No. Court File No. VLC-S-S-259207
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

In the Matter of a decision of the Office of the Information and Privacy Commissioner dated October 27, 2025, in OIPC File Nos. F22-90348, F23-93304, F22-91316 and F23-92107, 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
Connor Madden
c/o Platform Litigation, **Attention: Rhys Rhodes**
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Port Moody, BC V3H 0K7
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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 the petition anywhere in Canada, within 21 days after that services,

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

(c) if you were served 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 F25-83.

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 in the present case, the information withheld under s. 22(1) of *FIPPA* is personal information, the disclosure of which would constitute an unreasonable invasion of third-party privacy.

4. A declaration under section 2(2)(b) of the *JRPA* that the records at issue in this proceeding contain personal information subject to exceptions from disclosure under ss. 22(3)(b), (d), and (i) 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

7. The MPSSG is a "public body" as defined in Schedule 1 of *FIPPA.*

8. Within the MPSSG, BC Corrections manages the supervision of adults in custody and those subject to community supervision. BC Corrections also manages the operation of correctional centres throughout British Columbia, including the Fraser Regional Correctional Centre ("**FRCC**") and the Surrey Pretrial Services Centre ("**SPSC**").

9. The access to information applicant (the "**Applicant**") was an inmate at FRCC and SPSC.

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

The Access Requests

11. This judicial review arises from two access to information requests made by the Applicant under *FIPPA*:

a. On May 12, 2022, the Applicant made an access to information request to the MPSSG for video evidence from disciplinary charge number 86284 while the Applicant was at FRCC (the "**First Request**"). The time frame of the First Request was specified as February 1, 2021 to May 12, 2022.

b. On July 12, 2022, the Applicant made an access to information request to the MPSSG for all footage related to uses of force against the Applicant while in BC Corrections' custody (the "**Second Request**").

(collectively, the "**Access Requests**")

12. The video footage at issue in the Access Requests (collectively, the "**Video Footage**") consists of 256 video files recorded at FRCC and SPSC. The Applicant is in all the videos that make up the Video Footage. The Video Footage also includes depictions of correctional officers, emergency personnel, and other inmates.

13. On May 25, 2022, the MPSSG responded to the First Request by notifying the Applicant that the responsive records were being withheld in their entirety pursuant to *FIPPA* ss. 15(1)(l) (harm to the security of any property or system), 15(2)(c) (harm to the history, supervision, or release of a person in custody or under supervision), and 22 (harm to personal privacy). The MPSSG further advised that the responsive records could not be severed in accordance with s. 4(2) of *FIPPA*.

14. On July 12, 2022, the Applicant made the Second Request.

15. On September 14, 2022, the MPSSG responded to the Second Request by notifying the Applicant that the responsive records were being withheld in their entirety pursuant to *FIPPA* ss. 15(1)(l), 15(2)(c), and 22. The MPSSG further advised that the responsive records could not be severed in accordance with s. 4(2) of *FIPPA*.

16. The MPSSG permitted the Applicant's legal representative to view the Video Footage. The MPSSG did not, however, provide the legal representative a copy of the Video Footage.

17. The Applicant asked the Commissioner to review the MPSSG's decision to withhold the Video Footage. The Applicant also complained that the MPSSG's refusal to disclose

the Video Footage was contrary to ss. 4(2), 6(1), and 9(2) of *FIPPA* and that the MPSSG failed to disclose the records as required by s. 25(1).

18. During mediation by the Commissioner, the MPSSG advised the Applicant that the exceptions from disclosure under ss. 15(1)(f) and 19(1)(a) also applied to the Video Footage.

19. Mediation resolved the Applicant's ss. 6(1) and 25(1) complaints but did not resolve the other disputes arising from the Access Requests.

