

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4631

Appeal PA23-00123

Orillia Soldiers' Memorial Hospital

March 31, 2025

Summary: In a request made under the *Freedom of Information and Protection of Privacy Act*, a law firm asked Orillia Soldiers' Memorial Hospital for records related to a COVID-19 outbreak at a long-term care home. The hospital issued a decision to grant access to some of the records. An affected party appealed the hospital's decision and said the mandatory exemption for third party information at section 17(1) of the *Act* applied. 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 affected party'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 MO-1782, PO-1776-R, PO-1787, PO-3435, PO-4090 and PO-4165.

OVERVIEW:

[1] The Orillia Soldiers' Memorial Hospital (the hospital) received a request under the *Freedom of Information and Protection of Privacy Act* (*FIPPA*, or the *Act*) from a law firm for information about a specific COVID-19 outbreak at a long-term care home.¹ Before

¹ The full text of the request is set out at Appendix A to this decision.

issuing its decision, the hospital notified the long-term care home (the LTC Home), as an affected party, pursuant to 28(1)(a) of *FIPPA* and sought its views on the disclosure of the records at issue. The LTC Home objected to the disclosure of any of the responsive records.

[2] After considering the LTC Home's response, the hospital issued a decision to disclose the records in part. It denied the law firm access to portions of some of the records pursuant to the mandatory exemption at section 21(1) (personal information) of *FIPPA*, and in full to others under the discretionary exemption at section 22 (information available to the public) of the *Act*.

[3] The LTC Home, now the appellant, appealed the hospital's decision. An IPC mediator had discussions with the LTC Home, the law firm, and the hospital. The LTC Home claimed that the mandatory exemption for third-party information at section 17(1) of *FIPPA* applies to the records at issue. It also said that the request was an abuse of the access process, and that the discretionary exemptions at sections 13(1) (advice or recommendations), 14(1), 14(2)(a) and/or (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 also told the mediator it believes the records are protected from disclosure by section 3 of the *Quality of Care Information Protection Act (QCIPA)*.

[4] The mediator added the issues of frivolous or vexatious request (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 application of the mandatory exemption for third party information at section 17(1) of *FIPPA*.²

[5] The law firm advised that it continued to seek access to the records that the hospital decided to disclose but was not appealing the hospital's decision to deny some information under sections 21(1) or 22 of *FIPPA*.

[6] The hospital confirmed its position that no additional exemptions apply to the records at issue. No further mediation was possible, and the matters were transferred to the adjudication stage of the appeals process where an adjudicator may conduct a written inquiry.

[7] I commenced an inquiry in which I obtained representations from the LTC Home, and the law firm.³ The hospital declined to submit representations. In this decision, I uphold the hospital's decision to disclose the information at issue and dismiss the LTC Home's appeal.

² In the Notice of Inquiry I sent to the parties, I expanded the issue of whether the request was frivolous and/or vexatious to whether the request was an abuse of process.

³ As explained below, I did not invite representations from the law firm about Issues B or C.

RECORDS:

[8] There are 140 records at issue, comprising approximately 600 pages of correspondence and reports.

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

[9] This is one of four decisions issued together that deal with similar parties, types of records, and issues.⁴ 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.

[10] 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

[11] The LTC Home provided background information that is helpful to understand 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.

[12] The appellant, the LTC Home, operates a long-term care home. It says that that

⁴ The other three appeals and decisions are Appeal PA22-00549 (Order PO-4630), and Appeal PA24-00181 (Order PO-4632) and PA24-00365 (Order PO-4633).

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. It says that the Outbreak occurred at its long-term care home 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 long-term 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.

[13] The LTC Home says that throughout the Outbreak, it collaborated with various government institutions who provided oversight and guidance, including the hospital, Royal Victoria Regional Health Centre, the North Simcoe Muskoka Local Health Integration Network (now known as Ontario Health atHome)⁵, the Ministry of Long-Term Care, and the Simcoe Muskoka District Health Unit (collectively referred to in this Order as the Community Partners).

[14] To manage the Outbreak, the LTC Home explained that it participated in daily Outbreak Management Team (OMT) meetings and Incident Management System (IMS) meetings with the Community Partners, and maintained frequent, ongoing communication with them. The LTC Home says the purpose of the OMT and IMS meetings, and other regular communications, was for the LTC Home to share openly and candidly, in confidence, information relating to the Outbreak with the Community Partners so that it could receive advice, recommendations and other assistance from these institutions to manage the Outbreak.

