



Victoria Registry No. 2615294

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Martin Girard

Petitioner

And:

The Corporation of the City of Victoria
and the Information and Privacy Commissioner of British Columbia

Respondents

RESPONSE TO PETITION

Filed by: The Corporation of the City of Victoria (the "City")

THIS IS A RESPONSE TO the petition filed June 24, 2026.

The City estimates that the hearing of the petition will take 1 ½ days.

Part 1: ORDERS CONSENTED TO

N/A

Part 2: ORDERS OPPOSED

The City opposes the granting of the orders set out in paragraphs ALL of Part 1 of the petition.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

N/A

Part 4: FACTUAL BASIS

1. The City is a municipal corporation continued pursuant to the *Community Charter*, S.B.C. 2003, c. 26 and is a local public body pursuant to the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 (“FIPPA”).
2. The Petitioner made a request, pursuant to section 5 of FIPPA, for access to records of the City related to workplace investigations in the City’s Bylaw Services (the “Request”) on November 4, 2025.

***Affidavit #1 of Bradley Cranwell made July 30, 2026
(the “Cranwell Affidavit”), paragraph 5***

3. On November 19, 2025, after consideration of the estimated fees, the Petitioner agreed to narrow down the scope of the Request to “All records of the ten human resources investigations involving Bylaw Services. (Date Range of Search 2020-01-01 to 2025-11-04).”

Cranwell Affidavit, paragraph 7; exhibit C

4. On December 30, 2025, the City responded to the Petitioner advising him that 362 responsive records are being withheld pursuant to section 22(1) of FIPPA.

Cranwell Affidavit, paragraph 9; exhibit E

5. On January 2, 2026, the Petitioner submitted a request to the Office of the Information and Privacy Commissioner (“OIPC”) to review the City’s response to the Request.

Cranwell Affidavit, paragraph 11

6. In the course of the review by the OIPC, the Petitioner abandoned his request for review of the applicability of section 22(1) of FIPPA to the records at issue and, instead, sought disclosure pursuant to section 25(1)(b) of FIPPA.

7. On May 20, 2026, OIPC dismissed the Petitioner’s request for review finding that section 25(1)(b) does not apply to the records at issue.

Cranwell Affidavit, paragraph 13; exhibit G

Part 5: LEGAL BASIS

Decision under Review

8. The decision under review in this proceeding, is the OIPC dismissal of the Petitioner's request for review of the City's alleged failure to apply section 25(1)(b) to the information in records responsive to the Request (the "Decision").
9. The reasons for the Decision are found in the OIPC's May 20, 2026 letter to the Petitioner.

Cranwell Affidavit, exhibit G

Standard of Review

10. The applicable standard of review is reasonableness as explained by Justice Gomery in ***Thompson Rivers University v British Columbia (Information and Privacy Commissioner)*, 2023 BCSC 1933:**

[25] On judicial review, the court supervises the exercise of authority by governmental institutions, such as OIPC, and may intervene to quash an unreasonable decision. The essential issue is whether the adjudicator has exercised his authority reasonably according to the tests set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*].

[26] Reasonableness review requires a "reasons first" approach that starts with an analysis of the adjudicator's reasons; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras. 78-79. It manifests a posture of judicial restraint or deference reflecting "a respect for the distinct role of administrative decision makers"; *Vavilov* at para. 13; *Mason* at para. 57. However, judicial restraint is not an end in itself. As Jamal J., speaking for a majority, explained in *Mason* at para. 57:

Reasonableness review ... serves to "maintain the rule of law" (para. 2) and "to safeguard the legality, rationality and fairness of the administrative process" (para. 13). Thus, the purpose of reasonableness review is to uphold "the rule of law, while according deference to the statutory delegate's decision" (*Canada Post*, at para. 29).

[27] Substantively, the hallmarks of reasonableness are summarized in *Vavilov* at paras. 99-101. A decision may be unreasonable if it is internally or externally flawed. An internal flaw is "a failure of rationality internal to the reasoning process". An external flaw is a decision's failure to

accord with a relevant factual or legal constraint bearing upon it. They are summed up in a call for “justification, transparency and intelligibility”.

11. Thus, the Court may review the Decision for internal or external flaws, while according deference to the decision maker.