The Inquiry

20. On June 4, 2024, the Commissioner issued a Notice of Inquiry pursuant to s. 56 of *FIPPA* (the "**Inquiry**"). The Notice of Inquiry set out that an adjudicator would consider whether the MPSSG:

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

b. was required to withhold the Video Footage at issue under s. 22 of *FIPPA;*

c. was required to sever parts of the Video Footage at issue under s. 4(2) of *FIPPA;* and

d. complied with s. 9(2) of *FIPPA.*

21. On August 27, 2024, the MPSSG provided the Commissioner with its written submissions and evidence in support of its position that ss. 15(1)(f), 15(1)(l), 15(2)(c), and 19(1)(a) permitted the MPSSG to withhold the Video Footage; that s. 22(1) required the MPSSG to withhold the Video Footage; that any remaining information in the Video Footage could not reasonably be severed in accordance with s. 4(2); and that the MPSSG had complied with s. 9(2).

22. The MPSSG's evidence at Inquiry included affidavits from the Deputy Warden at SPSC, a Privacy Analyst in the Office of the Assistant Deputy Minister of the MPSSG, and the Assistant Deputy Warden at FRCC.

23. On January 2, 2025, the Applicant provided responsive written submissions to the Commissioner through a legal advocate.

24. On January 17, 2025, the MPSSG provided reply written submissions to the Commissioner.

The Adjudicator's Decision

25. On October 27, 2025, a delegate of the Commissioner (the "**Adjudicator**") issued their decision in OIPC Order F25-83 (the "**Decision**").

26. In the Decision, the Adjudicator determined that the MPSSG had not established the application of ss. 15(1)(f), 15(1)(l), 15(2)(c), or 19(1)(a) of *FIPPA* and that the MPSSG was therefore not authorized to withhold the Video Footage pursuant to those provisions.

27. The Adjudicator also determined that s. 22(1) of *FIPPA* required the MPSSG to withhold certain severed parts of the Video Footage because their disclosure would be an invasion of the privacy of inmates other than the Applicant who could be seen and, in some cases, heard in those parts of the Video Footage.

28. The Adjudicator determined that s. 22(1) did not require the MPSSG to withhold any other parts of the Video Footage and that the Ministry was required to disclose those parts of the Video Footage to the Applicant.

Part Three: LEGAL BASIS

29. The Adjudicator's determinations 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. The Adjudicator misapplied the reasonable expectation of harm test and placed an unduly high onus on the MPSSG.

30. The Adjudicator's determinations regarding the application of each of these provisions misapprehends and unreasonably discounts the MPSSG's evidence regarding the nature, severity, and likelihood of the expected harms that would result from disclosure of the Video Footage. The Adjudicator also failed to address critical evidence and submissions made by the MPSSG regarding these possible harms. These errors are central and fundamental to the Adjudicator's conclusions that the MPSSG had not established these harms beyond a "mere possibility."

31. The Adjudicator's analysis also fails to apply the required contextual analysis in circumstances that involve the risks of serious physical and psychological harm to correctional officers, emergency personnel, and other inmates. The harms at issue also involve serious risks to the security of correctional centres in British Columbia, which are inherently violent and dangerous spaces. For these reasons, these determinations are not justified in light of the relevant evidence and law and must be set aside.

32. The Adjudicator's analysis pertaining to the application of ss. 22(3)(b), (d), and (i) of *FIPPA* is illogical and does not provide the rational, coherent chain of analysis required of a reasonable administrative decision.

33. In particular, the Adjudicator's determination that visual depictions of individuals' skin colour and other physical characteristics within the Video Footage is not personal information that indicates a third party's racial or ethnic origin within the meaning of *FIPPA* s. 22(3)(i) is unreasonable and must be set aside.

34. 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

35. *FIPPA* establishes that the public has a right of access to information held by "public bodies", including the MPSSG. Disclosure of records through the *FIPPA* process is to be treated and considered as disclosure to the world.

36. 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.

37. 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.

38. Section 15 of *FIPPA* provides numerous exceptions that allow public bodies to withhold information where disclosure of that information could reasonably be expected to harm (or create a risk of harm to) 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).

39. 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."

40. 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."

41. 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."

42. 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."