[15] The LTC Home says that the LTC Home prepared detailed minutes of the OMT meetings, Daily Outbreak Operational Reports, Incident Briefings, Incident Command Centre Situational Updates and Actions reports, Temporary IMS Structure reports, Communication Plans, as well as email updates and other records relating to the Outbreak, which it says were shared confidentially with the Community Partners for the purposes of responding to and managing the Outbreak. The LTC Home also participated in infection prevention and control (IPAC) assessments, workplace safety assessments and other inspections completed by other institutions.

[16] 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 one another 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.

⁵ I note that 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*.

[17] The LTC Home also says that it entered into a confidential Leadership Support Agreement with the hospital to receive onsite assistance in managing the Outbreak. The LTC Home submits that it created confidential reports with the hospital, including a COVID-19 Outbreak Action Plan, After-Action Report, COVID-19 Outbreak Recovery Transition Plans, and Action Plan Workbooks, based on confidential information shared relating to the Outbreak. The LTC Home submits that it is these Outbreak-related records that form the bulk of the information at issue.

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

[18] 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.

[19] *QCIPA* defines “quality of care information” in section 2(2) as follows:

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

[20] As set out in the Notice of Inquiry I 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.

[21] In the Notice of 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

[22] The LTC Home submits that records 13-37, 50-58, 60-63, 74-75, 77-81, 83-122 and 124 meet the criteria for "quality of care information" in *QCIPA*, and as a result, *FIPPA* does not apply to them.

[23] 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.

[24] 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 community partners to collaborate, in confidence, regarding opportunities for quality improvement to prevent future outbreaks and manage them when they occur.

[25] 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 *QCPIA*. 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.

[26] 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 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. It submits that the information at issue relates primarily to the activities of the LTC Home's quality of care committee in terms of its assessment of the status of the Outbreak, its areas of concern and the implementation of quality improvement recommendations supplied by the OMT.⁶

[27] In her affidavit, the Director states that she was advised by the LTC Home's Chief Operating Officer that the OMT included members of the LTC Home's Quality Council (i.e., quality of care committee). Specifically, she says that she was advised and believes that the LTC Home's administrator, director of care, and assistant director of care were members of both the Quality Council and the OMT.

[28] The Director attests that the information in records 13-37, 50-58, 60-63, 74-75,

⁶ I note that the appellant 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 to set out these representations here.

77-81, 83-122 and 124 was collected or prepared by or for Quality Council (in addition to the broader OMT) for the primary purpose of helping the Quality Council carry out its quality of care functions. She says these functions included studying, assessing and evaluating the provision of health care to residents during the Outbreak with a view to managing the Outbreak and improving the health of residents overall.

The law firm's representations

[29] The law firm denies that *QCIPA* applies to the information at issue. It submits that the records do not fall within the definition of "quality of care information." Furthermore, it says the LTC Home has failed to demonstrate that a quality of care committee existed at the LTC Home at the relevant time.

[30] The law firm questions the LTC Home's suggestion that a quality of care committee, operating within the OMT, was responsible for managing the Outbreak. It argues that the fact that the OMT performed "quality of care functions" and consisted of some members who also sat on the Quality Council does not, on its own, mean the OMT was a quality of care committee.

[31] 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.

[32] It states that the "prescribed criteria" referenced in (b) above is defined 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.

[33] As such, the law firm submits that three criteria must be achieved in order for a quality of care committee to have existed at the LTC Home: (1) one or more individuals must perform quality of care functions; (2) the committee must be established by a health facility; and (3) before beginning to act, the committee must be designated in writing as a quality of care committee. It says that the legislation's use of the word "and" indicates the requirements are cumulative, meaning a committee will not exist unless all three of the requirements are satisfied. The law firm submits that the quality of care committee designation is not transferrable under the legislation and the presence of committee members in other groups does not make those groups quality of care committees.

[34] The law firm notes that the LTC Home has not provided evidence in support of its position that the OMT was designated in writing as a quality of care committee. It points out that no terms of reference for the committee were produced. The law firm's position is that the LTC Home's failure to produce any written evidence of a quality of care committee, should result in an inference that no evidence exists. The law firm submits 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.

