

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-4630

Appeal PA22-00549

Royal Victoria Regional Health Centre

March 31, 2025

Summary: In a request made under the *Freedom of Information and Protection of Privacy Act*, a law firm asked the Royal Victoria Regional Health Centre (the hospital) for records related to a COVID-19 outbreak at a long-term care home. The hospital issued a decision to grant partial access to the responsive records. The long-term care home appealed the hospital's decision to disclose the information and said that the mandatory exemption for third party information at section 17(1) of *FIPPA* applied to all the information. The long-term care home also claimed that the records were protected from disclosure by section 3 of *Quality of Care Information Protection Act*. Additionally, it said that the law firm's request was an abuse of process and asserted that it should be permitted to apply various discretionary exemptions that the hospital did not apply. In this decision, the adjudicator dismisses the long-term care home's appeal and upholds the hospital's access decision.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31, as amended, sections 10(1)(b), and 17(1), *Quality of Care Information Protection Act*, S.O. 2016, c. 6, Sch. 2, section 3.

Orders Considered: Orders PO-1776-R, PO-1787, PO-3435, PO-4090, and PO-4165.

OVERVIEW:

[1] The Royal Victoria Regional Health Centre (the hospital) received a request from a law firm under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for the following records:

...any and all records pertaining to the Royal Victoria Regional Health Centre's involvement in the outbreak at [a long-term care home] between January 8, 2021, and February 18, 2021, including but not limited to agendas, minutes, policies, procedures, memos, staffing, training, equipment, and supplies.

[2] Prior to issuing its decision, the hospital notified affected parties under section 28(1)(a) of *FIPPA* and sought their views on the disclosure of the records at issue. The hospital received representations objecting to the disclosure to some of the information contained in the records.

[3] After considering the affected parties' responses, the hospital notified the affected parties and the law firm of its decision to grant partial access to the records. The hospital denied access to some of the requested information pursuant to the mandatory exemptions in sections 17(1) (third party information) and section 21(1) (personal privacy), as well as the discretionary exemptions in sections 13(1) (advice or recommendations), and 18.1 (information with respect to closed meetings), 19 (solicitor-client privilege), 22 (information available to the public). The hospital also relied on the labour-relations exclusion at section 65 of *FIPPA* to withhold some of the records. Additionally, it denied access to some of the information in the records on the basis that it was not responsive to the law firm's request.

[4] The law firm appealed the hospital's decision to apply section 13(1) to the records and Appeal PA22-00570 was opened to address that issue. One of the affected parties, a long-term care home (the LTC Home), now the appellant, appealed the hospital's decision to disclose any of the information at issue.

[5] During mediation, the mediator had discussions with the LTC Home, the law firm and the hospital. The LTC Home advised the mediator that it believes that section 17(1) applies to all the information in the records. The LTC Home also asserted that the law firm's request is an abuse of the access process, and that the discretionary exemptions at sections 13(1) (advice or recommendations), 14(1) and 14(2)(a)(c) (law enforcement), 15(b) (relations with other governments), and 18(1)(j) (assessments and evaluations by or for hospital committees) of *FIPPA* should apply to the records at issue. The LTC Home further advised the mediator of its view that the records at issue are protected from disclosure by section 3 of the *Quality of Care Information Protection Act (QCIPA)*. The mediator then added the issues of whether the request was frivolous and/or vexatious (to capture the abuse of process allegations), the raising of discretionary exemptions by a third party, and the application of section 3 of *QCIPA* to the records at issue, in addition to the issue of whether the mandatory exemption for third party information at section 17(1) of *FIPPA*, are at issue in this appeal.¹

¹ In the Notice of Inquiry I sent to the parties, I expanded the issue of whether the law firm's request was frivolous and/or vexatious to whether the request was an abuse of process.

[6] Further mediation was not possible, and the matters were transferred to the adjudication stage of the appeals process where an adjudicator may conduct a written inquiry. I commenced an inquiry in which I obtained representations from the LTC Home, the hospital and the law firm.

[7] During the inquiry, the hospital notified the IPC that it had revised its decision in PA22-00570 (the law firm's appeal of the hospital's decision to withhold some information pursuant to section 13 of *FIPPA*). The hospital decided to disclose additional portions of records 27, 28, 66, 93 and 95 to the law firm. After considering the hospital's revised position, the law firm agreed to withdraw appeal PA22-00570.

[8] However, the LTC Home (the appellant in this appeal) confirmed its position that section 17(1) of *FIPPA* applied to that information. The LTC Home also asserted that the new information the hospital decided to disclose should be withheld because the law firm's request was an abuse of process, because additional discretionary exemptions should apply, and because section 3 of *QCIPA* protected it from disclosure. The LTC Home was provided an opportunity to reply to the hospital's representations and its revised position regarding records 27, 28, 66, 93 and 95. The LTC Home specified that it repeated and relied on its previous representations and made no further submissions.

[9] In this decision, I uphold the hospital's decision to disclose the information at issue and I dismiss the LTC Home's appeal.

RECORDS:

[10] There are 130 records, or portions of records, at issue in this appeal.² The records include emails and attachments. Each record ranges from 1 to 22 pages each.

ISSUES:

- A. What is the impact of section 3 of the *Quality of Care Information Protection Act*?
- B. Is the law firm's request an abuse of process?
- C. Can the appellant raise the application of the discretionary exemptions in sections 13(1) (advice or recommendations), 14(1) and 14(2)(a)(c) (law enforcement), 15(b) (relations with other governments), and 18(1)(j) (assessments and evaluations by or for hospital committees) of *FIPPA*?

² I note that none of the information the hospital decided to withhold is at issue in this appeal. To be clear, the information the hospital severed in the copy of the records it provided the IPC is not at issue, aside from those portions in records 27, 28, 66, 93 and 95 that it decided to disclose during the inquiry process. That information is at issue in this appeal.

- D. Does the mandatory exemption for third party information at section 17(1) of the *FIPPA* for third party information apply to the records?

DISCUSSION:

[11] This is one of four decisions issued together that deal with similar parties, types of records, and issues.³ The law firm is the requester in each of the appeals and the LTC Home is the appellant. The LTC Home appealed various institutions' decisions to disclose information to the law firm about a specific COVID-19 outbreak at the LTC Home.

[12] The LTC Home submitted substantially similar representations for each of the four appeals and there is significant overlap in the type of records at issue. As a result, some portions of the four decisions are also duplicative. Although there is repetition in my overview of the LTC Home's representations and in some of my analysis of the issues in each of the four decisions, unique consideration was required in each appeal to take into account the individual records at issue, and the evidence provided by the parties before making each decision.

Background

[13] The LTC Home provided background information that is helpful in understanding the context of this appeal and the nature of the information at issue. As such, I have outlined the main points below and taken them into consideration when making my decision.

[14] The LTC Home operates a long-term care home. It says that the records at issue relate to the province's first outbreak of a variant of concern of COVID-19 (the Outbreak) and its efforts to manage it within the long-term care home. It says the Outbreak occurred in the context of a global infectious disease pandemic, the likes of which the world had not seen in over 100 years. According to the LTC Home, long-term care homes were particularly harshly impacted by COVID-19 outbreaks because of their vulnerable populations and other systemic factors. As a result, it asserts that these care homes needed a safe space to collaborate with other health care institutions and share confidential information to manage a crisis that none of them had ever experienced before, and which they knew very little about.

[15] The LTC Home says that throughout the Outbreak, it collaborated with various government institutions who provided oversight and guidance, including the hospital, the North Simcoe Muskoka Local Health Integration Network (now called Ontario Health

³ The other three appeals and decisions are Appeal PA23-00123 (Order PO-4631), Appeal PA24-00181 (Order PO-4632), and Appeal PA24-00365 (PO-4633).

atHome)⁴, the Ministry of Long-Term Care, the Simcoe Muskoka District Health Unit, and Orillia Soldiers' Memorial Hospital (collectively referred to in this Order as the Community Partners).

[16] The LTC Home states that it participated in daily Outbreak Management Team (OMT) meetings with the Community Partners and maintained frequent, ongoing communication with them to manage the Outbreak. It says the purpose of the OMT meetings was for the LTC Home to share openly and candidly, in confidence, information relating to the Outbreak with OMT members so that it could receive advice, recommendations, and assistance managing the Outbreak.

[17] The LTC Home says that it prepared detailed minutes of the OMT meetings, as well as Situation Background Assessment Recommendation Reports (SBAR Reports), Daily Outbreak Operational (DOO) Reports, email updates and other records relating to the Outbreak, which it says were shared with members of the OMT for the purposes of responding to and managing the Outbreak. The LTC Home says it also shared confidential information during Infection Prevention and Control (IPAC) assessments, workplace safety assessments and other inspections completed by the Community Partners. It says it entered into confidential agreements to receive support services, as part of the Outbreak management process. The LTC Home says that these Outbreak-related documents form the bulk of the records at issue in this appeal.

[18] The LTC Home provided an affidavit from its Director of Long-Term Care Operations (the Director) stating that the members of the LTC Home's OMT met daily and communicated amongst each other frequently to discuss the status of the Outbreak in the home. The Director attested that her understanding was that information was provided to members of the OMT in confidence and there was an expectation that it would not be shared publicly.

Issue A: What is the impact of section 3 of the *Quality of Care Information Protection Act*?

[19] The LTC Home says that section 3 of *QCIPA* applies to the records at issue in this inquiry, and that as a result, *FIPPA* does not apply. Section 3 of *QCIPA* states:

The Freedom of Information and Protection of Privacy Act does not apply to quality of care information.

