIA

PETITIONER

AND:

INFORMATION AND PRIVACY COMMISSIONER FOR BRITISH COLUMBIA

RESPONDENT

PETITION TO THE COURT

ON NOTICE TO:

INFORMATION AND PRIVACY COMMISSIONER OF BRITISH COLUMBIA
4th Floor – 947 Fort Street
Victoria, B.C. V8V 3K3

And

The Applicant
Travis Bell
Prisoners' Legal Services, **Attention: Max McQuaig**
310-7818 6th Street
Burnaby, BC V3N 4N8
Phone: (604) 636-0470

The address of the registry is: 800 Smithe Street, Vancouver, BC V6Z 2E1.

The petitioner estimates that the hearing of the petition will take one (1) day.

[X] This matter is an application for judicial review.

[ ] This matter is not an application for judicial review.

This proceeding is brought by the Petitioner for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the petitioner

(i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioners,

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

(1)	The ADDRESS FOR SERVICE of the Petitioner is: Ministry of Attorney General Legal Services Branch PO Box 9280 STN PROV GOVT Victoria, British Columbia, V8W 9J7 Fax number address for service of the Petitioner: (250) 953-3557 E-mail address for service (if any) of the Petitioner: Matthew.Fingas@gov.bc.ca Dario.Balca@gov.bc.ca
(2)	The name and office address of the petitioner's lawyer is: Matthew Fingas and Dario Balca Ministry of Attorney General Legal Services Branch PO Box 9280 STN PROV GOVT

	Victoria, British Columbia, V8W 9J7

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. An order in the nature of *certiorari* under section 2(2)(a) of the *Judicial Review Procedure Act,* RSBC 1996, c 241 (the "***JRPA***"), quashing the decision of the Information and Privacy Commissioner for British Columbia (the "**Commissioner**") in OIPC Order F25-81 (the "**Decision**").

2. A declaration under section 2(2)(b) of the *JRPA* that in the present case, the Ministry of Public Safety and Solicitor General (the "**MPSSG**") is not required to disclose the records at issue in this proceeding to the Applicant under ss. 15(1)(f), 15(1)(l), 15(2)(c), and 19(1)(a) of the *Freedom of Information and Protection of Privacy Act,* RSBC 1996, c. 165 ("***FIPPA***").

3. A declaration under section 2(2)(b) of the *JRPA* that the records at issue in this proceeding contain personal information subject to an exception from disclosure under s. 22(3)(i) of *FIPPA.*

4. An order under section 2(2)(a) of the *JRPA* that the Commissioner reconsider the analysis in the Decision pertaining to s. 22(4)(3) of *FIPPA*.

5. Alternatively, an order remitting this matter back to the Commissioner for reconsideration in light of this Court's reasons.

6. Such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

The Parties

7. The MPSSG is a "public body" as defined in Schedule 1 of *FIPPA*. Within the MPSSG, BC Corrections manages the supervision of adults in custody or subject to community supervision. BC Corrections also manages the operation of correctional centres throughout British Columbia.

8. The Commissioner is an independent Officer of the Legislature who oversees the information and privacy practices of public bodies and private organizations. The Commissioner is responsible for the administration of *FIPPA*.

The Inquiry

9. On March 13, 2023, an applicant (the "**Applicant**") made an access to information request to the MPSSG under *FIPPA* for all video footage (the "**Video Footage**") pertaining

to the uses of force against the Applicant at North Fraser Pretrial Centre ("**NFPC**") on October 31, 2021 and January 5, 2022 (the "**Incidents**").

10. On May 30, 2023, the MPSSG responded to the Applicant advising that the Video Footage was being withheld from production pursuant to the exceptions from disclosure provided in ss. 15 (1)(l), 15(2)(c), and 22 of *FIPPA.*

11. Within the MPSSG's response of May 30, 2023, the Applicant was offered the opportunity to privately view the Video Footage with their legal representative.

12. On July 7, 2023, the Applicant requested that the Commissioner review the MPSSG's decision to withhold the Video Footage.

13. At a Commissioner-facilitated mediation, the MPSSG advised the Applicant that ss. 15(1)(f) and 19(1)(a) *FIPPA* exceptions also applied to the Video Footage. This mediation resolved the Applicant's *FIPPA* s. 25(1) complaint but did not resolve the other issues in dispute.