[35] The LTC Home was provided with a copy of the law firm's representations and invited to make a reply. In response, it stated only that it repeated and relied on its previous representations and did not make any additional submissions.

Findings and analysis

[36] 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*.

[37] The LTC Home asserts that the records contain "quality of care information" that was collected and prepared by, or for, its "quality of care committee." It states that the "quality of care committee" formed part of the OMT and was carrying out quality of care functions. Although the LTC Home describes these functions in its representations, I agree with the law firm that it has not provided sufficient evidence in support of its assertions that a "quality of care committee" was established in the manner required by *QCIPA* and Regulation 483/16.

[38] I understand the LTC Home's evidence to be that because the OMT included members of LTC Home's "Quality Council," certain OMT-related records were collected and/or prepared for the primary purpose of quality of care functions. I am not convinced

by this evidence.

[39] 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*. I note also that the Regulation 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.

[40] The LTC Home was provided with a copy of the law firm'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.

[41] In my view, the LTC Home's decision not to address the points raised by the law firm, most importantly, the regulatory requirements to establish a quality of care committee, is detrimental to its position. It seems to me that if a "quality of care committee" was 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 a quality of care team was not established pursuant to Regulation 483/16.

[42] In any event, because *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 be "quality of care information," despite the LTC Home's lack of evidence to that point.

[43] I see nothing specific that suggests these records 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.

[44] I am also 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*. Many of the records display the hospital's logo and appear to have been prepared by the hospital with information from the LTC Home. These include planning documents, incident briefings and/or reports, situational updates, and reports relating to agreements. It is clear to me from my review of the contents that the purpose of these records was not "quality of care" matters as contemplated by *QCIPA*. The records appear to be aimed at assisting with the management of the Outbreak.

[45] The remaining records are "joint documents" from the hospital and the LTC Home including Outbreak transition plans, workbooks and recommendations, and OMT meeting minutes. Based on the content, these records also appear to relate to the efforts to manage the Outbreak. While I accept that some of the individuals whose names appear in these records may have been a part of the LTC Home's "Quality Council," I agree with the law firm that the presence of quality of care committee members in other groups,

such as the OMT, does not make those other groups quality of care committees, nor does it mean that the records related to the groups contain quality of care information.

[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 *QCIPA* and as a result, section 3 of *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 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 that 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 a request that 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 relating to requests for access to records pertaining to the Outbreak. Specifically, it says that 10 separate access requests for identical or similar documents have been 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 Health Unit), Ontario Health and the Royal Victoria Regional Health Centre. It says that most of these requests were made by the same requester and are broad in nature. In support of these assertions, the Director’s affidavit provided as

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.

exhibits 10 copies of different access to information requests that the LTC Home was notified of as a potential affected party.

[53] The LTC Home argues that it has been subjected to an 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 (the law firm). 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.

[54] The LTC Home says that there is ongoing litigation related to the Outbreak and that there is a real likelihood that the law firm intends to use the records to advance its own private interest. The LTC Home submits that the law firm that has commenced a civil action against the LTC Home. It argues that to the extent that the law firm is seeking disclosure of the records for the purposes of civil litigation, this is a private interest, and as a result, the request is inconsistent with the express purposes of *FIPPA*.

[55] 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.

[56] 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.

[57] Furthermore, the LTC Home says that the request is intended to accomplish an objective other than to gain access, without reasonable or legitimate grounds. It argues that the information at issue should not be disclosed because the law firm intends to disseminate the information publicly to advance its civil action and subject the LTC Home and its employees to further public scrutiny. The LTC Home submits that this disclosure would "be a significant disincentive for [the LTC Home] and other long-term care operators in terms of having open and transparent dialogue with government authorities and community partners."

