

Date: 20240117  
Place: Vancouver

**In the matter of:**

**The *Freedom of Information and Protection of Privacy Act*,  
R.S.B.C. 1996, c. 165 (the “*Act*”)**

And in the Matter of:

An Adjudication under Section 62 of the *Act*,

Requested by R.M. June 7, 2023

**Reasons for Decision**

**Of the**

**Honourable Justice Mayer**

Sitting as an adjudicator appointed under Section 60 of the *Act*

Counsel for the Commissioner:

Kate R. Phipps

The Requesting Party, on her own behalf:

R.M.

Written Submissions of the Commissioner dated:

October 31, 2023

Written Responsive Submissions of the  
Requesting Party dated:

November 30, 2023

Written Reply Submissions of the Commissioner  
dated:

December 14, 2023

**Introduction**

[1] The applicant, R.M. applies, pursuant to s. 62 of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 [*FIPPA*], for review of a decision of the Information and Privacy Commissioner refusing her request to be provided with a copy of records related to her complaint that the Georgia Straight newspaper had disclosed her personal information (the “Decision”).

[2] As the Commissioner is unable to review their own decisions I have been designated, pursuant to s. 60 of *FIPPA*, to investigate and rule on R.M.’s application.

[3] The Commissioner and R.M. have provided written submissions setting out their positions on this application. In addition, the Commissioner provided an affidavit from Ethan Plato, legal counsel for the Commissioner, which sets out his evidence and attached relevant documents concerning the basis for the Decision.

**Background**

[4] This application arises from a complaint made by R.M. to the Commissioner made March 31, 2022, that the Georgia Straight had disclosed her personal information contrary to the *Personal Information and Protection Act*, S.B.C. 2003, c. 63 [*PIPA*].

[5] In particular R.M. took issue with the publication of an article concerning a “Notice of Liability” sent to the Georgia Straight which alleged that the media should be held responsible for publishing deceptive and distorted facts with respect to steps taken to address the COVID-19 pandemic. The article did not mention R.M. by name, but included a hyperlink to a webpage where the “Notice of Liability”, including R.M.’s name and signature, could be seen.

[6] The Commissioner investigated R.M.’s complaint and decided that that *PIPA* did not apply to the publication of personal information made for a journalistic purpose or alternatively, that R.M. had provided implied consent to the disclosure of her personal information when the “Notice of Liability” was forwarded to the Georgia

Straight. In December 2022, R.M. sought a reconsideration of this decision which was denied by the Commissioner on April 20, 2023.

[7] On May 16, 2023, R.M. made a request, pursuant to s. 4, of *FIPPA* for access to all records in the Commissioner's files associated with her complaint and the reconsideration. On the same day Mr. Plato responded to R.M. advising that her request for these documents was refused because the documents she had requested related to the exercise of the Commissioner's functions, which the Commissioner was not required to disclose pursuant to s. 3(3)(f) of *FIPPA*.

### **Issue**

[8] In this review I am not to consider the merits of the Commissioner's decisions dismissing R.M.'s complaint concerning an alleged breach of her privacy rights by the Georgia Straight. R.M.'s remedy in respect of those decisions is through judicial review.

[9] My function as an adjudicator in this case is only to determine whether the Commissioner's delegate, Mr. Plato, was correct in concluding that the records requested by R.M. fall outside of the scope of *FIPPA* pursuant to s. 3(3)(f), and are therefore exempted from disclosure.

### **Analysis**

[10] Section 4 of *FIPPA* reads as follows:

#### **Information rights**

4(1) Subject to subsections (2) and (3), an applicant who makes a request under section 5 has a right of access to a record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information that is excepted from disclosure under Division 2<sup>1</sup> of this Part, but if that information

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<sup>1</sup> Division 2 lists a number of exceptions to the general right of access to records provision at s. 4(1) of *FIPPA* including for example records involving cabinet confidences, policy advice and recommendations, legal advice, disclosure harmful to police investigations and disclosure harmful to intergovernmental relations or negotiations.

can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

[11] Section 3(3)(f) of *FIPPA* reads as follows:

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

...

(f) a record that is created by or for, or is in the custody or under the control of, an officer of the Legislature and that relates to the exercise of functions under an Act;

[12] Pursuant to s. 57 of *FIPPA* the burden is on the Commissioner to prove that there is no right of access to a requested document pursuant to s. 3(3)(f).