14. On January 8, 2025, the Commissioner issued a Notice of Inquiry (the "**Inquiry**") pursuant to s. 56 of *FIPPA.* The Notice of Inquiry sets out that an adjudicator would consider whether the MPSSG:

a. was required to refuse to disclose the Video Footage under section 22 of *FIPPA*;

b. was authorized to refuse to disclose the Video Footage under ss. 15(1)(f), 15(1)(l), 15(2)(c), and 19(1)(a) of *FIPPA;* and

c. met its duty to assist the applicant under ss. 4(2), 6(1), and 9(2) of *FIPPA.*

15. On January 24, 2025, the MPSSG wrote to the Commissioner providing notice that the Video Footage captured BC Ambulance Service paramedics and Port Coquitlam Fire Service members. This letter requested that the City of Port Coquitlam (the "**City**") and the Provincial Health Service Authority (the "**PHSA**") be added to the Inquiry as appropriate persons under s. 54(b) of *FIPPA* because those parties were best situated to provide evidence and submissions with respect to the application of s. 22 of *FIPPA* to their employees.

16. On January 28, 2025, an adjudicator of the Commissioner responded to the MPSSG's letter of January 24, 2025 declining the MPSSG's request to add the other parties to the Inquiry because it was not clear to the adjudicator what submissions the City or the PHSA would be able to make about the application of s. 22 of *FIPPA* to their own employees that the MPSSG could not make on its own behalf. The adjudicator also invited the MPSSG to provide evidence from employees of the City or the PHSA as part of the inquiry.

17. On February 27, 2025, the MPSSG provided the Commissioner with written submissions and affidavit evidence to support its position that the Video Footage was appropriately withheld pursuant to ss. 15 (1)(f), 15(1)(l), 15(2)(c), 19(1)(a), and 22 of *FIPPA*.

18. In those submissions, the MPSSG clarified that the Video Footage was comprised of 25 video files recorded at NFPC when the Applicant was in custody.

19. The MPSSG also provided affidavit evidence from three individuals, including an Assistant Deputy Warden at NFPC, a privacy analyst employed by the MPSSG, and a Records and Privacy Advisor of the City.

20. These affidavits explained, in part, the operation of correctional centres in British Columbia, including the operation of their security systems. These affidavits also provided evidence regarding the risks and occurrence of violence in correctional centres as well as the occurrence and risks associated with the smuggling of contraband into correctional centres.

21. On May 26, 2025, the Applicant provided responsive written submissions through counsel. These submissions sought an order compelling the MPSSG to release the Video Footage to the Applicant.

22. On June 18, 2025, the MPSSG provided reply submissions to the Commissioner.

The Adjudicator's Decision

23. On October 21, 2025, the Commissioner's delegate (the "**Adjudicator**") issued OIPC Order F25-81.

24. In the Order, the Adjudicator determined that the MPSSG had not established the application of ss. 15(1)(f), 15(1)(l), 15(2)(c), and 19(1)(a) *FIPPA* exceptions, and thus the MPSSG was not authorized to withhold the Video Footage from production to the Applicant.

25. The Adjudicator also considered whether the Video Footage contained personal information subject to exceptions from disclosure in s. 22 of *FIPPA.* In this analysis, the Adjudicator determined that the Video Footage containing personal information including depictions of correctional officers' and emergency personnels' faces and bodies is information about their positions and functions as public body employees within the meaning of s. 22(4)(e) of *FIPPA,* thus disclosure of this information would not be an unreasonable invasion of those parties' privacy.

26. The Adjudicator also considered the application of *FIPPA* s. 22(3)(i) to the personal information contained in the Video Footage. The Adjudicator made findings of fact that the Video Footage depicted individuals' skin colour and some individuals wearing turbans.

The Adjudicator then determined that the visual depictions of the individuals' skin colour and head coverings were not personal information that indicates a third party's racial or ethnic origin, or religious beliefs within the meaning of *FIPPA* s. 22(3)(i).

Part Three: LEGAL BASIS

27. The Adjudicator's decisions in Order 25-81 regarding the application of *FIPPA* ss. 15(1)(f), 15(1)(l), 15(2)(c), and 19(1)(a) to the Video Footage are unreasonable.

28. The Adjudicator unreasonably discounted the submissions and evidence provided by the MPSSG and unreasonably misapplied the onus provisions in relation to each of these statutory exceptions to disclosure, resulting in an unreasonable and incorrect decision.

29. The Adjudicator's analysis pertaining the application of s. 22(4)(e) of *FIPPA* is illogical and does not provide the rational, coherent chain of analysis required of a reasonable administrative decision. The MPSSG seeks review of the Adjudicator's determination that depictions of correctional officers' and emergency personnel's faces and bodies is information about their positions and functions as public body employees within the meaning of s. 22(4)(e) of *FIPPA.*

30. The Adjudicator's determination that visual depictions of individuals' skin colour and head coverings within the Video Footage is not personal information that indicates a third party's racial or ethnic origin, or religious beliefs within the meaning of *FIPPA* s. 22(3)(i) is unreasonable and must be set aside.