[58] The LTC Home says that the OMT and IMS meetings, and the completion of Daily Outbreak Operational Reports, Incident Briefings, Incident Command Centre Situational Updates and Actions reports, Temporary IMS Structure reports, Communication Plans, COVID-19 Outbreak Action Plans, After Action Reports, COVID-19 Outbreak Recovery Transition Plans, Action Plan Workbooks, email updates, and other records at issue are part of a process used by government authorities and other community partners whenever there is a communicable disease outbreak in a long-term care home. Consequently, the LTC Home submits that a decision to disclose the records through a *FIPPA* request could adversely impact the transparency and, ultimately, the effectiveness of the outbreak management process across the province. It argues that this situation is similar to the case in *Duncanson v. Ontario (Information and Privacy Commissioner)*, where the LTC Home says that a court concluded that additional public scrutiny through disclosure of the records pursuant to *FIPPA* was not a desirable objective.⁸

[59] The LTC Home says that the Health Unit also received a similar request for records as those 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 decided 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 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 and its OMT members to further public scrutiny, all of which amount 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 the following assertions:

- 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, 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.

⁸ 1999 CanLII 18726 (ON SCDC).

⁹ The Simcoe Muskoka District Health Unit.

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 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, ...

(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*.¹⁰ 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."¹¹ 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,

¹⁰ Orders PO-2050, PO-2906, and PO-3738-I.

¹¹ Order PO-2906 at pages 35 to 36.

(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] Numerous IPC orders have stated that section 10(1)(b) can only be relied upon by the head of an institution under *FIPPA*.¹² 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 *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] IPC adjudicators have consistently held that the application of the frivolous and vexatious provisions is only relevant to the use of the “processes” of *FIPPA*.¹³ 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 persons in a way that would trigger the application of this provision.

[69] Furthermore, 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.¹⁴

[70] I agree with and adopt the findings of the adjudicators who have considered this issue already.¹⁵ 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 an affected party 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

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

¹³ See, for example, Orders M-906 and MO-1488.

¹⁴ Order PO-2050.

¹⁵ Orders PO-2050, PO-2688, MO-3647, and PO-3728-I.

law and to have the appeal dismissed on the basis of such a finding.¹⁶ 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:

- 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 has 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 and should be dismissed. I 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.¹⁷ 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

¹⁶ Most recently, Order MO-4404. See also, PO-3728-I, PO-2906, PO-2490, MO-2635 and M-618.

¹⁷ Order MO-4513.

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?¹⁸

[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.¹⁹ Other factors specific to the case can also be relevant in deciding whether a pattern of conduct amounts to an abuse of the right of access.²⁰

[77] The law firm is the requester on four appeals currently before me at the inquiry stage of the appeals process.²¹ 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 stages.²² 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.²³

[78] I note the LTC Home’s reliance on Order MO-1782, where an adjudicator concluded that the appellant had engaged in a pattern of conduct that amounted to an abuse of the right of access and dismissed the appeal. In that decision, the adjudicator based her finding on numerous factors, including the total number of the appellant’s requests, their timing, their repetitive and overlapping nature, their scope (which was both extremely broad and inordinately detailed at the same time), and the appellant’s purpose in making his requests, both admitted and inferred.

[79] Specifically, the appellant in that appeal had made a total of 28 requests to the Regional Municipality of Niagara over six years. The adjudicator specified that three of the appellant’s requests were repetitive and five additional requests overlapped with the previous three. She also noted that the appellant’s requests had been increasing and accounted for approximately half of the requests Niagara received each year. Based on all these factors, the adjudicator concluded that the number of requests was sufficiently high enough to weigh in favour of a finding that a pattern of conduct existed that amounted to an abuse of the right of access.

[80] In Order MO-1782, the adjudicator also considered the nature and scope of the

¹⁸ Most recently, Order MO-4513. See also, Orders M-618, M-850, MO-1782.

¹⁹ Most recently, Order MO-4513. See also, Orders M-618, M-850, MO-1782 and MO-1810.

²⁰ Order MO-1782.

²¹ The current appeal, as well as Appeals PA22-00549, PA24-00181 and PA24-00365.

²² Appeals PA22-00570, MA22-00751, MA23-00341, PA23-00122 and PA24-00212.

²³ Four other requests were made by a different requester, who does not appear to have a connection to the law firm.

appellant's requests, which she concluded were extremely broad and resulted in large number of responsive records and processing fees over \$15,000. She noted that the appellant rarely requested only one type of record and rather sought every kind of record for multiple years from various sources or individuals and their assistants.