43. Section 22(1) of *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 whether the information falls into any of the categories set out in s. 22(3) which give rise to a presumption that disclosure will be an unreasonable invasion of third-party privacy. These include:

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;

b) *FIPPA* s. 22(3)(b) – the disclosure of personal information is presumed to be an unreasonable invasion of a third party's privacy if the personal information was compiled and is identifiable as part of an investigation into a possible violation of law; and

c) *FIPPA* s. 22(3)(d) – the disclosure of personal information is presumed to be an unreasonable invasion of a third party's privacy if the personal information relates to employment, occupational, or educational history.

44. 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

45. The Adjudicator's determinations in the Decision 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 discounted 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 unreasonably and incorrectly relied on a precedent of this Court in *British Columbia (Public Safety and Solicitor General v.* Stelmack, 2011

BCSC 1244 ("***Stelmack***") to ground a critical portion of the analysis pertaining to the application of s.15(1)(l) of *FIPPA*, resulting in a fundamentally flawed conclusion on that issue.

46. 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.

47. The Adjudicator's analysis pertaining to the application of ss. 22(3)(b), (d), and (i) of *FIPPA* is illogical and does not provide the rational, coherent chain of analysis required of a reasonable administrative decision. These determinations ignore or misapprehend critical evidence provided by the MPSSG and are not justified in light of the facts and law before the Adjudicator.

Standard of Review

48. 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

49. 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

50. 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.

51. 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

52. 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

53. 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).

54. 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

55. 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

56. 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).

57. 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 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

58. 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

59. 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

60. 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.

61. 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

62. 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.

63. 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.

64. 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 must be set aside.

i. FIPPA Section 15(1)(f)

65. 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.

66. 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

67. 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 SPSC, FRCC, and other correctional centres, which would endanger the life and physical safety of inmates, correctional staff, and the public. The MPSSG led evidence regarding the violent nature of correctional facilities and occurrence of smuggling of contraband. This evidence also spoke to how disclosure of the Video Footage could compromise safety and security by revealing information about weaknesses and blind spots in the video surveillance system.

68. The MPSSG also provided evidence and submissions on the issue that disclosure of 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.

69. To support these submissions, the MPSSG led detailed evidence about both the inherently violent and dangerous nature of correctional centres, but also about the Applicant's history of violence, and history of altercations with correctional officers. The MPSSG's evidence provided specific examples about how disclosure of the Video Footage could allow the Applicant or other inmates to exploit information in the videos, creating a risk of harm to correctional officers or other inmates.

70. In determining that s.15(1)(f) did not apply to except disclosure of the Video Footage, the Adjudicator first determined that when considered together, it was not obvious where the gaps or blind spots in surveillance. The Adjudicator further concluded that since the MPSSG had not directly pointed to security weaknesses, that they could not conclude that disclosure of the Video Footage could reasonably be expected to allow someone to exploit gaps in the surveillance system. This analysis unreasonably places too high an onus on the MPSSG regarding the reasonable expectation of the harm alleged.

71. This analysis is also fundamentally flawed because it fails to apply the required contextual harms-based analysis and address the severity of the harm at issue. The analysis inappropriately discounts the MPSSG's evidence regarding the violent nature of correctional centres, the Applicant's history of violence, and general security risks posed by disclosure of the Video Footage.

72. The Adjudicator's determination on this issue critically fails to address direct evidence regarding how information such as the direction doors open, the location and coverage

of security cameras, and the layout of the correctional centres could be exploited for the purpose of violence or smuggling contraband.

73. Despite the MPSSG's evidence regarding specific ways that the Video Footage could be used to exploit security weaknesses or risks, the Adjudicator unreasonably discounted this evidence and repeatedly places too high an onus for the MPSSG to provide additional examples of exploitable gaps in its own systems.

74. This error occurs again when the Adjudicator concludes that since the MPSSG does not provide specific examples of how disclosure of videos showing planning sessions by correctional officers could be exploited, and it is not apparent to the Adjudicator on the face of the videos, that the reasonable expectation of harm test is not met. The analysis of this issue requires appropriate contextual recognition of the gravity of the harms at play, including the violent nature of correctional centres and severe consequences if this information were used for retaliatory purposes.