31. The MPSSG brings this petition under the *JRPA* and Rules 2-1(2)(b) and 16-1 of the *Supreme Court Civil Rules.*

Statutory Scheme

32. *FIPPA* establishes that the public has a right of access to information held by "public bodies" including the MPSSG.

33. Sections 3 to 11 of *FIPPA* describe the kinds of records available through the *FIPPA* process and provide a mechanism by which a person may request to access such information.

34. Sections 12 to 22.1 of *FIPPA* set out mandatory and discretionary exceptions to the public's right of access to information. These provisions enable and, in some cases, require public bodies to refuse to disclose information.

35. Section 15 of *FIPPA* provides numerous exceptions that allow public bodies to withhold information where that information could reasonably be expected harm law enforcement personnel, investigations, or other activities. The s. 15 exceptions relied on by the MPSSG in this matter are ss. 15(1)(f) and (l), and 15(2)(c).

36. Section 15(1)(f) of *FIPPA* provides that: "the head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to … (f) endanger the life or physical safety of a law enforcement officer or any other person."

37. Section 15(1)(l) of *FIPPA* provides that: "the head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to … (l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system." The security system of NFPC falls within the definition of s. 15(1)(l). This was accepted by the Adjudicator and does not appear to be an issue in this proceeding.

38. Section 15(2)(c) of *FIPPA* provides that: "the head of a public body may refuse to disclose information to an applicant if the information … (c) is about the history, supervision or release of a person who is in custody or under supervision and the disclosure could reasonably be expected to harm the proper custody or supervision of that person."

39. Section 19(1)(a) of *FIPPA* provides that: "the head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to … (a) threaten anyone else's safety or mental or physical health."

40. Section 22(1) of the *FIPPA* provides that the head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's privacy. In making this determination, the head of a public body must consider all relevant circumstances, including:

a) *FIPPA* s. 22(3)(i) – the disclosure of personal information is presumed to be an unreasonable invasion of a third party's privacy if the personal information indicates the party's racial or ethnic origin, sexual orientation, or religious or political beliefs or associations; and

b) *FIPPA* s. 22(4)(e) – the disclosure of personal information is not an unreasonable invasion of the party's personal privacy if the information is about the party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff.

41. A person who requests records from a public body under *FIPPA* may request that the Commissioner review the public body's response to that request. Sections 52 to 59.01 of *FIPPA* set out the procedure for seeking such a review, including, at s. 56, that the Commissioner may conduct an inquiry, and s. 58, that the Commissioner may make orders regarding the right of access or authorized/required refusal of access to records at issue.

Errors in the Adjudicator's Decision

42. The Adjudicator's determinations in the Order regarding the application of *FIPPA* ss. 15(1)(f), 15(1)(l), 15(2)(c), and 19(1)(a) are each unreasonable and must be set aside because:

a. The Adjudicator ignored or misapprehended significant portions of the evidence provided by the MPSSG regarding the reasonable expectation of harm to persons or security systems in BC Correctional centres;

b. The Adjudicator incorrectly and repeatedly imposed an unduly high burden on the MPSSG in determining the application of these *FIPPA* exceptions;

c. The Adjudicator failed to apply the required harm-based contextual approach throughout the Decision; and

d. The Adjudicator incorrectly distinguished the application of *FIPPA* s. 15(1)(l) from a related decision of the Commissioner in Order F25-42, resulting in a fundamentally flawed conclusion on that issue.

43. Cumulatively, these errors render the Adjudicator's conclusions on the application of *FIPPA* ss. 15(1)(f), 15(1)(l), 15(2)(c), and 19(1) unreasonable. The Adjudicator's critical determinations fail to provide a rational, coherent chain of analysis to support the conclusion that the cited *FIPPA* exceptions relied on by the MPSSG do not apply, and the MPSSG is not authorized to refuse disclosure of the Video Footage.

44. The Adjudicator's analysis pertaining the application of s. 22(4)(e) of *FIPPA* is illogical and does not provide the rational, coherent chain of analysis required of a reasonable administrative decision. The MPSSG seeks review of the Adjudicator's determination that depictions of correctional officers' and emergency personnel's faces and bodies is information about their positions and functions as public body employees within the meaning of s. 22(4)(e) of *FIPPA.*

45. Finally, the Adjudicator's determination that visual depictions of individuals' skin colour and head coverings within the Video Footage is not personal information that indicates a third party's racial or ethnic origin, or religious beliefs within the meaning of *FIPPA* s. 22(3)(i) is unreasonable. This determination ignores or misapprehends critical evidence provided by the MPSSG and is not justified in light of the facts and law before the Adjudicator.