[81] As the LTC Home pointed out in its representations, the adjudicator in MO-1782 also took note that the appellant's request coincided with legal proceedings against Niagara. She specifically stated that "this fact considered in isolation is insignificant," but when combined with other factors evidence in the case, it "contributed to a discussion about this appellant's conduct, and weighs in favour of a frivolous or vexatious finding."²⁴

[82] The additional behaviour the adjudicator referred to was that:

- The appellant appeared to be pursuing a personal agenda apart from access,
- He used intemperate language that was often inappropriate and verged on threatening and signaled a desire to carry on a conflict with Niagara in addition to seeking information,
- He appeared to have a secondary purpose which the adjudicator concluded was to be a nuisance to Niagara, and
- he personalised his requests to an unreasonable degree by insisting that certain persons be questioned in an effort to personally burden certain representatives of Niagara with the tasks he identifies.

[83] Ultimately, the adjudicator concluded that appellant had engaged in a pattern of conduct that amounted to an abuse of the right of access and she dismissed the appeal. In my view, the fact that the appellant was concurrently engaged in litigation with Niagara played a small role in the adjudicator's decision, as she was clear that fact would have been "insignificant in isolation."

[84] In any event, the facts in the current appeal bear very little similarity to those described in MO-1782. In my view, 9 or 10 requests to different institutions for different information does not amount to a high volume of requests, particularly where each of those institutions may have different information to which the law firm seeks access. The law firm was clear about the types of records, the topic, and the timeframe it was seeking and its request resulted in the hospital identifying 140 responsive records (comprising approximately 600 pages). I find that its request was not overly broad or unusually detailed.

[85] I also note the LTC'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

²⁴ Emphasis added.

LTC Home's cause. In Order MO-3406 the adjudicator noted that the appellant 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.

[86] I am satisfied that the current situation is sufficiently distinct from Orders MO-2111 and MO-2289. I find that the law firm has not made a high volume or excessively broad number of requests, and this is not a circumstance where there is a pattern of conduct that results in an abuse of process.

Bad faith or a purpose other than to obtain access

[87] 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.²⁵ 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...²⁶

[88] 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."²⁷ 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.²⁸ In 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.²⁹

[89] As confirmed by Adjudicator Higgins, these purposes are permissible. He emphasized that to find otherwise would contradict the fundamental principles underlying

²⁵ Order MO-2635

²⁶ Order MO-4513.

²⁷ Order MO-1924.

²⁸ Orders M-618 and MO-3761.

²⁹ Order MO-1924.

the *Act*.³⁰

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

[91] 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."³¹ 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."

[92] 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 pursuing the discovery process does not, in itself, amount to an abuse of process.³² Although the timing of 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.

[93] 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.

[94] 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.³³ 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 the personal privacy exemption at

³⁰ Order MO-1924.

³¹ Interim Order MO-2573-I was determined pursuant to the municipal counterpart to *FIPPA*, the *Municipal Freedom of Information and Protection of Privacy Act*.

³² Order PO-3435 at para. 40.

³³ *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).

section 14(2)(a) of 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 issues other than whether the underlying request for records is either frivolous or vexatious or an abuse of process.

[95] 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.³⁴ 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.

[96] 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.

[97] For the reasons set out above, I find that the law firm's request is not an abuse of process pursuant to *FIPPA* or at 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(1) (advice or recommendations), 14 (law enforcement), 15(b) (relations with other governments), and 18(1)(j) (assessments and evaluations by or for hospital committees) of *FIPPA*?

[98] The LTC Home submits that this appeal involves rare and unusual circumstances and that as a result, it should be permitted to raise the application of the discretionary exemptions at sections 13, 14, 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.

[99] *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

³⁴ I also note that the request that was the subject of another appeal (since withdrawn) was made by someone other than the law firm.

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

[100] 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.³⁵ 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.³⁶

[101] 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

[102] 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 appellant]

[103] 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

³⁵ See, for example, Orders P-1137, PO-1705, MO-2635, MO-2792 and PO-3489.

³⁶ Orders P-1137, PO-1705, MO-2635, MO-2792 and PO-3489.

release. 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.”³⁷

[104] 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.”

[105] 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.

[106] 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 Outbreak Management Team.³⁸ 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(1) of *FIPPA*.

[107] It 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*.

[108] 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,

³⁷ The appellant relies on Order M-430.

³⁸ As defined above, OMT refers to the “Outbreak Management Team.”

sections 15(b) (relations with other governments),³⁹ or 18(1)(j) (assessments and evaluations by or for hospital committees).⁴⁰ 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 a member of the OMT) and the supply of confidential third-party information to them in carrying out this role.”