75. The Adjudicator's conclusions on this issue are largely supported by the Adjudicator's adoption of findings of this Court in *Stelmack*, where video footage from two cameras in a police station's holding cells were ordered to be disclosed to an applicant. The Adjudicator unreasonably relied on a line of reasoning in *Stelmack* which applied to limited video footage from two cameras in holding cells at a police station, as opposed to the expansive nature of the Video Footage at issue, which is comprised of over 200 videos depicting multiple areas and the layout of two different correctional centres.

76. The Adjudicator then determined that the MPSSG had not met its onus to prove the reasonable expectation of endangerment of the physical safety of corrections officers due to possible retaliation by the Applicant or his associates. In making this determination, the Adjudicator noted evidence regarding the Applicant's history of violence against correctional officers but placed significant emphasis on the fact that no further evidence about the nature of those violent incidents was provided. The Adjudicator then determined those past incidents or the applicant's past behaviour did not allow for a conclusion that the applicant will use information in the Video Footage to retaliate against anyone.

77. The Adjudicator again placed an unduly high onus on the MPSSG regarding the alleged harm. The MPSSG was not required to demonstrate the possibility of retaliation on a balance of probabilities, only that disclosure of the Video Footage could reasonably be expected to endanger the physical safety of correctional officers beyond a mere possibility.

78. The Adjudicator did not afford appropriate weight to direct evidence regarding the Applicant's history of criminal charges involving violence, and history of violence against correctional officers in this analysis. This analysis also fails to provide the required contextual analysis of the gravity of the harm at issue, and severe consequences at stake.

These flaws are central and fundamental to the Adjudicator's determination regarding the application of *FIPPA* s. 15(1)(f) to the Video Footage, rendering this determination unreasonable.

ii. FIPPA Section 15(1)(l)

79. The crux of the MPSSG'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 SPSC and FRCC specifically, as well as other correctional centres in British Columbia because of common designs, security, training, and equipment.

80. The MPSSG provided detailed evidence regarding the expectation of harm and likelihood that information in the Video Footage would be used to exploit the security systems within SPSC and FRCC. This included concerns related to security protocols, officer communication and strategy, door operation and functions, security weaknesses, camera angles and locations, and concerns related to the disclosure of the layout of these correctional centres.

81. In determining the application of s.15(1)(l) to the Video Footage, the Adjudicator acknowledged that the Video Footage does reveal information such as camera angles and location, then emphasized that the MPSSG had not argued that the cameras are concealed from inmates. This conclusion fails to give due consideration to the expansive nature of the Video Footage (over 200 videos showing many areas within the correctional centres) and appropriate recognition that the Video Footage provides different and important information that could be used for the planning of nefarious purposes.

82. The Adjudicator then determined that s. 15(1)(l) does not apply to the Video Footage because the MPSSG had not met its onus to establish the reasonable expectation of harm, as it had not explained how the exploitation of its security systems would harm the *security* of the video system itself. This conclusion is based on an illogical interpretation of s. 15(1)(l) in light of the facts and evidence before the Adjudicator. It does not provide a clear, intelligible line of reasoning.

83. To establish the application of s. 15(1)(l) of *FIPPA,* the MPSSG is required to demonstrate that disclosure of the Video Footage could reasonably be expected to harm the security of <u>any property</u>, including a system or a building. The MPSSG provided detailed evidence about how information in the Video Footage could be used for the purpose of violence or smuggling contraband, thus harming the security of this property, building, and video surveillance system.

84. The Adjudicator appears to require that MPSSG lead evidence that disclosure of the Video Footage would make the video surveillance system more vulnerable to hacking or manipulation. This line of reasoning again misapprehends the evidence of the MPSSG

and relies on an unreasonable application of s. 15(1)(l). The Adjudicator again places too high an onus on the MPSSG and misapplies the reasonable expectation of harm test.