Standard of Review

46. The *Administrative Tribunals Act*, SBC 2004, c 45 does not apply to the Commissioner. As a result, the appropriate standard of review must be determined based on the common law alone.

British Columbia (Office of the Premier) v. British Columbia (Information & Privacy Commissioner), 2011 BCSC 112 at para. 44

47. The standard of review framework set out by the Supreme Court of Canada in *Vavilov* begins with a presumption that the reasonableness standard applies. This presumption can be rebutted where (1) the legislature has indicated that it intends a different standard to apply or (2) where the rule of law requires correctness review with respect to general questions of law of central importance to the legal system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies.

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 [*Vavilov*] at paras. 16-17

48. The relevant statutory scheme and the nature of the errors raised by the petitioner in the case at bar do not trigger either of the exceptions to the presumption of reasonableness. Reasonableness is therefore the appropriate standard.

49. Prior jurisprudence—which continues to provide insight provided its application is aligned with the *Vavilov* framework—has also applied the reasonableness standard to adjudicators' interpretation and application of disclosure exceptions under *FIPPA*, including ss. 15, 19, and 22.

Vavilov at para. 143

British Columbia (Public Safety and Solicitor General) v. Stelmack, 2011 BCSC 1244 at paras. 174-177 and 392

B.C. Teachers' Federation, Nanaimo District Teachers' Association et al. v. Information & Privacy Commissioner (B.C.) et al., 2006 BCSC 131 at paras. 72-77

British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner), 2019 BCSC 2128 [*British Columbia Hydro*] at paras. 42-46

50. The purpose of reasonableness review is to "give effect to the legislature's intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law". A reviewing court's focus will be on the decision actually made by the administrative decision maker, both in terms of its reasons and the outcome. The reviewing court does not decide the issues itself and measure the decision maker's results against the outcome reached by the court.

Vavilov at paras. 82-85

51. The principles that guide the courts' application of the reasonableness standard as articulated in *Vavilov* include the following:

a. Where reasons are provided, the court begins with a careful examination of the reasons, with a view to understanding the decision makers' reasoning process (at para. 84).

b. The court's role is to determine whether the impugned decision as a whole bears the hallmarks of reasonableness—justification, transparency, and intelligibility (at para. 99).

c. A reasonable decision is one "based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision maker" (at paras. 102-110).

d. A decision's reasonableness "may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it" (at paras. 125-126).

e. It is not sufficient that an outcome is reasonable, if it is based on an unreasonable chain of analysis. Both the reasoning process and the outcome must be reasonable (at para. 87).

52. In *Vavilov,* the Court identified two types of fundamental flaws that will render a decision unreasonable and warrant the reviewing court's interference: (1) the decision lacks internally coherent reasoning (see paras. 82-87, 97-98, and 102-104) or (2) the decision cannot be justified in light of the relevant legal and factual constrains which bear on it (see paras. 88-90 and 105- 135). A decision should not be disturbed unless it contains at least one of these types of flaws.

Vavilov at paras. 100-107

53. In the information and privacy context, prior decisions of this Court have set aside decisions of the Commissioner as unreasonable where an adjudicator "imposed an unduly high onus" on a government body seeking to rely on a statutory exemption from disclosure based on a reasonable expectation of probable harm.

British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner), 2019 BCSC 2128 at paras. 94-96

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 170 v. British Columbia (Information and Privacy Commissioner), 2018 BCSC 1080 [*United Association of Journeymen*] at paras. 89-97

The Adjudicator misapplied the "reasonable expectation of harm" test and misapprehended the MPSSG's evidence

54. As part of the Inquiry, the MPSSG relied on the following four harms-based exceptions from disclosure provided under *FIPPA,* among other exceptions: ss. 15(1)(f) (endanger life or physical safety); 15(1)(l) (harm to security of property or system); 15(2)(c) (harm to custody or supervision); and 19(1)(a) (harm to individual or public safety).

55. In deciding whether any of these provisions permit non-disclosure, the relevant question is whether disclosure "could reasonably be expected to" lead to the type of harm (or risk of harm) each provision is intended to prevent. The standard of proof is a middle ground between "mere possibility" of harm, and that which is probable. Thus, the onus of the public body seeking to rely on any of these exceptions is to provide evidence that the risk of harm is considerably above a mere possibility. Such evidence must be directly connected to the anticipated harm.

Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner, 2014 SCC 31 at para. 54

56. The inquiry is contextual, and the amount and quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and "inherent probabilities or improbabilities or the seriousness of the allegations or consequences".