[109] 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.

[110] 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, which would ultimately compromise public safety. It 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 notes that 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.

[111] Finally, 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.⁴¹

Findings and analysis

[112] 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

³⁹ 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.”

⁴⁰ Section 18(1)(j) 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.”

⁴¹ 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.

13(1) (advice or recommendations), 14(1) (law enforcement), 15(b) (relations with another government), or 18(1)(j) (assessments and evaluations by or for hospital committees) of *FIPPA*.

[113] As explained 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.⁴² 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.

[114] Previous orders have clearly stated that the discretionary exemptions exist for institutions to claim. As emphasized 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.

[115] 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(1) 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].

[116] As an affected party, the LTC Home does not have that same right to assert the application of section 13(1) of *FIPPA*, unless it can establish that the "rare and unusual circumstances" discussed above at paragraph 100 exist such that it should be permitted to claim the discretionary exemption.⁴³

⁴² Orders P-1137, PO-1705, MO-2635, MO-2792 and PO-3489.

⁴³ Orders P-1137, PO-1705, MO-2635, MO-2792 and PO-3489.

[117] 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*.⁴⁴ 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.

[118] 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, 2021,⁴⁵ 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 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.

[119] 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, hospital considered the information at issue and applied the discretionary exemptions as it determined was appropriate. The hospital decided not to apply section 13(1), or any of the other discretionary exemptions 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

⁴⁴ 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.

⁴⁵ Available at: <https://www.ipc.on.ca/en/media-cent.re/news-releases/federal-provincial-and-territorial-information-and-privacy-commissioners-and-ombudsman-issue-joint>

reason to allow the LTC Home to raise those discretionary exemptions when the hospital did not.

[120] 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.

[121] I also do not accept that the LTC Home should be permitted to raise the discretionary exemption 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 have been able to withhold it under the exemption. I see no reason to interfere with the hospital's decision not to apply section 14(1).⁴⁶

[122] 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; ...

[123] 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.

[124] 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.

[125] In PO-1776-R, an adjudicator applied the discretionary exemption at section 20

⁴⁶ Or possibly, the hospital's decision that section 14(1) did not apply.

(health and safety) of *FIPPA* even though the Ministry of the Attorney General had not done so.⁴⁷ 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.⁴⁸

[126] 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 sufficiently explained why the reluctance would arise. There are over 140 records (comprising approximately 600 pages) at issue and 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.

[127] Furthermore, the law firm argued in its representations that if a long-term care home operators were to withhold information from public authorities in a crisis it would contravene its obligations under the *Fixing Long-Term Care Act* and would risk of losing its license and/or face financial and criminal penalties. The law firm submits that long-term care home operators are unlikely to risk exposing themselves to the penalties associated with violating the *Fixing Long-Term Care Act*.

[128] 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 the law firm’s claim that it has an ongoing legal 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 long-term care homes have an obligation to communicate about outbreak-related matters and that the chilling effect described by the LTC Home is not likely to occur. In any event, I am satisfied that the circumstances in this matter are distinct from those in PO-1787 and PO-1776-R.

[129] I am not persuaded that long-term care homes would withhold information about

⁴⁷ 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.

⁴⁸ See Reconsideration Order R-980015 at page 20.

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.

[130] I will now address the remaining general arguments made by the LTC Home.

[131] 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 (as will be discussed below) and I do not see any basis to also consider its arguments in that regard here.

[132] 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 to do so.⁴⁹ 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.

[133] 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.

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

[134] The LTC Home submits that section 17(1) of the *Act* applies to the information at issue. The purpose of section 17(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,⁵⁰ where specific

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

⁵⁰ *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.*).

harms can reasonably be expected to result from its disclosure.⁵¹

[135] 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; ...

[136] 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.