85. This illogical line of reasoning departs from past decisions of the Commissioner, such as in Order F25-42, and also departs from the treatment of this issue by the Ontario Information and Privacy Commissioner.

Order F25-42, 2025 BCIPC 50;

Order PO-4428 *Ontario (Ministry of the Solicitor General) (Re)* 2023 OIPC No 227

86. The Adjudicator's decision regarding the application of *FIPPA* s. 15(1)(l) misapprehends the evidence of the MPSSG, misapplies the relevant onus provision, and is based on an illogical line of reasoning. For these reasons, the Adjudicator's decision on s. 15(1)(l) is unreasonable and must be set aside.

iii. FIPPA Section 15(2)(c)

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

88. 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 behaviour and incidents with correctional officers.

89. The Adjudicator's critical conclusion regarding the application of s. 15(2)(c) was that the Adjudicator could not see, and the MPSSG had not adequately explained how information in the Video Footage could be used to harm the proper future custody of the Applicant.

90. This analysis misapprehends or ignores the MPSSG's evidence regarding the Applicant's history of disciplinary and emergency incidents in correctional facilities. It improperly discounts the MPSSG's evidence regarding how the Video Footage could be used to exploit surveillance weaknesses or officer communications and response protocols. The Adjudicator misapplies the reasonable expectation of harm test in requiring proof that goes beyond the required "middle ground" between merely possible and probable. The Adjudicator's decision on the application of s. 15(2)(c) was unreasonable and must be set aside.

iv. FIPPA Section 19(1)(a)

91. 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".

92. 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. The MPSSG provided direct evidence relating to the Applicant, as well as general evidence relating to violent nature of correctional centres and the occurrence of interactions in the community.

93. At its core, this issue involves the balancing of an applicant's right to information and the severe risks and realities that correctional officers face in their daily employment. This issue requires proper contextual consideration of the inherently dangerous nature of correctional centres and the horrific consequences that could result from the possibility of retaliation against correctional officers in the community.

94. 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.

95. Unlike ss. 15(1)(l) or 15(2)(c), which contemplate a reasonable expectation of harm, ss. 19(1)(a) and 15(1)(f) can be invoked where disclosure can reasonably be expected to *threaten* or *endanger* health and safety. While the standard of proof remains the same, what needs to be proven is different: the question under ss. 19(1)(a) and 15(1)(f) 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. The Adjudicator erred in rejecting the MPSSG's submissions on this critical aspect of the law on ss. 19(1)(a) and 15(1)(f).

96. The Adjudicator failed to provide the required contextual harms-based analysis and failed to afford proper weight to the MPSSG's evidence regarding the Applicant's history and the possible harms that would result from disclosure of the Video Footage. The Adjudicator's conclusions on the "retaliation" issue improperly apply an unduly high onus on the MPSSG. As a result, the Adjudicator's decision on s.19(1)(a) is unreasonable and must be set aside.

The Adjudicator misapplied s. 22(3) of *FIPPA*

97. Section 22(1) of *FIPPA* requires the head of a public body to refuse to disclose information if disclosure would be an unreasonable invasion of a third party's personal privacy.

98. The first step of the analysis is to determine whether the third-party information at issue is indeed "personal information". If so, the adjudicator must next decide whether

any of the circumstances listed in s. 22(4) apply, in which case the disclosure of personal information will not be an unreasonable invasion of a third party's privacy.

99. If s. 22(4) does not apply, the analysis then turns to s. 22(3). If any of the circumstances in s. 22(3) apply, there is a rebuttable presumption that the disclosure would be an unreasonable invasion of a third party's privacy. Whether or not s. 22(3) applies, the decision maker must consider all relevant circumstances, including those listed in s. 22(2).