Merck Frosst Canada Ltd. v. Canada (Health), 2012 SCC 3 at para. 94

British Columbia Hydro at paras. 85-88

57. The required contextual analysis was described by former OIPC Commissioner Loukidelis in the following terms:

> "….harms-based exceptions to disclosure operate on a rational basis that considers the interests at stake. What is a reasonable expectation of harm is affected by the nature and gravity of the harm in the particular disclosure exception. There is a sharp distinction between protecting personal safety or health and protecting commercial and financial interests."

Order F08-22, 2008 CanLII 70316 (BC IPC) at para. 48

58. Put another way, when *FIPPA* exceptions relate to the protection of personal safety, the threshold to establish harm is lower than when commercial or financial interests are at stake.

59. The law is clear that the "reasonable expectation of harm" test does not require the public body to demonstrate that harm is likely or probable.

United Association of Journeymen at para. 42

60. The Adjudicator correctly identified the applicable legal standard. However, the Adjudicator misapplied the "reasonable expectation of harm" test in respect of each exception from disclosure relied on by the MPSSG under ss. 15 and 19 by imposing too high an onus on the MPSSG and misapprehending the MPSSG's evidence relating to the harms that could reasonably be expected to follow disclosure of the Video Footage.

61. Moreover, the Adjudicator failed throughout the Decision to apply a contextual approach that accounted for the inherent probability and seriousness of the harms at issue despite the MPSSG's detailed evidence on the serious risks and harms posed by disclosure of the Video Footage.

62. As a result, the Decision cannot be justified in relation to the facts and law that constrained the Adjudicator. The Decision as a whole is unreasonable and ought to be set aside.

i) FIPPA Section 15(1)(l)

63. The crux of the Petitioner's reliance on *FIPPA* s. 15(1)(l) to except the Video Footage from disclosure is that disclosure could reasonably be expected to harm the security systems of NFPC specifically, as well as other correctional centres in British Columbia because of common designs, security, training, and equipment.

64. The MPSSG provided evidence that the Video Footage depicts the most direct route into NFPC, including the precise number of secure doors and gates that must be passed on this route, and the features of these doors. The evidence provided that this information could be exploited for the purpose of attempted inmate escape or contraband smuggling into correctional centres. The evidence also provided that since correctional centres throughout British Columbia use common designs, these harms extend beyond NFPC to all correctional centres in the province.

65. Aside from the "direct route" issue, the MPSSG's evidence also provided that the Video Footage could be used to understand and exploit surveillance gaps or blind spots in the security system.

66. In considering the application of *FIPPA* s. 15(1)(l), the Adjudicator divided their analysis into three categories based on the types of harm raised by the MPSSG. Those categories are the direct route issue, harm related to inherent information such blind spots and gaps in the video surveillance system, and harms based on knowledge of correctional officers' procedures and communications.

67. With regard to the "direct route" issue, the Adjudicator found that they could understand, in an abstract sense, how this information could create possible security risks

for NFPC. The Adjudicator then briefly concluded that MPSSG's evidence did not bring this anticipated harm out of realm of mere possibility.

68. The Adjudicator determined that to meet the requisite threshold, the MPSSG would need to lead evidence about how escape attempts or contraband smuggling currently operate, or how exactly knowledge of a direct route into NFPC would affect those activities. These conclusions erroneously misapply the onus that the MPSSG must meet for s. 15(1)(l) to apply, as well as fail to provide the required contextual harms-based analysis. Further, these conclusions misapprehend the detailed evidence provided by the MPSSG on these issues.

69. The evidence provided by the Assistant Deputy Warden, which was accepted by the Adjudicator, details the inherently dangerous and often violent nature of correctional centres. This evidence also provides details about the occurrence and frequency of the smuggling of drugs and other contraband into NFPC.

70. Despite this evidence, as well as the cited common-sense risk that information regarding a direct route into correctional centres throughout British Columbia would pose, the Adjudicator concluded that the MPSSG's evidence did not bring this anticipated risk out of the realm of mere possibility. This conclusion misapprehends the MPSSG's evidence and fails to provide the required contextual analysis of the serious harms at stake. This analysis also fails to take into account that the alleged harm applies beyond just NFPC to other correctional centres in British Columbia.

71. Further, the Adjudicator places too high an onus on the MPSSG to lead evidence about how contraband smuggling and escape attempt activities currently operate. The Adjudicator unreasonably appears to require the MPSSG to lead evidence about how inmates could thwart its security systems, when the detailed evidence establishes the risk of these serious harms well beyond mere speculation. The Adjudicator's conclusion on this point again fails to apply the rational harms-based analysis required.

72. With regard to the Adjudicator's conclusions regarding general video surveillance based harms, the Adjudicator concluded that it is possible that the Video Footage could show gaps in the video surveillance system, but the MPSSG did not provide specific examples of such gaps, and thus, the Adjudicator found that the MPSSG had not met its burden to prove that disclosure could reasonably be expected to result in harm to NFPC's security system.