Part 1: Type of information

[137] The LTC Home says that the information it supplied to the hospital includes information that is scientific, commercial, or financial in nature. The IPC has described the 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

⁵¹ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

observation and testing of a specific hypothesis or conclusion by an expert in the field.⁵²

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.⁵³ The fact that a record might have monetary value now or in future does not necessarily mean that the record itself contains commercial information.⁵⁴

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.⁵⁵

The LTC Home's representations

[138] The LTC Home says that the records at issue (including the Daily Outbreak Operational Reports, OMT meeting minutes, Incident Briefings, Incident Command Centre Situational Updates and Actions reports, Communication Plans, and email updates) contain "extensive data relating to the Outbreak," including information about:

- resident and staff infections, hospitalizations, deaths and resolved cases,
- IPAC/Personal Protective Equipment (PPE) inventory and audits,
- staffing levels and on-site supports,
- vaccination rates and frequency of swabbing/testing surveillance and results,
- repatriation, cohorts, and communications, and other areas of concern.

[139] The LTC Home says that the hospital and the Community Partners used this data to draw conclusions and provide recommendations, which are outlined in records such as the "EOC Tactics Planning," Incident Briefings, Incident Command Centre Situational Updates and Actions reports, Temporary IMS Structure reports, COVID-19 Outbreak Action Plans, After Action Reports, COVID-19 Outbreak Recovery Transition Plans, Action Plan Workbooks, as well as in reports and assessments completed by the Health Unit, the Canadian Red Cross and the Royal Victoria Hospital. As such, the LTC Home says that the information at issue is scientific in nature.

[140] The LTC Home refers me to Order PO-4090, where an adjudicator concluded that some of the information at issue in that matter could be characterized as "scientific" for

⁵² Order PO-2010.

⁵³ Order PO-2010.

⁵⁴ Order P-1621.

⁵⁵ Order PO-2010.

the purposes of section 17(1) because 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.⁵⁶

[141] The LTC Home argues that the records at issue in this appeal similarly consist of conclusions drawn from data relating to the Outbreak and recommendations with respect to outbreak management made by the Community Partners (including the hospital), who are interested in laws and policies relating to outbreak management during the COVID-19 pandemic. As such, the LTC Home says the records contain scientific information.

[142] The LTC Home submits that the records at issue also contain commercial and/or financial information. It says that the records discuss the following:

- internal policies and procedures,
- staff orientation, education and “in-services,”
- operational, business continuity, staffing and recruitment and retention plans,
- isolation and cohort, surveillance and testing, and vaccination plans,
- internal and external audit results,
- PPE supplies and inventory,
- resident and staff communication strategies,
- COVID-19 case reporting, outbreak dashboards, and implementation of action items and recommendations.

[143] The LTC Home asserts that this information “clearly relates to the operations of the [LTC Home] in the provisions of services to its residents and employees” and that it is, as a result, commercial in nature.

[144] Finally, the LTC Home submits that the data contained in the records relating to staffing levels, swabbing/testing numbers, immunization rates, and PPE inventory relates to the purchase or obtaining of supplies and services, as well as to how the LTC Home “distributed its resources with reference to specific data.” It says that this information clearly relates to the financial operations of the LTC Home.

⁵⁶ PO-4090 at paragraph 66.

The law firm's representations

[145] The law firm denies that the records at issue contain scientific information for the purposes of section 17(1). It submits that the records relate to the LTC Home's response to a critical incident in its facility and not the testing of a hypothesis or the conducting of a study.

[146] The law firm argues that Order PO-4090 is distinct from the matters at issue in this appeal and says it does not support the LTC Home's position. It says that in Order PO-4090, the requester sought information available to the Ontario Government when it was deciding whether to enact legislation, and the Government withheld certain documents from the requester under section 17(1) because the documents contained studies conducted by third parties that it said fell within the definition of "scientific information." The law firm points out that when determining whether the records at issue were "scientific information," the adjudicator noted the documents 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 law firm says the adjudicator concluded that the documents were properly classified as "scientific information."

[147] The law firm says that the current appeal is "vastly different" from the facts in Order PO-4090. It submits 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 risk to human life and health in this case would not allow for a study to be conducted. PO-4090 does not support the LTC Home's position.

[148] Regarding the LTC Home's assertion that the records contain commercial information, the law firm says that it finds it difficult to understand how these topics, outside of possibly PPE supplies and inventory, fall within the scope of "the buying, selling or exchange of merchandise or services" which is the exclusive definition of "commercial information," as outlined above. The law firm says that although it has not reviewed any of the documents, most of the information noted by the LTC Home as being "commercial in nature" appears to address issues related to outbreak management. The law firm denies that this is "commercial information" as contemplated by section 17(1).