[20] The *QCIPA* defines "Quality of care information" in section 2(2) as follows:

(2) Subject to subsection (3), in this Act,

⁴ I note that the 14 Local Health Integration Networks, operating as Home and Community Support Services, were amalgamated to form a new organization named "Ontario Health atHome" pursuant to section 27.2(1) of the *Continuing Care Act*.

“quality of care information” means information that,

(a) is collected or prepared by or for a quality of care committee for the sole or primary purpose of assisting the committee in carrying out its quality of care functions,

(b) relates to the discussions and deliberations of a quality of care committee in carrying out its quality of care functions, or

(c) relates solely or primarily to any activity that a quality of care committee carries on as part of its quality of care functions, including information contained in records that a quality of care committee creates or maintains related to its quality of care functions.

[21] As set out in the Notice of Inquiry sent to the parties at the beginning of this inquiry, section 67(1) of *FIPPA* states:

This Act prevails over a confidentiality provision in any other Act unless the other Act or this Act specifically provides otherwise.

[22] In the Notice of Inquiry provided to the parties at the beginning of this inquiry I asked each party to explain whether any of the information in the records at issue met the criteria outlined above for “quality of care information” and, if so, to comment on the impact of section 67(1) of *FIPPA* and section 3 of the *QCIPA*, and on the applicability of *FIPPA* to the responsive records.

The LTC Home’s representations

[23] The LTC Home submits that records at issue meet the criteria for “quality of care information” in *QCIPA*, and that as a result, *FIPPA* does not apply to them.⁵

[24] The LTC Home submits that the purpose of *QCIPA* is to enable confidential discussions between authorized health facilities about errors or systemic problems to improve the quality of health care delivered to patients. It says the goal of *QCIPA* is to create a safe space for health institutions (including the LTC Home) to talk openly about quality improvement without fear that the information will be used against them.

[25] The LTC Home asserts that the COVID-19 pandemic and related outbreaks gave rise to systemic problems in the health care sector. It explains that long-term care homes affected by COVID-19 outbreaks aligned with various entities, such as the Community Partners, to collaborate, in confidence, regarding opportunities for quality improvement and to prevent future outbreaks and manage them when they occur.

⁵ The LTC Home says that the records that *QCIPA* applies to “include” the OMT meeting minutes, SBAR Reports, DOO Reports and emails updating OMT members on the status of the Outbreak.

[26] The LTC Home says the records at issue in this appeal meet the criteria for “quality of care information” as outlined in section 2(2) of the *QCIPA*. Specifically, the LTC Home submits that the information at issue was collected and prepared by or for the LTC Home’s quality of care committee, which it says formed part of the LTC Home’s OMT, for the primary purpose of assisting the committee in carrying out its quality of care functions.

[27] The LTC Home says that “quality of care functions” means “activities carried on for the purpose of studying, assessing or evaluating the provision of health care with a view to improving or maintaining the quality of the health care and include conducting reviews of critical incidents.” It says the purpose of the information at issue in this appeal is to study, assess and evaluate the provision of health care to residents during the Outbreak with a view to managing the Outbreak and thus, improving the quality of health care provided to residents overall. The LTC Home maintains that the information at issue relates primarily to the activities of its committee in terms of its assessment of the status of the Outbreak day-to-day, its areas of concern and the implementation of quality improvement recommendations supplied by the OMT.⁶

The hospital’s representations

[28] The hospital agrees that it communicated with the LTC Home and exchanged information to help manage a crisis neither of them had ever experienced and about which they knew very little. However, the hospital disagrees with the LTC Home that the information contained in the records consists of quality of care information which cannot be disclosed pursuant to *QCIPA*.

[29] The hospital argues that the LTC Home’s position would significantly broaden the definition of “quality of care information” and the scope of the confidentiality provision enacted under *QCIPA*.

[30] The hospital submits that the LTC Home provided only a general submission that all the information in the records is quality of care information without providing explanations with reference to specific records. It argues that much of the information contained in the records is factual information that relates to the status of the Outbreak at the LTC Home and the actions taken to manage it. The hospital says that factual information is not quality of care information.

[31] The hospital refers to the definition of quality of care information in section 2(2) of *QCIPA*, reproduced above. It submits that the LTC Home has failed to provide any evidence to support the assertion that the records at issue were prepared for its quality of care committee. The hospital argues that the fact that some members of the LTC Home’s Committee may also have been members of the OMT is not sufficient to meet the criteria at s 2(2) of *QCIPA* that the information was collected or prepared solely or

⁶ I note that the LTC Home included additional representations about why the information at issue does not fit within the criteria set out at section 2(3) of *QCIPA*. However, given my finding below, it is not necessary for me to set out those portions of the LTC Home’s representations here.

primarily for its committee or relates solely or primarily to the activities the committee carries out. In fact, the hospital says, many of the reports and correspondence at issue were created by members of the OMT other than the LTC Home for the purpose of the broader OMT, and not for the LTC Home's committee.

[32] Additionally, the hospital submits that *QCIPA* defines "quality of care functions" as "activities carried on for the purpose of studying, assessing or evaluating the provision of health care with a view to improving or maintaining the quality of the health care and include conducting reviews of critical incidents." It says that the LTC Home has not explained how the information relates to the quality of care functions of its committee. The hospital argues that to interpret "quality of care functions" as meaning any information that relates to the operation of a health facility or the provision of health care, even if it relates to the management of an unprecedented crisis, would significantly expand the definition of that term.

The law firm's representations

[33] The law firm, the requester in this appeal, denies that *QCIPA* prevents the disclosure of the information at issue because none of the records fall within the definition of "quality of care information." First, the law firm argues that the LTC Home has failed to demonstrate that a quality of care committee existed at the LTC Home at the relevant time. Alternatively, it says that if a committee is found to exist, the records at issue do not fall within the definition of "quality of care information" provided in section 2(2) of the *QCIPA*.

[34] The law firm notes that *QCIPA* defines a "quality of care committee" as "a body of one or more individuals that performs quality of care functions" and:

- (a) that is established, appointed or approved,
 - (i) by a health facility,
 - (ii) by a quality oversight entity, or
 - (iii) by any combination of health facilities or quality oversight entities,
and
- (b) that meets the prescribed criteria.

[35] The law firm explains that the "prescribed criteria" referenced in (b) in the above definition are included in Ontario Regulation 483/16:

1. Before beginning to act as a quality of care committee, the committee must be designated in writing as a quality of care committee for the purposes of the Act or of the Quality of Care Information Protection Act, 2004 by,

- i. the health facility or the quality oversight entity that established, appointed or approved it, or
- ii. if the quality of care committee was established, appointed or approved by a combination of health facilities or quality oversight entities, each such facility or entity.

2. The terms of reference of the quality of care committee and its designation must be available on request to members of the public.

[36] The law firm argues that the LTC Home has not provided any evidence to demonstrate that the OMT was designated in writing as a quality of care committee. The law firm submits that because the LTC Home failed to produce any written evidence of a quality of care committee, I should infer that it does not exist. Furthermore, the law firm says that if the OMT was not designated in writing as a quality of care committee, it was not a quality of care committee under *QCIPA* and section 3 of *QCIPA* does not apply. Finally, the law firm submits that the fact that the OMT performed "quality of care functions" and consisted of members who also sat on the "quality council" does not, on its own, mean the OMT was a quality of care committee.

Findings and analysis

[37] Below are my reasons for finding that the confidentiality provision at section 3 of *QCIPA* for "quality of care information" does not apply to the records at issue in this appeal. This means that section 3 does not prevail over the access rights set out in *FIPPA*.

[38] The LTC Home asserts that the records contain "quality of care information" that was collected and prepared by, or for, its committee. It states that the committee formed part of the OMT (Outbreak Management Team) and was carrying out quality of care functions. I agree with the hospital that the fact that some members of the LTC Home's quality of care committee may also have been members of the OMT is not sufficient to meet the criteria at section 2(2) of *QCIPA* that the information was collected or prepared solely or primarily for its committee or relates solely or primarily to the activities the committee carries out.

[39] Furthermore, I am not satisfied that the LTC Home has provided sufficient evidence to demonstrate that the Committee was established in the manner required by *QCPIA* and Regulation 483/16.

[40] As outlined in the law firm's representations, Regulation 483/16 stipulates that certain steps must be taken to form a "quality of care committee," including designating the committee in writing as a quality of care committee for the purposes of *QCIPA*. The Regulation also states that the terms of reference of a quality of care committee and its designation must be available on request to members of the public.

[41] The LTC Home was provided with copies of the law firm and hospital's

representations and invited to submit a reply. In its responding submission, the LTC Home stated only that it repeated and relied on its previous representations. In my view, the LTC Home's decision not to address the points raised by the other parties, most importantly, the regulatory requirements to establish a quality of care committee, undermines its position. It seems to me that if the committee was properly established, the LTC Home could have easily provided a copy of the terms of reference and designation, which Regulation 483/16 states must be available to the public. The fact that it did not provide this information, nor did it offer an explanation or reason for not providing it, suggests that its committee may not have been properly established pursuant to Regulation 483/16.

[42] In any event, because section 3 of QCIPA states that FIPPA does not apply to "quality of care information," I have also reviewed each of the records that the LTC Home says contain this information to determine whether it is apparent that it may in fact include "quality of care information" despite the LTC Home's lack of evidence to that point. I see nothing specific that suggests any of the records at issue were collected or prepared for or by a "quality of care committee," or that they otherwise relate to discussions or deliberations of a quality of care committee.