73. This analysis does not consider the MPSSG's evidence around other ways that the disclosure of the video surveillance could reasonably be expected to harm NFPC's security, including by showing the direction doors open, door types, and procedures for opening and closing these doors, as well as how corrections officers move and respond to emergency situations.

74. The Adjudicator places too high an onus on the MPSSG to lead evidence and directly point to gaps in its security systems in the inquiry process. This requirement misapplies the reasonable expectation of harm test.

75. Finally, in making these determinations, the Adjudicator incorrectly distinguishes the present case from a similar and recent decision in OIPC Order F25-42. The Adjudicator concluded that Order F25-42 was distinguishable because the MPSSG in that case provided *in camera* evidence about how disclosure of corrections footage could reasonably be expected to pose a risk to the physical safety of inmates and correctional staff.

76. In Order F25-42, the adjudicator made their determination to authorize the MPSSG to refuse disclosure of that video footage based on their own viewing of the videos at issue, concluding that, "In my view, the Video provides valuable information to inmates about where and how to engage in harmful conduct within the Centre. I can see that it provides substantive information about camera location and angles, revealing areas covered by video surveillance and areas shielded from view, in whole or in part."

OIPC Order F25-42, 2025 BCIPC 50 at paras. 24 and 25

77. The adjudicator's key findings in Order F25-42 were largely, if not entirely based on their own plain viewing of the video footage at issue and not rooted solely in the *in camera* submissions made by the MPSSG. The Adjudicator incorrectly distinguished these findings.

78. The Adjudicator's decisions regarding the application of *FIPPA* s. 15(1)(l) misapprehends the evidence of the MPSSG, misapplies the relevant onus provision, and lacks the required contextual analysis. For these reasons, the Adjudicator's decision on s. 15(1)(l) is unreasonable and must be set aside.

ii) FIPPA Section 15(1)(f)

79. Section 15(1)(f) of *FIPPA* authorizes the head of a public body to refuse to disclose information if the disclosure could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person.

80. Section 15(1)(f) does not require that the MPSSG provide proof of actual or even probable harm. This court explained the operation of this standard in the following terms:

> "…the standard requires harm that is more than simply "fanciful, imaginary, or contrived," but the standard does not go so far as requiring proof that the harm is more likely than not to occur."

United Association of Journeymen at para. 42

81. The MPSSG relied on *FIPPA* s. 15(1)(f) to except the Video Footage at issue from disclosure on the basis that disclosure could reasonably be expected to compromise the security of NFPC and other correctional centres, which would endanger the life and physical safety of inmates, correctional staff, and the public. In particular, the MPSSG submitted that disclosing the Video Footage would reveal the identities of the specific correctional officers involved in the incidents, creating a risk of retaliation against those officers by the Applicant or his associates in the community.

82. The MPSSG also led specific evidence regarding the inherently violent nature of correctional centres, as well the Applicant's incarceration history, which included confrontations with corrections officers. Importantly, the Video Footage depicts the identities of specific corrections officers that applied force to the Applicant in the course of the Incidents.

83. In concluding that the MPSSG had not established that disclosure could reasonably be expected to cause the type of harm contemplated by s. 15(1)(f), the Adjudicator erred in four ways that are fatal to their analysis on this provision.

84. First, despite using the language of reasonable expectation, the Adjudicator, in effect, imposed a higher standard essentially requiring the MPSSG to demonstrate that the harm contemplated was probable or likely.

85. Second, the Adjudicator misapprehended the MPSSG's evidence, which amply established a reasonable expectation of harm, including but not limited to the affidavit evidence regarding the nature of the Video Footage and the Applicant's history involving confrontations with correctional officers and violence.

86. Third, the Adjudicator misapprehended the scope of the MPSSG's submission on s. 15(1)(f). In particular, the Adjudicator based their conclusion on a finding that disclosure could not reasonably be expected to cause the Applicant to seek to retaliate against correctional officers. The Adjudicator ignored that the risk of this kind of harm could come from other inmates or the Applicant's associates in the community.

87. Finally, the Adjudicator found that since the Applicant's incarceration at a federal correctional institute would end in October 2025, it was only a mere possibility that the Applicant could return to NFPC. This finding is illogical and unreasonable in that it places an unduly high burden on the MPSSG to establish a likely or probable return of the Applicant to NFPC in order to make a finding that retaliative force is more than a mere possibility.