Statutory Scheme

12. Under FIPPA, applicant’s rights to access public body’s records does not extend to information that is excepted from disclosure under Division 2 of Part 1 of FIPPA.

FIPPA, section 4(2)

13. When responding to a FIPPA request, a public body is required to review any responsive records to determine whether they contain information that is excepted from disclosure under Division 2 of Part 1 of FIPPA.

14. Division 2 of Part 1 of FIPPA includes section 22 which protects from disclosure information disclosure of which would constitute an unreasonable invasion of third-party privacy.

FIPPA, section 22

15. Section 22 is a mandatory exception: a public body must refuse to disclose information disclosure of which would be an unreasonable invasion of privacy.

FIPPA, section 22(1)

16. While the application of section 22 to the records at issue is not before the Court, it is critical to recognize the important privacy objective that is protected by this section – an objective no less important than the public right to access government records.

FIPPA, section 2

17. By invoking section 25, the Petitioner is attempting to avoid the balancing of competing rights inherent in the application of section 22.

18. Section 25 is not part of Division 2 of Part 1 of FIPPA. It is an “override” provision which imposes on a public body a positive obligation to disclose to the public information the disclosure of which is clearly in the public interest:

Information must be disclosed if in the public interest

25 (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or

(b) the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

(3) Before disclosing information under subsection (1), the head of a public body must, if practicable, notify

(a) any third party to whom the information relates, and

(b) the commissioner.

(4) If it is not practicable to comply with subsection (3), the head of the public body must mail a notice of disclosure in the prescribed form

(a) to the last known address of the third party, and

(b) to the commissioner.

19. There is no suggestion that the records at issue contain any information about a risk of significant harm to the environment or the health or safety of the public or group of people. Therefore, the Petitioner's argument is focused on section 25(1)(b) of FIPPA: information disclosure of which is clearly in the public interest.

20. Section 25(1)(b) of FIPPA was first considered judicially in ***Clubb v. Saanich (District) (1996), 35 Admin. L.R. (2d) 309, 1996 CanLII 8417 (B.C.S.C.)*** where Justice Melvin offered the following comments about the meaning of "public interest" in this provision:

33 The term "public interest" in s. 25(1)(b) cannot be so broad as to encompass anything that the public may be interested in learning. The term is not defined by the various levels of public curiosity. The public is, however, truly "interested" in matters that may affect the health or safety of children.

21. Thus, whether section 25(1)(b) applies in the particular circumstances is not determined by the level of public curiosity about any specific information but whether disclosure of that information would be in the service of public interest, i.e., would benefit the public.

Application to the Decision under Review

22. In the present case, the Petitioner sought access to records of internal investigations into allegations of discrimination within the Bylaw Services of the City. The information was withheld pursuant to section 22(1) of FIPPA as it was determined that disclosure of information about these allegations and investigations would constitute an unreasonable invasion of third-party privacy.
FIPPA, section 22(3)(b),(d), (f), and (h)
23. There is no evidence that disclosure of this information would be clearly in the public interest. The most that the Petitioner can offer is that there has been some public discourse about the existence of the internal investigations into conduct at the City's Bylaw Services.
24. This matter was subject of reports in the media (CTV reports), but that alone cannot be sufficient to demonstrate that disclosure is clearly in the public interest such that protection of third party privacy should be overridden in favour of disclosure.
25. Accepting the Petitioner's approach to section 25, that it overrides all other parts of FIPPA whenever there is sufficient public interest in the information in question, would render all of Division 1 of Part 2 meaningless and transform application of exceptions to determination of extent of public curiosity about the information rather than the careful balancing of competing interest required by FIPPA.
26. The Decision correctly rejects this approach. Instead, it recognizes previous OIPC decisions and guidance documents that section 25(1)(b) is intended to apply only in the clearest and most serious situations where the disclosure is unmistakably in the public interest.
27. The Decision clearly articulates the relevant facts and explains why they do not rise to the level of triggering section 25(1)(b) of FIPPA. As such it is intelligible, transparent, and justified.
28. Therefore, it cannot be said that the Decision is internally or externally flawed and the petition should be dismissed.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit of Bradley Cranwell made July 30, 2026;
2. The pleadings filed herein; and
3. Such further and other material as counsel may advise and this Honourable Court may allow.

Date: August 6, 2026



Signature of Tomasz M. Zworski,
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The Corporation of the City of
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