[43] As noted by the hospital, many of the records at issue were created by members of the OMT other than the LTC Home for the purpose of the broader OMT, and not for the LTC Home's committee. Having reviewed the records at issue, I confirm that many were created by parties other than the LTC Home and clearly do not contain "quality of care information."

[44] Further, I am not satisfied that any of the information in the records at issue served "other quality of care functions" as set out in Section 2(2) of QCIPA. Most of the records at issue are emails. Based on my review of the emails, it is clear to me that the purpose of the communications was to coordinate support and assistance for the LTC Home and assist it in managing the Outbreak. I agree with the hospital that outbreak management is distinct from "quality of care" functions, as contemplated by QCIPA.

[45] Regarding the various reports at issue, I note that many appear to have been completed by the Community Partners, with information from or about, the LTC Home. There is no indication in any of the reports that the information in them was being used for anything other than outbreak management. Based on the content of the emails, I am also satisfied that the purpose of the meetings, communications, reporting tools and/or reports was not "quality of care" as defined by QCIPA.

[46] For all these reasons I find that the information at issue is not "quality of care information" for the purposes of section 2(2) of the QCIPA and as a result, section 3 of the QCIPA has no application to this appeal.

ISSUE B: Is the request for access an abuse of process?

[47] The LTC Home says that the law firm's request is an abuse of process and that it should be denied access to the records at issue for that reason.

[48] In the Notice of Inquiry I sent to the LTC Home at the beginning of this inquiry I asked it to explain why it believes I should find that the request is an abuse of process, what factors I should consider when making this determination, and what the consequences of that finding should be.

[49] After reviewing the LTC Home's representations on this issue, I determined that I did not need to hear from the other parties before deciding on this issue. Below, I have set out the most relevant parts of the LTC Home's arguments and I follow with my reasons for finding that the law firm's request is not an abuse of process.

[50] The LTC Home begins by stating that the right of access under *FIPPA* is not engaged where the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious, and the head may refuse the request in such circumstances.

[51] The LTC Home relies on the Ministry of Government and Consumer Services "Freedom of Information and Protection of Privacy Manual" which it says describes a frivolous and vexatious request as including those which amount to an abuse of the right of access. According to the LTC Home, the manual says the IPC considers it an abuse of process to use the access process to "make requests that are excessively broad in scope or unusually detailed" or which "coincide with the timing of other events (e.g., court proceedings)."⁷

[52] The LTC Home says that it has received multiple notifications as an affected third party of requests for access to records pertaining to the Outbreak. Specifically, it says that 10 separate access requests for identical or similar records were made to the hospital, the North Simcoe Muskoka Local Health Integration Network (now called Ontario Health atHome), the Ministry of Long-Term Care, the Simcoe Muskoka District Health Unit, the Orillia Soldiers Memorial Hospital, Ontario Health, and the County of Simcoe. Indeed, the LTC Home says that two identical requests have been made to the hospital.⁸

[53] The LTC Home says that most of the requests have been made by the same requester and are broad in nature. In support of these assertions, the Director's affidavit provided 10 copies of different access to information requests that the LTC Home was notified of as a potential affected party.

[54] In its representations, the LTC Home argues that it has been subjected to an

⁷ *Freedom of Information and Protection of Privacy Manual*, Information, Privacy and Archives Division Ministry of Government and Consumer Services, Queen's Printer for Ontario, 2018 at page 101.

⁸ The LTC Home is referring to this appeal and another appeal that was withdrawn by a different requester.

excessive number of overly broad requests for access to voluminous records relating to the Outbreak, that the requests are identical or very similar to one another and appear to originate from the same requester. It points to Order MO-3406 and says that this high volume of excessively broad and similar requests is indicative of a pattern of conduct which amounts to an abuse of the right of access.

[55] The LTC Home says that there is ongoing litigation related to the Outbreak and that there is a real likelihood that the requester intends to use the records to advance its own private interest. The LTC Home argues that to the extent that the requester is seeking disclosure of the records for the purposes of civil litigation, this is a private interest, and the request is inconsistent with *FIPPA*'s express purposes.

[56] Furthermore, the LTC Home argues that the information at issue ought not be ordered disclosed by the IPC. It says that the disclosure of any records should occur within the context of the court proceedings where there are rules in place to ensure procedural fairness and the protection of privacy interests of affected individuals. The LTC Home says that this reasoning is consistent with Order MO-1782, where an adjudicator stated:

The requests are generally coincident with the LTC Home's commencement of legal proceedings against Niagara [Regional Municipality]. This fact considered in isolation is insignificant. When it is combined with other factors evident in this case, however, it contributes to the discussion about this appellant's conduct, and weighs in favour of a frivolous or vexatious finding.

[57] The LTC Home submits that the current appeal is similar to the situation in Order MO-1782. Specifically, it says there is an ongoing legal proceeding, combined with the multiple, excessively broad requests for identical or similar records related to the Outbreak and that this weighs in favour of a frivolous and vexatious finding.

[58] The LTC Home also argues that the request was made to accomplish an objective other than to gain access, without reasonable or legitimate grounds. It maintains that there is a real likelihood that the law firm intends to disseminate the records publicly to subject the LTC Home to further public scrutiny.

[59] The LTC Home says that the Simcoe Muskoka District Health Unit (the Health Unit) also received a request that was similar to the request at issue in this appeal and that it denied access pursuant to the mandatory exemption for third party information at section 10(1)(b) of the *Municipal Freedom of Information and Protection of Privacy Act*.⁹ The LTC Home says that the Health Unit determined that the disclosure of the records could reasonably be expected to result in similar information no longer being supplied to the institution. The LTC Home says that "deference should be given to the views of public

⁹ The LTC Home is referring to another appeal, which was also withdrawn by a different requester and closed.

health experts who are statutorily charged with overseeing public health in the region.”

[60] In summary, the LTC Home submits that the requests are excessively broad, are being used to advance a private interest, and/or were made with the intention of subjecting the LTC Home to further public scrutiny, all of which amounts to an abuse of the right of access.

[61] The LTC Home made various additional arguments that I reviewed but will not set out in detail because, as I explain below, these factors are not relevant to the issue of whether the request is an abuse of process. They include the following assertions:

- Disclosure of the records would disincentivize long-term care operators from communicating openly and transparently with government authorities and community partners, compromising the effectiveness of future outbreak management process across the province,
- Additional public scrutiny is not a desirable objective in these circumstances,¹⁰
- The Outbreak has already garnered significant regulatory oversight, media attention and public scrutiny and additional public scrutiny would not meaningfully contribute to the public’s understanding of the activities undertaken by the parties involved,
- There is no compelling public interest which makes disclosure desirable,¹¹ and
- A commission completed a thorough and detailed investigation into how and why COVID-19 spread in long-term care homes and released a publicly available report.

Findings and analysis

[62] Below are my reasons for dismissing this aspect of the LTC Home’s appeal.

[63] The LTC Home’s representations raise the possible application of the “frivolous or vexatious” provisions at section 10(1)(b) of *FIPPA* and section 5.1 of Regulation 460. A preliminary issue in that regard is whether the LTC Home, as the third party appellant, is entitled to rely on those provisions, or whether they can only be claimed by an institution.

[64] Section 10(1)(b) of *FIPPA* specifies the following:

...every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless, ...

¹⁰ The LTC Home refers to the following case as support: *Duncanson v. Ontario (Information and Privacy Commissioner)* 1999 CanLII 18726 (ON SCDC).

¹¹ The LTC also refer to *Doe v. Hale*, 2006 CanLII 24240 (ON SCDC).

(b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

[65] Section 27.1 states

(1) A head who refuses to give access to a record or a part of a record because the head is of the opinion that the request for access is frivolous or vexatious, shall state in the notice given under section 26,

(a) that the request is refused because the head is of the opinion that the request is frivolous or vexatious;

(b) the reasons for which the head is of the opinion that the request is frivolous or vexatious; and

(c) that the person who made the request may appeal to the Commissioner under subsection 50 (1) for a review of the decision. 1996, c. 1, Sched. K, s. 4.

[66] As previous IPC orders have made clear, these provisions exist for the benefit of “institutions” under *FIPPA*.¹² Section 10(1)(b) sets a condition precedent for its application that “the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.”¹³ This theme is repeated in the notice requirement established by section 27.1(1). Similarly, sections 5.1(a) and (b) of Regulation 460 prescribe the following:

5.1 A head of an institution that receives a request for access to a record or personal information shall conclude that the request is frivolous or vexatious if,

(a) the head is of the opinion on reasonable grounds that the request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution; or

(b) the head is of the opinion on reasonable grounds that the request is made in bad faith or for a purpose other than to obtain access.

[67] There are numerous IPC orders that have consistently held that section 10(1)(b) can only be relied upon by the head of an institution under *FIPPA*.¹⁴ As explained in Order PO-2490:

...the universal requirement in these provisions that *the head* (i.e., the head of an institution under the *Act* – see the definition in section 2) must have

¹² Orders PO-2050, PO-2906, and PO-3738-I.

¹³ Order PO-2906 at pages 35 to 36.

¹⁴ For example, Orders PO-2050, PO-2906, and PO-3738-I.

formed an opinion that the request is frivolous or vexatious make it even more difficult for an affected party or appellant to rely on these provisions than to rely on a discretionary exemption, as discussed above. In fact, based on the statutory wording, I believe this is an insurmountable hurdle. I find that the appellant is not entitled to rely on these sections, *per se*. [Emphases in original.]