88. That is an impossible onus to meet, since no party can forecast the future behaviour of an Applicant. The MPSSG's evidence on this point establish a reasonable cause for concern regarding the applicant's past behaviour, and more than adequately establish that disclosure of the Video Footage creates a risk of endangerment beyond a mere

possibility. Thus, the Adjudicator's decision on s. 15(1)(f) was unreasonable and ought to be set aside.

iii) FIPPA Section 15(2)(c)

89. *FIPPA* s. 15(2)(c) allows a public body to refuse to disclose information if the information could be reasonably expected to harm the proper custody or supervision of that person.

90. In relying on s. 15(2)(c), the MPSSG provided evidence that disclosure of the Video Footage would provide the Applicant with information that could harm the future custody and supervision of the Applicant. The MPSSG's submissions were rooted in direct evidence regarding the Applicant's past use of drugs and contraband while in custody that led to several emergency response situations.

91. Further, the MPSSG provided direct evidence regarding how the Applicant may exploit information within the Video Footage to aid in the smuggling or use of contraband, or the harm of correctional officers or other inmates.

92. The Adjudicator's critical conclusion regarding the application of s. 15(2)(c) was that the MPSSG could not adequately explain how the Applicant would come to be reincarcerated at NFPC because he is currently incarcerated at a different correctional centre, and the MPSSG had not adequately explained whether the Applicant is expected to return to NFPC.

93. This conclusion misapplies the reasonable expectation of harm test in requiring proof that goes beyond the required "middle ground" between merely possible and probable. Further, this determination again places an impossible onus for the MPSSG to meet, since no party can forecast the future behaviour of an applicant.

94. The MPSSG's evidence met the required onus and the Adjudicator's decision on s. 15(2)(c) was unreasonable and ought to be set aside.

iv) FIPPA Section 19(1)(a)

95. Section 19(1)(a) of *FIPPA* authorizes the head of a public body to refuse to disclose information if the disclosure "could reasonably be expected to threaten anyone else's safety or mental or physical health".

96. Here, the MPSSG relied on s. 19(1)(a) to withhold the Video Footage based on a reasonable expectation that disclosure would threaten the safety and mental or physical health of correctional employees, other inmates, and members of the public outside NFPC.

97. The Adjudicator's reasoning and conclusion that the MPSSG had not established that disclosure could reasonably be expected to threaten anyone's safety or mental or

physical health cannot be justified in light of the legal and factual constraints that bore upon it.

98. Unlike ss. 15(1)(l) or 15(2)(c), which contemplate a reasonable expectation of harm, s. 19(1)(a) can be invoked where disclosure can reasonably be expected to *threaten* health and safety. While the standard of proof remains the same, what needs to be proven is different: the question under s. 19(1)(a) is not whether there is a reasonable expectation that disclosure would cause harm, but a reasonable expectation that disclosure could *create a threat or risk* of harm. The evidentiary requirement for demonstrating the likelihood of a risk being created will inherently be lower than what is required to show the likelihood of the harm itself.

99. The Adjudicator failed to grapple with this crucial aspect of the law on s. 19(1)(a) and the MPSSG's corresponding submissions. In doing so, the Adjudicator applied an unduly high onus on the MPSSG.

100. Relatedly, the Adjudicator erred by misapprehending the MPSSG'S detailed evidence in support of its reliance on s. 19(1)(a). This included affidavit evidence of the Assistant Deputy Warden, who provided, among other things, a lengthy list of the types of information contained in the Video Footage as well as a detailed explanation of how that information could be used to harm health and safety inside and outside NFPC. The Privacy Analyst's affidavit also contained statistics setting out the prevalence—and in some cases growing incidence—of assaults and other violent conduct by inmates against both correctional staff and other inmates. The Assistant Deputy Warden's evidence also spoke to the prevalence of such dangers.

101. The Adjudicator did not address the significance of these key pieces of evidence in her analysis on s. 19(1)(a) and concluded instead that the MPSSG "has not provided clear examples of how any specific information in the Videos reveals gaps in the security system of North Fraser such that an inmate or other person could reasonably be expected to use it to assault someone, engage in self-harm, smuggle or use drugs, or plan an effective escape".

Decision at para. 69

102. In doing so, the Adjudicator imposed too high an onus on the MPSSG, misapprehended key evidence on the issue before her, and failed to apply a contextual approach to her analysis that takes into account the inherent probability and seriousness of the harms s. 19(1)(a) seeks to prevent, which the MPSSG says are obvious on the face of the Video Footage and were amply supported by the MPSSG's evidence and submissions in any event.

103. The Adjudicator's decision on s.19(1)(a) is unreasonable and must be set aside.

v) FIPPA Section 22(4)(e)

104. After making determinations under *FIPPA* ss. 15 and 19, the Adjudicator then considered whether the Video Footage contained personal information within the meaning of *FIPPA* s. 22(1). The Adjudicator began their analysis by determining that the Video Footage contains personal information of the Applicant, two other inmates, the MPSSG's correctional officers and staff, the City's firefighters, and the PHSA's paramedics, including video depictions of their faces and bodies that could allow their identification.