[13] The Commissioner submits that the requested records pertain to the Commissioner's office's dealings with R.M.'s complaint and the reconsideration decision. Mr. Plato has provided evidence that the records held by the Commissioner consist of "documents received and created by the delegates of the Commissioner in investigating and reconsidering [the] complaint" and include the following: the delegates' case notes, the delegates' notes of telephone calls with the parties to the investigation, and correspondence and documents delegates received from R.M. and the Georgia Straight. That is, the relevant documents constitute the case file for R.M.'s complaint.

[14] In a number of earlier decisions where s. 3(1)(c) of *FIPPA* (the predecessor to s. 3(3)(f)) was considered, adjudicators have determined that a case file of the Commissioner's office is a record related to the Commissioner's functions and is excluded from production. Those decisions include the following:

- 1) *Adjudication (F.T.)*, (7 February 2019) Adjudication Order No. 28 (Kelleher J.);
- 2) *Adjudication (B.F.)*, (30 August 2018) Adjudication Order No. 27 (Grauer J.);
- 3) *Adjudication (Doe)*, (6 January 2015) Adjudication Order No. 26 (Fitch J.);
- 4) *Adjudication (J.P.)*, (30 October 2014), Adjudication Order No. 25 (Pearlman J.);

- 5) *Adjudication (V.P.D.)*, (12 April 2013) Adjudication Order No. 23 (Griffin J.);
- 6) *Adjudication (C.S.)*, (12 November 2009) Adjudication Order No. 22 (Griffin J.);
- 7) *Adjudication (J.S. and D.S.)*, (5 December 2008) Adjudication Order No. 21 (Pearlman J.);
- 8) *Adjudication (A.K.)*, (17 November 2008) Adjudication Order No. 20 (Gerow J.);
- 9) *Adjudication (D.)*, (12 July 2007) Adjudication Order No. 19 (Bauman J.); and
- 10) *Adjudication (V. (A.N.T.))*, (12 March 2007) Adjudication Order No. 18 (Bauman J.).

[15] I am satisfied that the documents requested by R.M. fall within the class of documents which fall outside of the scope of *FIPPA* pursuant to s. 3(3)(f). That is, they consist of records created by or for, or in the custody or under the control of the Commissioner, who is an officer of the Legislature, or their delegate and relate to the exercise of the Commissioner's investigative and adjudicative functions.

[16] R.M. submits, in summary, that even if the requested records are excluded from production under s. 3(3)(f) of *FIPPA*, that pursuant to ss. 4(1) and (2), records which do not fall within one of the exceptions from disclosure set out in Division 2, are required to be severed from records which are exempted from disclosure and must be disclosed.

[17] R.M.'s submissions fail to recognize that under s. 3(3)(f) of *FIPPA* the production of certain types of documents does not fall within the scope of the *Act*. *FIPPA* simply does not apply to records of the Commissioner which relate to the exercise of their investigative and adjudicative functions. As I have already stated I am satisfied that the requested documents fall within this category. Sections 4(1) and (2) do not conflict with or override s. 3(3)(f).

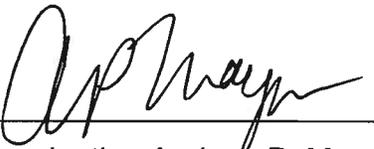
[18] R.M. also submits, in my understanding, that s. 3(4) of *FIPPA* somehow applies in this case. Section 3(4) specifies that notwithstanding the exclusion in

s. 3(3)(f), officers of the legislature are still subject to various regulatory requirements in respect of operational records. These requirements include, for example, s. 25.1, which prohibits the unauthorized use or disclosure of personal information. Section 3(4) does not make records which are outside of the scope of production under *FIPPA* producible. I do not find that s. 3(4) is relevant to this adjudication.

**Decision**

[19] I find that the Commissioner has satisfied their burden of proving that R.M. has no right of access to the requested documents as, pursuant to s. 3(3)(f), as they fall outside of the scope of documents required to be produced under *FIPPA*.

[20] R.M.'s application for a review of the Commissioner's decision is dismissed.

  
Justice Andrew P. Mayer