[68] Previous IPC decisions have specified that the application of the frivolous and vexatious provisions is only relevant to the use of the “processes” of *FIPPA*.¹⁵ According to these previous decisions, the frivolous and vexatious provisions of *FIPPA* were enacted to provide institutions with a tool to enable them to address abuses of the processes of the legislation that may impede the operation of an institution. The abuses referred to under *FIPPA* would not have an impact on affected parties in a way that would trigger the application of this provision.

[69] Furthermore, IPC adjudicators have agreed that the frivolous and vexatious provisions were not intended to be used by institutions to prevent the disclosure of records that would otherwise be available under *FIPPA* because they do not like the nature of the request or the person requesting the information.¹⁶

[70] I agree with and adopt the findings of the adjudicators who have considered this issue already.¹⁷ I agree that the frivolous or vexatious provisions at section 10(1)(b) of *FIPPA* are not intended to be available to affected parties who object to the disclosure of records that institutions have decided should be disclosed under *FIPPA*.

[71] However, even though the LTC Home cannot rely upon *FIPPA*’s frivolous or vexatious provisions, previous IPC orders have held that parties to an appeal have a right to argue that a request made under the *FIPPA* constitutes an abuse of process at common law and to have an appeal dismissed based on that finding.¹⁸ In this case, the LTC Home argues that the law firm’s request for information should be denied because it is an abuse of process. I will consider that issue next.

Abuse of process at common law

[72] In Order MO-2635, Adjudicator Faughnan explained that the principles that would apply to an allegation that a request is an abuse of process or “frivolous or vexatious” at common law are, to a significant extent, the foundation of the frivolous or vexatious provisions in *FIPPA*. As a result, he concluded that the following issues should be considered:

¹⁵ See, for example, Orders M-906 and MO-1488.

¹⁶ Order PO-2050.

¹⁷ Orders PO-2050, PO-2688, MO-3647, and PO-3728-I.

¹⁸ Most recently, Order MO-4404. See also, PO-3728-I, PO-2906, PO-2490, MO-2635 and M-618.

- whether the request was part of a pattern of conduct that amounts to an abuse of the right of access,
- whether the request was made in bad faith or for a purpose other than to obtain access.

[73] In this appeal, the LTC Home submits that the law firm engaged in a pattern of conduct amounting to an abuse of process, and that the request that forms the basis for this appeal was made for an improper purpose. As such, I will consider both claims below.

Pattern of Conduct

[74] A pattern of conduct must be found to exist before determining whether that pattern of conduct amounts to an abuse of the right of access.¹⁹ In Order M-850, the adjudicator defined a “pattern of conduct” as follows:

... a “pattern of conduct” requires recurring incidents of related or similar requests on the part of the requester (or with which the requester is connected in some material way).

[75] The following factors may be relevant in determining whether a pattern of conduct amounts to an “abuse of the right of access”:

- *Number of requests*: is the number excessive by reasonable standards?
- *Nature and scope of the requests*: are the requests overly broad and varied in scope or unusually detailed? Are they identical or similar to previous requests?
- *Purpose of the requests*: are the requests intended to accomplish some objective other than to gain access to the requested information? For example, are they made for “nuisance” value, or is the requester’s aim to harass the institution or to break or burden the system?
- *Timing of the requests*: is the timing of the requests connected to the occurrence of some other related event, such as court proceedings?²⁰

[76] If I find that the request is part of a pattern of conduct, then I must determine whether that pattern of conduct amounts to an “abuse of the right of access.” In making that determination, various factors may be relevant, including the cumulative effect of the number, nature, scope, purpose, and timing of the requests.²¹ Other factors specific to the case can also be relevant in deciding whether a pattern of conduct amounts to an

¹⁹ Order MO-4513.

²⁰ Most recently, Order MO-4513. See also, Orders M-618, M-850, MO-1782.

²¹ Most recently, Order MO-4513. See also, Orders M-618, M-850, MO-1782 and MO-1810.

abuse of the right of access.²²

[77] In the current case, I am not satisfied that the law firm has engaged in a pattern of conduct that would amount an abuse of process. The LTC Home provided affidavit evidence indicating that it has received 10 notifications of requests for information from various institutions. The Director states that she believes most of these requests were made by the law firm.

[78] The law firm is the requester on four appeals currently before me at the inquiry stage of the appeals process.²³ One additional appeal was withdrawn by the law firm at the adjudication stage, and four other appeals arising from requests made by the law firm were closed at the intake or mediation stage.²⁴ As such, I can confirm that the law firm made at least 9 requests for information to various institutions for records related to the LTC Home.²⁵ I can also confirm that the law firm is not the requester in the other appeal referred to by the appellant in its representations.

[79] Although the law firm's requests all seek information about the Outbreak, each request was submitted to a different institution or sought different information. Based on my understanding of the context from the file materials, it appears the law firm has a good faith interest in obtaining information from each of the institutions about the Outbreak. In my view, the requests were not made for "nuisance" value or to place a burden on any system.²⁶

[80] I note the LTC Home's reliance on Order MO-3406, which specifies that a high volume of excessively broad and similar requests is indicative of a pattern of conduct which amounts to an abuse of the right of access. I do not find this case helpful to the LTC Home's cause. In Order MO-3406 the adjudicator noted that the appellant in that appeal had made three requests within three months. The adjudicator concluded that the three requests were not excessive. The adjudicator differentiated the case before her from others, such as Orders MO-2111 and MO-2289, where there were 27 and 626 requests, respectively.

[81] In my view, 9 requests made to different institutions does not amount to a high volume of requests, particularly where each of those institutions may have different information that the law firm seeks.²⁷ In this appeal, the law firm requested access to records about hospital's involvement in the Outbreak during a month-long period. I

²² Order MO-1782.

²³ This appeal, as well as Appeals PA23-00123, PA23-00181, and PA24-00365.

²⁴ Appeals PA22-00570, MA22-00751, MA23-00341, PA23-00122 and PA24-00212.

²⁵ Four other requests were made by a different requester, who does not appear to have a connection to the law firm.

²⁶ I note that the LTC Home's assertion that the law firm is attempting to gather information for a civil proceeding and that this is an inappropriate use of *FIPPA*. I address this argument later in this decision.

²⁷ I note that there could be an additional request from the law firm, according to the LTC Home. I am not aware of an additional IPC appeal. However, if there were an additional request from the law firm that was similar in nature to the other nine already accounted for, this would not have affected my decision.

disagree with the LTC Home that the request was overly broad or unusually detailed. Overall, I am not satisfied that this is a circumstance where there is a pattern of requests that results in an abuse of process.

Bad faith or a purpose other than to obtain access

[82] As noted above, a request may also be an abuse of process if it is made in bad faith or for a purpose other than to obtain access.²⁸ In short, "bad faith" implies the conscious doing of a wrong for a dishonest purpose. The IPC has defined the term "bad faith" as,

The opposite of "good faith," generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfil some duty or other contractual obligation, not prompted by an honest mistake as to one's rights, but by some interested or sinister motive...²⁹

[83] A "purpose other than to obtain access" would require a requester to "have an improper objective above and beyond a collateral intention to use the information in some legitimate manner."³⁰ In Order MO-1924, Adjudicator Higgins noted that requesters may have "some collateral purpose over and above an abstract desire to obtain information" when making requests. He emphasized,

Access to information legislation exists to ensure government accountability and to facilitate democracy (see *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC), [1997] 2 S.C.R. 403). This could lead to requests for information that would assist a journalist in writing an article or a student in writing an essay.³¹

[84] As confirmed by Adjudicator Higgins, these purposes are permissible. He emphasized that to find otherwise would contradict the fundamental principles underlying *FIPPA*.³² Potential examples of purposes other than to gain access, as stated above, could include harassing an institution to break or burden their systems, or purely to create a nuisance.³³

[85] I do not accept the LTC Home's assertion that the law firm should be prohibited from seeking information under *FIPPA* because it commenced a civil proceeding, or that any information disclosed should be under the guidance of the court in the litigation process. As noted in Order MO-1782, relied on by the LTC Home, the fact that a request

²⁸ Order MO-2635.

²⁹ Order MO-4513.

³⁰ Order MO-1924.

³¹ Order MO-1924.

³² Order MO-1924.

³³ Order M-618 and MO-3761.

for information is coincident with legal proceedings, considered in isolation, is insignificant.

[86] Previous IPC orders have been clear that litigants are not prohibited from seeking access to information pursuant to *FIPPA*. As explained in Interim Order MO-2573-I, “the Act does not contain any provision aimed at preventing a requester from making an access request, even where the requester is involved in litigation with the institution, and the requested records may be related to the litigation.”³⁴ The adjudicator confirmed that “a request for information that could also be sought on discovery in contemporaneous litigation is not, per se, an abuse of process.”³⁵

[87] As emphasized in Order PO-3435, although an appellant may be able to seek the same information through the rules of discovery, those rules do not preclude them from seeking access under *FIPPA*. To be clear, the fact that an appellant has chosen to make a request instead of (or in addition to) pursuing the discovery process does not, in itself, amount to an abuse of process.³⁶ While the timing of a request aligning with court proceedings may, in combination with other factors, lead to a conclusion that a requester is acting in bad faith, the existence of litigation, in isolation, does not support a finding of bad faith. The fact that there is contemporaneous litigation is not sufficient evidence to base a finding of bad faith on if there are no other factors that suggest a requester is acting in bad faith. In this case, I see no other factors indicating that the law firm has an alternative purpose other than obtaining the requested information, or that it is acting in bad faith.