105. The Adjudicator then considered whether the personal information in the Video Footage fell within the categories specified in s. 22(4) of *FIPPA,* including s. 22(4)(e) which provides that disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the information is <u>about the third party's position functions, remuneration as an officer, employee or member of a public body, or as a member of a minister's staff.</u>

106. The Adjudicator determined that because human communication includes non-verbal cues conveyed through facial expressions and body language, that video depictions of employees, including their faces and bodies, are about these individuals' positions and functions as public body employees.

107. This analysis fails to properly apply considerations detailed in the evidence before the Adjudicator. The analysis creates an illogical result where video depictions of any public employee will not be deemed to be an unreasonable invasion of that third party's privacy regardless of the circumstances, role, or task that employee is engaged in.

108. This unreasonable determination is in contrast to a previous decision of the Commissioner that properly found that video depictions of a person's face does not provide information <u>about</u> their functions as an employee of a public body.

109. The Adjudicator's determination on s. 22(4)(e) is unreasonable and must be set aside.

110. The Adjudicator's ultimate conclusion on the application of s. 22(4)(e) was that the Video Footage contains personal information that is inextricably linked to the public body employees' personhood and is not solely about their functions as public body employees. Given this, the Adjudicator decided she could not conclude at that stage of the analysis that disclosure of the Video Footage would not be an unreasonable invasion of the public body employees' personal privacy under s. 22(4)(e). The MPSSG does not seek judicial review of this aspect of the Decision.

vi) FIPPA s. 22(3)(i)

111. Having determined that the personal information in the Video Footage was not an unreasonable invasion of those individuals' privacy under s. 22(4) of *FIPPA*, the Adjudicator then considered whether the personal information is presumed to be an unreasonable invasion of that party's privacy based on the considerations set out in *FIPPA* s. 22(3).

112. The Adjudicator considered the application of *FIPPA* s. 22(3)(i), which provides that disclosure of personal information is presumed to be an unreasonable invasion of a third party's privacy if the personal information indicates the party's racial or ethnic origin, or religious beliefs or associations. The Adjudicator specifically found that the Video Footage depicts all the individuals' skin colour and some of the individuals wearing turbans.

113. The Adjudicator then determined that these visual depictions are not personal information that indicates the third party's racial or ethnic origin, or religious beliefs or associations and thus s. 22(3)(i) of *FIPPA* did not apply to except disclosure.

114. The Adjudicator's determination regarding the application of s. 22(3)(i) of *FIPPA* is unreasonable and not justified in light of the findings of fact and evidence. The Adjudicator's interpretation of s. 22(3)(i) unreasonably disregards the third-party privacy concerns contemplated in provision and must be set aside.

Remedy

115. The Petitioner says this Court should issue:

a. An order in nature of *certiorari* under s. 2(2)(a) of the *JRPA* quashing the Decision*;*

b. A declaration under s. 2(2)(b) of the *JRPA* that in the present case, the MPSSG is not required to disclose the records to the Applicant pursuant to ss. 15(1)(f), 15(1)(l), 15(2)(c) and 19(1)(a) of *FIPPA*.

c. A declaration under section 2(2)(b) of the JRPA that in the present case, the information withheld under s. 22(1) is personal information, the disclosure of which would constitute an unreasonable invasion of third party privacy.

d. A declaration under section 2(2)(b) of the *JRPA* that the records at issue in this proceeding contain personal information subject to an exception from disclosure under s. 22(3)(i) of *FIPPA.*

e. An order under section 2(2)(a) of the *JRPA* that the Commissioner reconsider the analysis in the Decision pertaining to s. 22(4)(e) of *FIPPA*.

116. Alternatively, an order remitting this matter back to the Commissioner for reconsideration in light of this Court's reasons.

117. The Petitioner does not seek its costs and asks that no costs be ordered against it.

18320 Holdings Inc. (c.o.b. Automotive Training Centres) v. Thibeau 2014 BCCA 494;

Lang v. British Columbia (Superintendent of Motor Vehicles), 2005 BCCA 244 at paras. 46-48

Part 4: MATERIAL TO BE RELIED ON

118. Affidavit # 1 of Tammy Fritz made on November 28, 2025.

119. Such further and other material as counsel may advise and this Honourable Court may accept.

Date: December 3, 2025.

Signature of Matthew S. Fingas
counsel for the petitioner

To be completed by the court only:	
Order made [ ] in the terms requested in paragraphs ..... of Part 1 of this petition [ ] with the following variations and additional terms:	
Date:	..... Signature of [ ] Judge [ ] Associate Judge