100. Here, the Adjudicator concluded that the Video Footage contained the personal information of correctional officers and inmates who are not the applicant. The Adjudicator also found that s. 22(4)(e) did not apply to any of the personal information of third parties, and moved on to the s. 22(3) analysis. The Adjudicator's reasoning and conclusions in respect of the application of ss. 22(3)(i), (b), and (d) are unreasonable and must be set aside.

i. FIPPA Section 22(3)(i)

101. Section 22(3)(i) creates a presumption that disclosure will be an unreasonable invasion of third-party privacy where the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

102. Despite specifically finding that the Video Footage contained the skin colour and other physical features of all the third parties, the Adjudicator concluded that this information is not personal information that indicates the third parties' racial or ethnic origins within the meaning of s. 22(3)(i) because those physical characteristics are visible to anyone the person comes across.

103. The Adjudicator erroneously adopted the reasoning from OIPC Order F25-81 (at paras. 99-113) that s. 22(3) is intended to protect personal information that is sensitive or private in nature and that the Legislature could not have intended this to include a person's skin colour, which is apparent to anyone a person comes across.

104. The Adjudicator's determination regarding the application of s. 22(3)(i) of *FIPPA* is unreasonable and not justified in light of the relevant facts and applicable law. The Adjudicator's interpretation and application of s. 22(3)(i) unreasonably disregards the third-party privacy concerns contemplated by this provision and must be set aside.

ii. FIPPA s. 22(3)(b)

105. Section 22(3)(b) creates a presumption that disclosure will be an unreasonable invasion of third-party privacy where 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. The MPSSG relied on this provision in respect of only one of the videos in the Video Footage which depicts the applicant assaulting a correctional officer. That incident became the subject of a disciplinary charge and an investigation under the *Criminal Code.*

107. The Adjudicator relied on OIPC Order F19-02, in which the adjudicator held that "the act of compiling involves some exercise of judgment, knowledge or skill on behalf of the individual or public body doing the compiling, as opposed to just passively collecting information."

108. Here, the Adjudicator found this video was part of an investigation into a possible violation of law but concluded that it was not compiled and identifiable as part of an investigation because it was recorded in the ordinary course of the correctional centre's operations and could not be characterized as compiled and identifiable as part of the MPSSG's disciplinary charge investigation.

109. This conclusion is unreasonable, and the Adjudicator's decision on s. 22(3)(b) ought to be set aside. The Adjudicator received ample submission and evidence on the inherent dangers and high incidence of violence in correctional centres. The fact that security footage is recorded as a matter of course in these institutions does not preclude a finding that the MPSSG specifically contemplated that this footage—or any security footage captured in this environment—could become evidence in relation to a disciplinary or criminal charge.

iii. FIPPA s. 22(3)(d)

110. Section 22(3)(d) of *FIPPA* creates a presumption that disclosure will be an unreasonable invasion of third-party privacy where the personal information relates to employment, occupational, or educational history.

111. This provision applies to information that provides "qualitative details about how each particular employee did his or her job" on a given day as well as information that reveals how public body employees do their jobs.

OIPC Order F18-47, 2015 BCIPC 42 at para. 24
OIPC Order F15-42, 2018 BCIPC 50 at para. 37

112. Here, the Adjudicator found s. 22(3)(d) did not apply because there was no evidence that the Video Footage related to a qualitative assessment of the third-party correctional officers' workplace conduct or that it contains information that relates to their employment history.

113. The Adjudicator's determination regarding the application of s. 22(3)(d) of *FIPPA* is unreasonable and not justified in light of the relevant facts and applicable law. The Adjudicator's interpretation and application of s. 22(3)(d) unreasonably disregards the third-party privacy concerns contemplated by this provision and must be set aside.

Remedy

114. 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 exceptions from disclosure under ss. 22(3)(b), (d), and (i) of *FIPPA.*

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

116. 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;

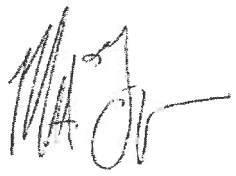
Lang v. British Columbia (Superintendent of Motor Vehicles), 2005 BCCA 244 at paras. 46-48

Part 4: MATERIAL TO BE RELIED ON

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

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

Date: December 8, 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: .....[*date*].....	..... Signature of [ ] Judge [ ] Associate Judge