[88] The LTC Home’s remaining arguments are not relevant to the issue of whether the law firm’s request is an abuse of process, based on the criteria above. The IPC does not weigh factors related to public scrutiny, regulatory oversight, or the public interest when considering whether a request is an abuse of process.

[89] I have considered the decisions relied on by the LTC Home, namely, *Duncanson v. Ontario (Information and Privacy Commissioner)* and *John Doe v. Hale*, and find that they are not applicable to the issue of whether the law firm’s request is an abuse of process.³⁷ Each of these cases dealt with different issues than those before me. The paragraph highlighted by the LTC Home in *Duncanson v. Ontario (Information and Privacy Commissioner)* relates to the potential application of section 14(2)(a) of the personal privacy exemption in the *Municipal Freedom of Information and Protection of Privacy Act*. The paragraph the LTC Home highlighted in *John Doe v. Hale* is about whether the public interest override at section 23 of *FIPPA* is engaged. The analysis in both cases concerns

³⁴ Interim Order MO-2573-I was determined pursuant to the municipal counterpart to *FIPPA*, the *Municipal Freedom of Information and Protection of Privacy Act*.

³⁵ Order MO-2573-I.

³⁶ Order PO-3435 at para. 40.

³⁷ *Duncanson v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 2464, 175 D.L.R. (4th) 340, 124 O.A.C. 170, 87 C.P.R. (3d) 94, Court File Nos. 284/97, 376/97, 410/97, 509/97 and 5/98 (Div. Ct.) and *Doe v. Hale*, 2006 CanLII 24240 (ON SCDC).

issues other than whether the underlying request for records is either frivolous or vexatious or an abuse of process and is not relevant.

[90] Next, I find that the fact that some of the information is already publicly available is not, absent any other connecting arguments or evidence, relevant to the determination of whether a request is an abuse of process. I also do not agree that the fact that the Health Unit made a different access decision in response to a similar request for information is relevant to the issue of whether the law firm's request in this appeal is an abuse of process.³⁸ Institutions make decisions based on the records before them and their understanding and application of the access to information legislation. In my view, these are separate matters and the Health Unit's decision does not support the LTC Home's argument that the law firm's request in this appeal is an abuse of process.

[91] Finally, I find that the LTC Home's arguments that focus on whether disclosing the information would disincentivize long-term care operators from communicating openly and transparently with government authorities and compromise the effectiveness of future outbreak management processes across the province are also not relevant to whether the request is an abuse of process. These types of harms-related arguments are typically the subject of the analysis under section 17(1) of *FIPPA*. In my view, these arguments are not relevant to the determination of whether a request is an abuse of process at common law.

[92] For the reasons set out above, I find that the law firm's request is not an abuse of process pursuant to common law, and I dismiss this aspect of the appeal.

Issue C: Can the LTC Home raise the application of the discretionary exemptions in sections 13 (advice or recommendations), 14 (law enforcement), 15(b) (relations with other governments), and/or 18(1)(j) (assessments and evaluations by or for hospital committees) of the *Act*?

[93] The LTC Home submits that this appeal involves rare and unusual circumstances and as a result, it should be permitted to raise the application of the discretionary exemptions at sections 13, 14(1), 14(2)(a), 14(2)(c), 15(b), and 18(1)(j) of *FIPPA*, even though the hospital did not claim those sections applied to any of the information at issue.³⁹

[94] *FIPPA* contains both mandatory and discretionary exemptions. A mandatory exemption indicates that a head "shall" refuse to disclose a record if the record qualifies for exemption under the exemption. A discretionary exemption uses the permissive "may." The legislature expressly contemplated that the head of the institution is given

³⁸ I also note that the request that was the subject of another appeal (since withdrawn) was made by someone other than the law firm.

³⁹ Or, in the case of section 13, claimed that the discretionary exemption only applied to some of the information.

the discretion to claim, or not to claim, these exemptions.

[95] As set out in Order P-1137, and reiterated by many decisions of the IPC, if the head of an institution determines that, despite the application of a discretionary exemption, a record should be disclosed, they may do so.⁴⁰ Previous orders have emphasized that the purpose of the discretionary exemptions is to protect institutional interests, and that as a result, it would only be in the most unusual of cases that an affected party could raise the application of an exemption which has not been claimed by the head of an institution.⁴¹

[96] As explained in the Notice of Inquiry provided to the LTC Home, affected party interests are typically considered in the context of the mandatory exemptions in sections 17 or 21(1) of the *Act*. The LTC Home was asked to explain why it should be permitted to raise any of the discretionary exemptions in this case.

The LTC Home's representations

[97] The LTC Home submits that this appeal involves rare and unusual circumstances such that it should be permitted to raise the application of discretionary exemptions not claimed by the hospital. The LTC Home refers me to Order P-257, which states the following:

[The IPC] has an inherent obligation to ensure the integrity of Ontario's access and privacy scheme. In discharging this responsibility, **there may be rare occasions when the Commissioner decides it is necessary to consider the application of a particular section of the Act not raised by an institution during the course of the appeal. This could occur in a situation where it becomes evident that disclosure of a record would affect the rights of an individual, or where the institution's actions would be clearly inconsistent with the application of a mandatory exemption provided by the Act.** It is possible that concerns such as these could be brought to the attention of the Commissioner by an affected person during the course of an appeal and, if that is the case, the Commissioner would have the duty to consider them. In my view, however, it is only in this limited context that an affected person can raise the application of an exemption which has not been claimed by the head; the affected person has no right to rely on the exemption, and the Commissioner has no obligation to consider it [emphasis added by LTC Home].

[98] The LTC Home says that IPC decisions about what rare and usual circumstances will justify the use of discretionary exemptions by third parties have largely hinged on the motivation of the discretionary exemption, as well as the consequences of the information

⁴⁰ See, for example, Orders P-1137, PO-1705, MO-2635, MO-2792 and PO-3489.

⁴¹ Orders P-1137, PO-1705, MO-2635, MO-2792 and PO-3489.

release. It says that the IPC has determined that the “rare” occasion in which a third party may rely on a discretionary exemption would be “where release of a record would seriously jeopardize the rights of a third party.”⁴²

[99] The LTC Home provided two examples where the IPC allowed individuals to raise discretionary exemptions when the institution had not done so:

1. Order PO-1787, where an adjudicator allowed an individual to raise the discretionary exemption at section 14(1)(e) of *FIPPA*. That section states, “a head may refuse to disclose a record if the disclosure could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person,” and
2. Order PO-1776-R, in which an adjudicator allowed an individual to raise the discretionary exemption at section 20. Section 20 states, “a head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.”

[100] The LTC Home submits that although the IPC has been reluctant to permit third parties to raise discretionary exemptions under *FIPPA*, it has demonstrated a willingness to allow it when disclosure of a record would affect the rights of an individual, where the institution's actions would be clearly inconsistent with the application of a mandatory exemption, or where third-party health and safety would be impacted. In this case, the LTC Home submits that the unprecedented COVID-19 pandemic in general, and the Outbreak at the LTC Home specifically, give rise to the “rare and unusual circumstances” that would justify the IPC allowing it to raise the discretionary exemptions.

[101] The LTC Home asserts that it is “evident that disclosure of the records would affect the rights of the LTC Home.” It says the records outline responses and/or strategies, recommendations, and action items relating to the outbreak provided to it by employees of institutions who were members of the OMT (Outbreak Management Team). The LTC Home argues that it has the right to maintain the confidentiality of government advice which it received in the context of an unprecedented outbreak pursuant to section 13 of *FIPPA*.

[102] The LTC Home also submits that inspections were conducted by the ministry and other institutions, and that the records related to these inspections are subject to the law enforcement exemption at section 14(1) of the *Act*.

[103] The LTC Home did not make any specific submissions about why it should be permitted to raise the other discretionary exemptions it claims should apply, specifically, sections 14(2)(a) or (c) (law enforcement),⁴³ section 15(b) (relations with other

⁴² The LTC Home relies on Order M-430.

⁴³ Sections 14(2)(a) and (c) state that “a head may refuse to disclose a record that, (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the

governments),⁴⁴ or 18(1)(j) (assessments and evaluations by or for hospital committees).⁴⁵ However, it did make some additional arguments that it did not connect to any of its discretionary exemption claims. For example, it asserts that the disclosure of the information at issue “would be entirely inconsistent with both [the hospital’s] advisory role during the Outbreak (as members of the OMT) and the supply of confidential third party information to them in carrying out this role.” It submits that the hospital’s decision not to apply the mandatory exemption for third party information at section 17(1) to all the information is inconsistent with the application of that mandatory exemption. The LTC Home says that the IPC has demonstrated a willingness to allow an affected party to raise a discretionary exemption when an institution’s actions would be clearly inconsistent with the application of a mandatory exemption. It argues that this is one of those cases.⁴⁶

[104] In short, the LTC Home says the forced disclosure of confidential and highly sensitive information shared between long-term care homes and other institutions while managing an unprecedented pandemic will have a chilling effect on the sharing of information when managing a “rare and unusual” health crisis, which would ultimately compromise public safety. The LTC Home notes that the Simcoe Muskoka District Health Unit shares this concern and denied a requester access to similar records on the basis that disclosure of the records could result in similar information no longer being shared.⁴⁷

[105] The LTC Home submits that the unprecedented COVID-19 pandemic and the potential harm associated with the lack of cooperation and transparency between the various stakeholders during an outbreak is a “rare and unusual” circumstance that justifies the use of discretionary exceptions by the LTC Home. The LTC Home submits that, as a matter of procedural fairness, it should be permitted to make representations on how the discretionary exemptions apply to the records so that these exemptions can be considered by the IPC in the full context of this unique case.⁴⁸

function of enforcing and regulating compliance with a law, or (c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability.”

⁴⁴ Section 15(b) states that “a head may refuse to disclose a record where the disclosure could reasonably be expected to reveal information received in confidence from another government or its agencies by an institution.”

⁴⁵ Section 18(1) states that “a head may refuse to disclose a record that contains information provided in confidence to, or records prepared with the expectation of confidentiality by, a hospital committee to assess or evaluate the quality of health care and directly related programs and services provided by a hospital, if the assessment or evaluation is for the purpose of improving that care and the programs and services.”

⁴⁶ For clarity, I note that the LTC Home argued above that the IPC “has demonstrated a willingness to allow [an individual to raise a discretionary exemption] when the institution’s actions would be clearly inconsistent with the application of a mandatory exemption.

⁴⁷ The LTC Home is referring to another appeal, which was withdrawn by the requester.

⁴⁸ I note that after reviewing the LTC Home’s representations about whether it should be permitted to raise the discretionary exemptions when the hospital had not done so, I determined that I had sufficient evidence to make a decision, and it was unnecessary to seek representations from the other parties to this appeal.

Findings and analysis

[106] Below are my reasons for finding that the LTC Home has not established that it should be permitted to raise the application of the discretionary exemptions at sections 13, 14(1), 14(2)(a), 14(2)(c), 15(b), and 18(1)(j) of *FIPPA*.

[107] As noted above, the purpose of the discretionary exemptions is to protect institutional interests, and it is only in “the most unusual of cases” that an affected party may raise the application of a discretionary exemption that has not been claimed by an institution.⁴⁹ The LTC Home was asked to explain why it should be permitted to raise the discretionary exemptions it alleges apply in this case when the institution did not. Having reviewed its representations, I find that it has not demonstrated that this is one of those “rare occasions” where it is necessary to consider the application of a discretionary exemption that was not applied by the hospital.

[108] As previous orders have emphasized, the discretionary exemptions exist for institutions to claim. As explained in Order P-257,

The Act does not require the head [of an institution] to notify an affected person in respect of any other exemption, nor does it provide for an affected person to raise any other exemption for consideration during the appeal process. The Act acknowledges that the views of an affected person are a valuable component of the head's decision-making process with respect to the specific types of information covered by sections 17(1) and 21(1). However, the Act makes no similar acknowledgement with respect to other exemptions and, in the absence of the circumstances which give rise to the application of section 28(1), an affected person would have no knowledge of the head's intention to release records prior to the actual release.

[109] It follows that while an institution has the right to apply discretionary exemptions, the same right does not exist for the LTC Home. As such, I disagree with the LTC Home's assertion that section 13 provides it “the right to maintain the confidentiality of government advice which it received in the context of an unprecedented Outbreak.” Section 13(1) of *FIPPA* states:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution [emphasis added].

[110] As an affected party, the LTC Home does not have that same right to assert the application of section 13 of *FIPPA*, unless it can establish that the “rare and unusual circumstances” discussed above at paragraph 95 exist such that it should be permitted

⁴⁹ Orders P-1137, PO-1705, MO-2635, MO-2792 and PO-3489.

to claim the discretionary exemption.

[111] The LTC Home argues that the unprecedented situation surrounding the COVID-19 pandemic, and specifically, the Outbreak at its location, give rise to the “rare and unusual circumstances” that should allow it to raise the discretionary exemption at section 13 of *FIPPA*.⁵⁰ I do not agree. While I acknowledge that the pandemic was an unprecedented event and I accept that long-term care homes were particularly vulnerable in outbreak situations, I do not see how this justifies allowing the LTC Home to invoke discretionary exemptions that the institution (the hospital) decided not to apply.

[112] The IPC provided guidance to institutions dealing with access to information requests during the COVID-19 pandemic in 2021. As former Assistant Commissioner Sherry Liang instructed in Order PO-4165, the expectation was that institutions must continue to respect their transparency obligations, even during the pandemic. The former Assistant Commissioner referred to a public “Joint Statement of the Federal, Provincial and Territorial Access and Privacy Commissioners” issued June 2, 2021⁵¹, emphasizing the following points:

- Access to government information and respect for privacy are essential for governments to be held accountable for their actions and decisions, and to maintain the public’s trust in times of widespread crisis. By ensuring confidence in decision-making, design and implementation of emergency measures and the systems that support them, access to information and privacy laws actually promote and assist the health and well-being of individuals and their families.
- Governments should emphasize both the proactive and voluntary disclosure of government information – particularly, information of significant public interest related to policy-making, public health, public safety, economy, procurements and benefits.
- Public bodies must be open and transparent with non-personal or aggregate-level information that the public needs to know to make informed choices and decisions about how to protect themselves and to ensure fair distribution of risks and benefits among all members of society, including the most vulnerable and marginalized groups.

[113] As is clear from the points set out above, the IPC’s view was that the importance of access to information was heightened during the pandemic. It encouraged institutions to proactively disclose information. In this case, the hospital considered the information at issue and applied the discretionary exemptions as it determined was appropriate. The hospital decided not to apply section 13, or any of the other discretionary exemptions

⁵⁰ I note the LTC Home argues due to the circumstances surrounding the Outbreak, it should be permitted to raise all of the discretionary exemptions it claims apply.

⁵¹ Available at: <https://www.ipc.on.ca/en/media-centre/news-releases/federal-provincial-and-territorial-information-and-privacy-commissioners-and-ombudsman-issue-joint>

noted by the LTC Home, to the information that remains at issue in this inquiry. I do not see the uniqueness of the pandemic, or the Outbreak at the LTC Home, as a persuasive reason to allow the LTC Home to raise those discretionary exemptions when the hospital did not.

[114] Similarly, I do not accept the LTC Home's assertion that procedural fairness requires it be permitted to raise the discretionary exemptions due to the unique circumstances created by the COVID-19 pandemic. As emphasized above, the principles of *FIPPA* continued to apply, even during the COVID-19 pandemic, and I am not convinced that there are any procedural fairness issues arising from this finding.

[115] I also do not accept that the LTC Home should be permitted to raise the discretionary exemptions for law enforcement related matters at section 14(1) of *FIPPA* simply because inspections were conducted that may fall within that exemption. The "discretionary" part of the exemption means that an institution may choose to disclose information, despite the fact that it may be able to withhold it under an exemption.

[116] Although the LTC Home did not specifically refer to any other subsections of section 14(1), it raised Orders PO-1776-I and PO-1787, which both relate to health and safety. I considered these decisions in the context of section 14(1)(e), which specifies that:

(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

(e) endanger the life or physical safety of a law enforcement officer or any other person; ...

[117] I note that both the decisions the LTC Home refers to are examples of cases where affected individuals have been permitted raise discretionary exemptions related to safety matters, when institutions have not done so.

[118] For example, in PO-1787, the requester sought access to the name, title, firm name and address of a lawyer that drafted a response anonymously to a complaint made by the requester about a company to the Ontario Human Rights Commission (OHRC). The adjudicator allowed the lawyer (as an affected individual) to raise the discretionary exemption at section 14(1)(e), even though the OHRC did not apply it. The lawyer referred to documentation in the records as evidence of the requester's past aggressive and violent behaviour and pointed out the requested information would enable the requester to contact him. The adjudicator ultimately determined that it was appropriate to consider the discretionary exemption because the lawyer expressed concerns about potential danger to his physical safety if the information was disclosed.

[119] In PO-1776-R, an adjudicator applied the discretionary exemption at section 20 (health and safety) of *FIPPA* even though the Ministry of the Attorney General had not

done so.⁵² Section 20 states that “a head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.” The adjudicator determined that it was appropriate to consider the discretionary exemption because it was not clear that the Ministry of the Attorney General was aware of the personal safety concerns of the affected individual when it issued its decision.⁵³

[120] I do not agree with the LTC Home that this appeal raises similar health or safety concerns such as those outlined above. The LTC Home asserts that third party health and safety would be impacted by the disclosure of the records because the LTC Home and other long-term care operators would become reluctant to supply fulsome information about outbreak management with institutions, to the detriment of long-term care residents, their families and the public generally. However, the LTC Home has not explained why the reluctance would arise. There are 130 records at issue in this appeal, each varying in length from 1 to 20 pages. The LTC Home has not identified any specific information that, if disclosed, would have a chilling effect on information sharing in the future. The LTC Home’s argument seems to be that if long-term care home operators knew that any information would be subject to freedom of information legislation, they would be reluctant to share it with institutions such as the hospital, or the Ministry of Long-Term Care. In my view, this is simply too general of an argument to accept.

[121] I am also not persuaded that long-term care homes would risk patient and staff safety by refusing to share information and obtain assistance from the Community Partners in an outbreak situation because they are concerned about information being disclosed through freedom of information legislation.

[122] In any event, as the law firm pointed out in its representations, long-term care home operators must advise on any urgent or critical issues that have an impact to their operations, and any inaction or failures to report issues are offences under their governing legislation. I understand the law firm to be saying that the LTC Home, and other long-term care home operators, do not have the option not to communicate with the Ministry of Long-Term Care or other authorities designated in the relevant legislation about outbreak management matters.

[123] Once again, I note that the LTC Home was provided with a copy of the law firm’s representations and offered an opportunity to make representations in response to its claim that the LTC Home has a duty to communicate about these matters. The LTC Home declined to provide any response on this issue. Absent any additional information from the LTC Home, I am inclined to agree with the law firm that the LTC Home has an obligation to communicate about outbreak-related matters and that the chilling effect

⁵² Reconsideration Order PO-1776-R is a reconsideration of Reconsideration Order R-980015. Reconsideration Order PO-1776-R overturns the adjudicator’s decision that section 20 did not apply to the information at issue. In Reconsideration Order R-980015, the adjudicator allowed the affected party to raise the discretionary exemption at section 20 but concluded that it did not apply.

⁵³ See Reconsideration Order R-980015 at page 20.

described by the LTC Home is not likely to occur.

[124] In any event, I am satisfied that the circumstances in this matter are distinct from those in PO-1787 and PO-1776-R. I am not persuaded that long-term care homes would withhold information about potential outbreaks from community partners and endanger residents by not seeking assistance managing an outbreak of a contagious illness because information they share may be subject to freedom of information legislation.

[125] The LTC Home made additional general arguments about why I should permit it to raise the discretionary exemptions it seeks to apply. I will address those arguments now.

[126] To begin, I am not persuaded by the LTC Home's argument that the hospital has acted inconsistently with the mandatory exemption for third party information at section 17(1) of *FIPPA* and that as a result, it should be permitted to raise various discretionary exemptions that the hospital did not. I consider the potential application of section 17(1) of *FIPPA* later in this decision. The LTC Home had an opportunity to make representations on the potential application of that section and I do not see any basis to also consider its arguments in that regard here.

[127] Finally, I have considered the LTC Home's argument that, as a matter of procedural fairness, it should have been permitted to make representations on how the discretionary exemptions applied to the information at issue. As I explained above, the first step for a party other than an institution that wants to claim a discretionary exemption is to establish that it should be permitted it to do so.⁵⁴ The LTC Home's representations indicate it understood this requirement. It stated that IPC decisions about what rare and usual circumstances will justify the use of discretionary exemptions by third parties have largely hinged on the purpose of the discretionary exemption, as well as the consequences of the information release. In my view, it was up to the LTC Home to make any relevant arguments in its representations to that end. If the facts surrounding the application of the discretionary exemption the LTC Home sought to apply were relevant to why it should be permitted to raise it when the institution had not done so, the LTC Home should have made those arguments in its representations. The LTC Home had an opportunity to make arguments in support of its assertions that it should be permitted to raise discretionary exemptions not applied by the hospital and I see no procedural unfairness in the inquiry process.

[128] For all of these reasons I find that the "rare and unusual circumstances" that might justify a third party raising a discretionary exemption do not exist in this case. As a result, I decline to allow the LTC Home to raise any of the discretionary exemptions that were not applied by the hospital.

⁵⁴ Orders P-1137, PO-1705, MO-2635, MO-2792 and PO-3489.

Issue D: Does the mandatory exemption at section 17(1) for third party information apply to the records?

[129] The LTC Home submits that section 17(1) of *FIPPA* applies to the information at issue.

[130] The purpose of section 17(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,⁵⁵ where specific harms can reasonably be expected to result from its disclosure.⁵⁶

[131] The relevant portions of section 17(1) state:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; ...

[132] For section 17(1) to apply, the party arguing against disclosure must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information;
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.

⁵⁵ *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

⁵⁶ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

Part 1: Type of information

[133] The IPC has described the relevant types of information protected under section 17(1) as follows:

Scientific information is information belonging to an organized field of knowledge in the natural, biological or social sciences, or mathematics. For information to be characterized as “scientific,” it must relate to the observation and testing of a specific hypothesis or conclusion by an expert in the field.⁵⁷

Commercial information is information that relates only to the buying, selling or exchange of merchandise or services. This term can apply to commercial or non-profit organizations, large or small.⁵⁸ The fact that a record might have monetary value now or in future does not necessarily mean that the record itself contains commercial information.⁵⁹

Financial information is information relating to money and its use or distribution. The record must contain or refer to specific data. Some examples include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.⁶⁰

The LTC Home’s representations

[134] The LTC Home submits that the information it supplied to the hospital during the Outbreak included information that fits the definition of scientific, commercial, or financial for the purposes of section 17(1) of *FIPPA*.

[135] First, the LTC Home argues that the records at issue in this appeal contain information similar in nature to information an adjudicator determined was scientific information for the purposes of section 17(1) of *FIPPA* in Order PO-4090. In that matter, an adjudicator agreed with the institution that some of the information at issue could be characterized as “scientific” for the purposes of section 17(1) because it included

information relating to study objectives, background or contextual information, conclusions drawn from data, and recommendations resulting from studies that were conducted by third parties, including stakeholders interested in laws and policies relating to the provision of abortion services.⁶¹

[136] The LTC Home submits that the records at issue in this appeal similarly consist of

⁵⁷ Order PO-2010.

⁵⁸ Order PO-2010.

⁵⁹ Order P-1621.

⁶⁰ Order PO-2010.

⁶¹ Order PO-4090.

"conclusions drawn from data relating to the Outbreak and recommendations with respect to outbreak management made by Community Partners, who are interested in laws and policies relating to outbreak management during the COVID-19 pandemic."⁶²

[137] For example, the LTC Home says the SBAR reports contain extensive data relating to the Outbreak, including the following:

- resident and staff infections,
- hospitalizations and deaths,
- daily active and resolved case counts,
- frequency of swabbing/testing surveillance and results,
- IPAC audits,
- personal protective equipment inventory,
- vaccine data,
- repatriation and cohorts,
- medical supports,
- staffing levels,
- communications, and
- other areas of concern (for example, medical complexities, resident wandering).

[138] The LTC Home says that members of the OMT (Outbreak Management Team) used this data to draw conclusions and provide recommendations, which are also outlined in the SBAR Reports. Similarly, the LTC Home says that the Daily Outbreak Operational Reports contain data relating to resident and staff COVID-19 infections, staffing levels, personal protective equipment stock levels, IPAC audits, and organizational supports onsite. It says it shared this data with the OMT (including the hospital) so that it could receive advice and recommendations relating to outbreak management. The LTC Home submits that the recommendations are captured in emails amongst the OMT members and in OMT meeting minutes. It says that the OMT members were interested in laws and policies related to outbreak management during the Covid-19 pandemic. As a result, the LTC Home says that the records contain information that is scientific in nature.

[139] The LTC Home says that the records also contain commercial information. It submits that the SBAR reports, Daily Outbreak Operational Reports, OMT meeting

⁶² I note that I was unable to locate an "After-Action Report" in the records at issue in this appeal.

minutes and related emails discuss the LTC Home's policies and procedures, operational plans, business continuity plans, staffing plans, recruitment and retention plans, isolation and cohorting plans, surveillance and testing plans, vaccination plans, staffing levels (i.e. management, medical practitioners, nursing staff, agency staff and other personnel), internal and external audit results, quality improvement tools and resources, personal protective equipment/nursing supplies inventory reports, communication strategies, COVID-19 case reporting, outbreak dashboards, and preparedness assessments. The LTC Home argues that this information "clearly relates to the operations of [the LTC Home] in the provisions of services to its residents and employees" and that as a result, it is commercial in nature.

[140] Finally, the LTC Home says that the data contained in the records (including, for example, staffing levels, swabbing/testing numbers, immunization rates, and personal protective equipment inventory) relates to the purchase or obtaining of supplies and services, as well as to how it distributed its resources with reference to specific data. It argues that "such information clearly relates to [the LTC Home's] financial operations."

The hospital's representations

[141] The hospital states that while it accepts that some of the records may contain the type of information identified by section 17(1), the mandatory exemption does not apply because the LTC Home did not explain how or why disclosure of that information, with reference to specific records, could reasonably be expected to result the harms contemplated in paragraph (a), (b), (c) of section 17(1) of *FIPPA*.

The law firm's representations

[142] The law firm denies that section 17(1) of *FIPPA* applies to the records at issue in this appeal. It submits that the information at issue is neither scientific, commercial, nor financial in nature.

[143] The law firm says that for information to be characterized as "scientific," it must relate to the observation and testing of a specific hypothesis or conclusion by an expert in the field. The law firm notes the LTC Home's contention that certain records, such as the SBAR Reports and Daily Outbreak Operational Reports, contain data that was used to draw conclusions and provide recommendations, and that as a result, the records are "scientific in nature." The law firm submits that this argument should be rejected because the LTC Home's response to the outbreak did not involve the testing of a hypothesis or the conducting of a study. Rather, the law firm says that the records relate to the LTC Home's response to a critical incident in its facility. As a result, the law firm says that the records do not contain "scientific information" for the purposes of section 17(1) of *FIPPA*.

[144] The law firm denies that IPC decision PO-4090 supports the LTC Home's position that the records contain scientific information. The law firm says that in PO-4090, the requester sought information available to the Ontario Government when it was deciding

whether to enact legislation. The law firm points out that when deciding whether the records at issue were "scientific information," the adjudicator noted the records contained both (a) study objectives and (b) conclusions and recommendations drawn from data that came from studies conducted by third parties. Based on these findings, the adjudicator determined that the documents were properly classified as "scientific information."

[145] The law firm argues that the current appeal is different from PO-4090. It says that unlike the deliberate and planned consideration of study data in PO-4090 in the context of drafting legislation, this case revolves around an urgent response to the spread of a lethal virus in a long-term care home. The law firm submits that the risk to human life and health crisis in this case would not allow for a study to be conducted.

[146] The law firm also denies that the records contain commercial information for the purposes of section 17(1) of *FIPPA*. The law firm states that it is difficult to understand how these topics set out above by the LTC Home could fall within the scope of "the buying, selling or exchange of merchandise or services," which is the exclusive definition of "commercial information." The law firm says that most of the information noted by the LTC Home as being "commercial in nature" appears to address issues related to outbreak management, which is not "commercial information" as defined by the IPC.

[147] Finally, the law firm denies that the records contain financial information for the purposes of section 17(1). It says that unless the records contain information on the financial elements of purchasing personal protective equipment or staff wages, the data referenced is not financial data. The law firm says it is unclear how data related to immunization or COVID-19 testing could be financial in nature. The law firm argues that the application suggested by the LTC Home is overbroad and that only records with financial data should be permitted to fall within the scope of "financial information."

Findings and analysis

[148] Having reviewed each page at issue, I find that none of the records contain any of the types of information section 17(1) of *FIPPA* is meant to protect, and as a result, that section does not apply.

Scientific information

[149] Based the context that the records were created in and in consideration of each record's specific content, I find that they do not contain scientific information for the purposes of section 17(1) of *FIPPA*.

[150] In my view, the records at issue in this appeal relate to efforts to support the LTC Home to manage the Outbreak, and do not include the "observation and testing of a specific hypothesis or conclusion", as in Order PO-4090. In Order PO-4090, referred to by the LTC Home, the adjudicator concluded the following about certain information at issue in the records:

Having reviewed the records, it is clear that they contain information that can be characterized as belonging to the social sciences. [The relevant portions] include, for example, information relating to study objectives, background or contextual information, conclusions drawn from data, and recommendations resulting from studies that were conducted by third parties, including stakeholders interested in laws and policies relating to the provision of abortion services. I am satisfied that the information relates to the "observation and testing of a specific hypothesis or conclusion," such that it satisfies the definition of "scientific information" for the purpose of section 17(1).⁶³

[151] While some of the records at issue in the matter before me contain observations, I am unable to identify any information that could be considered the "testing of a specific hypothesis or conclusion." In my view, the records at issue all relate to the efforts of the LTC Home and Community Partners to manage the Outbreak.

[152] Nearly all the records at issue are emails from hospital staff to each other or the Community Partners about outbreak management updates at the LTC Home and planning for ways the hospital could help the LTC Home with testing, swabbing, staffing, IPAC measures, and general outbreak management. The emails also include discussions about workplace safety measures, Ministry of Long-Term Care Inspection reports and orders, and planning for hospital board meetings. In short, the emails generally focus on coordinating assistance for the LTC Home and cannot be said to include any scientific information for the purposes of section 17(1) of the *Act*.

[153] In addition to the emails, the records also include OMT Meeting Minutes and two Daily Outbreak Operation Reports (called DOO Reports by the LTC Home).⁶⁴ The DOO reports contain summaries of resident and staff testing and swabbing results, as well as information about personal protective equipment and staffing levels. It is obvious from the content that no hypotheses are being tested in these reports, they are clearly for the purpose of outbreak management. I make the same finding in relation to the OMT Meeting Minutes. They are similar to the DOO Reports in that the content tracks the progress of the Outbreak and the measures being taken to manage it. The minutes cover communications to patient families and staff, as well as cleaning protocols. However, there is no scientific method or testing discussed. I am satisfied that none of these records contain scientific information.

[154] I make the same finding for the remaining records, including IPAC safety reports, and Inspection reports. None of the information in the records described above relates to "the observation and testing of a specific hypothesis or conclusion." As a result, I find that none of the information is scientific information for the purposes of section 17(1) of

⁶³ Order PO-4090 at paragraph 66.

⁶⁴ The OMT Meeting Minutes are within record 87. There is also a blank template for OMT Meeting Minutes in record 90. The DOO Reports are in records 85 and 86. I note that the records at issue do not include any of the SBAR Reports referred to by the LTC Home.

FIPPA.

Commercial information

[155] The LTC Home says that the information at issue “clearly relates to its operations in the provisions of services to its residents and employees and is, as a result, commercial in nature.”

[156] While I accept that the LTC Home runs a commercial business, and I accept the information in the records relates to that business in a general sense, it does not automatically follow that all the information in the records at issue is commercial information for the purposes of section 17(1) of *FIPPA*. The content of each individual record must be examined to determine whether the information in it meets the definition of “commercial information.”

[157] Order P-493 sets out the foundation for the meaning of “commercial” information. In Order P-493, the Inquiry Officer explained that although previous orders had dealt with the issue of whether information is “commercial” information, no one definition had been adopted. She noted that:

The Concise Oxford Dictionary (8th ed.) defined “commercial”, in part, as follows:

“of, engage in, bearing on, commerce”

“Commerce” is defined, in part, as:

“exchange of merchandise or services ... buying and selling”

Black’s Law Dictionary (5th ed.) defines “commercial” as:

relating to or is connected with trade and traffic or commerce in general; is occupied with business and commerce; generic term for most aspects of buying and selling.

[158] The inquiry officer ultimately concluded that “commercial information is information which relates solely to the buying, selling or exchange of merchandise or services.”⁶⁵ This characterization of commercial information has been adopted in subsequent orders.⁶⁶

[159] In Order MO-3335, the adjudicator noted that while it is not an exhaustive list, the types of information that fall under the heading “commercial” include price lists, lists of suppliers or customers, market research surveys, and other similar information relating to the commercial operation of a business. In Order PO-3237, referred to by the LTC

⁶⁵ Order P-493, emphasis added.

⁶⁶ Order MO-3335, PO-2010.

Home, the adjudicator concluded that the information at issue was commercial information because it related “to the buying and selling of transcription services.”⁶⁷ The information at issue in this appeal is different. As described above at paragraphs 152 and 153 above, the records at issue generally include coordinating efforts on the part of the hospital to assist with outbreak management at the LTC Home. While the information is about the LTC Home and is connected to its business in a general sense, it does relate to the buying or selling of commercial goods or services, as is necessary for the information to be considered “commercial information” for the purposes of section 17(1) of *FIPPA*.

[160] To be clear, the information at issue does not refer to the specifics of the LTC Home’s commercial activities. In my view, the circumstances are similar to those in Order PO-3146-I, where an adjudicator concluded that the information claimed to be commercial information was simply too general to fit the definition.

[161] The records above include discussions and information about the Outbreak, plans for managing it, which of the Community Partners were involved, and what support they were providing. Many of the emails relate to COVID-19 testing taking place at the LTC Home, performed by the Community Partners. Others track information related to the Outbreak. I do not agree that any of this information is commercial information as it does not directly relate to the buying, selling or exchange of merchandise or services. As such, I find that none of the information at issue is “commercial information” for the purposes of section 17(1) of *FIPPA*.

Financial information

[162] Finally, I also find that none of the records at issue contain “financial information” for the purposes of section 17(1) of *FIPPA*. As noted above, financial information has been defined as follows:

information relating to money and its use or distribution. The record must contain or refer to specific data. Some examples include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.⁶⁸

[163] I confirm that based on my review, none of the records at issue relate to accounting, pricing, profit or loss data, or operating costs. While some of the records refer to personal protective equipment stock or staffing matters, I find that this information is far too general to be considered “financial information” for the purposes of section 17(1) of *FIPPA*.

[164] The LTC Home did not direct me to any numerical information in the records at issue that corresponds to finances, and I did not locate any of that information myself. While staffing and stocking matters are included, they are not associated with any specific

⁶⁷ Order PO-3237 at paragraph 15.

⁶⁸ Order PO-2010.

dollar amount. As such, I find that the information at issue is not financial information for the purposes of section 17(1) of *FIPPA*.

[165] As all three parts of the section 17(1) test must be met, it is not necessary for me to consider the second or third parts of the test. I find that section 17(1) of *FIPPA* does not apply. I uphold the hospital's decision that the records at issue do not qualify for exemption and I will order it to disclose them to the law firm.

Outstanding matter

[166] While reviewing the records at issue in this appeal I identified some small portions of personal information on page three of record 85 and page one of record 109. The law firm confirmed that it is not seeking access to any personal information. I am providing hospital with copies of records 85 and 109 with the personal information highlighted. The hospital must sever the personal information from the copy of records 85 and 109 that it provides to the law firm.

[167] I also note that there is a duplicative line of information in Record 88 that was withheld by the hospital in its access decision in multiple other records. The law firm has not appealed the hospital's decision and has confirmed that it is not seeking access to this information, and I will order the hospital to redact it in the copy of records provided to the law firm.

ORDER:

1. I uphold the hospital's access decision and dismiss the LTC Home's appeal.
2. I order the hospital to disclose the records in accordance with its access decision by **May 7, 2025** but not before **May 2, 2025**. The hospital must not disclose the information highlighted in red in the copies of records 85, 88 and 109 provided to the hospital with this decision.
3. In order to verify compliance with this order, I reserve the right to require the hospital to provide me with a copy of the records disclosed to the requester upon request.

Original Signed by: _____
Meganne Cameron
Adjudicator

March 31, 2025 _____