[149] Finally, with respect to the LTC Home's assertion that there is financial information in the records, the law firm submits that unless the records contain information on the financial elements of purchasing PPE or staff wages, the information referenced cannot be characterized as "financial" for the purpose of section 17(1) of *FIPPA*. The law firm submits that it is unclear how information related to immunization or COVID-19 testing is financial in nature. It says that while the records containing data and information relating to purchasing of PPE or wages of staff would fall within the definition of financial

information, the application suggested by the LTC Home is overbroad. The law firm argues that only records with financial data should be characterized as “financial information” for the purposes of section 17(1).

Findings and analysis

[150] Having reviewed each page at issue, I find that none of them 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

[151] Based on my review of the records and my understanding of the context in which they were created, I agree with the law firm that they do not contain scientific information for the purposes of section 17(1) of *FIPPA*. I accept that the various reports in the records were generated to provide information for the OMT meetings to support their handling of the Outbreak. However, I am not persuaded that they relate to 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).

[152] While some of the records at issue in the matter before me contain observations, I am unable to identify any specific information that could be considered the “testing of a specific hypothesis or conclusion.” In my view, there is no scientific method or analysis contained in the records. The primary purpose of the information at issue is to provide updates to the OMT, Community Partners and the LTC Home.

[153] In my view, the reports (which include various inspection reports and assessments conducted by the Community Partners) relate to risk management and day-to-day planning for the Outbreak. For example, the cover page for a plan on page 252 indicates that “the purpose of this report, is to outline prioritized recommendations for [the LTC Home’s] continued recovery....” Many of the reports, assessments and plans at issue contain similar statements describing the purpose of each item. In my view, these statements make it clear that the purpose of the various records does not meet the

definition of "scientific information" as contemplated by section 17(1) of *FIPPA*. They are clearly not intended to be used for observing or testing a specific hypothesis.

[154] As noted in the Notice of Inquiry provided to the LTC Home at the beginning of this process, in order 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 In my view, the LTC Home has not established that any of the information at issue meets that criteria. As such, the information cannot be characterized as "scientific" for the purpose of section 17(1) of *FIPPA*.

Commercial information

[155] The LTC Home says that some of the information at issue clearly relates to the LTC Home's 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 Homes are running 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*. Each individual record must be examined to determine whether it meets the definition of a type of information set out in Part 1 of the three-part test.

[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

⁵⁷ Order PO-2010.

information which relates solely to the buying, selling or exchange of merchandise or services.”⁵⁸ This characterization of commercial information has been adopted in subsequent orders.⁵⁹

[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.

[160] The reports the LTC Home refers to primarily set out active positive COVID-19 case numbers for residents, staff and visitors, and reports of deaths. They include brief summaries of the situation and may refer generally to plans for training staff or remote work, and other related topics. While this information is connected to the LTC Home’s commercial business, I am unable to see how this relates to the buying or selling of commercial goods or services for the purposes of section 17(1) of *FIPPA*. In my view, the circumstances are similar to those in Order PO-3146-I, where the adjudicator concluded that the information claimed to be commercial information was simply too general to fit the definition.⁶⁰

[161] I have considered all remaining records. They include email updates for staff, residents and families, Town Hall scripts and speaking notes, FAQ sheets, communications plans, timelines, a copy of a leadership agreement, employee orientation checklists, presentations related to infection prevention and control, and other outbreak management related information. In my view, the records are best described as relating to outbreak management. They involve discussions and information about the Outbreak, which of the Community Partners were involved, and what support they were providing.

[162] 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.⁶¹ As a result, I find that the information is not “commercial information” for the purposes of section 17(1) of *FIPPA*.

Financial information

[163] 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

⁵⁸ Order P-493, emphasis added.

⁵⁹ Order MO-3335, PO-2010.

⁶⁰ Order PO-3146-I at paragraphs 37 to 39.

⁶¹ Order P-1621.

methods, pricing practices, profit and loss data, overhead and operating costs.⁶²

[164] I confirm that 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*. I did not locate any numerical information in the records at issue that corresponds to finances. While staffing and stocking matters are included, they are not associated with any specific 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) does not apply. I uphold the hospital’s decision that the records at issue do not qualify for exemption and I will order the hospital to disclose them to the law firm.

ORDER:

1. I uphold the hospital’s access decision and dismiss the 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**.
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

⁶² Order PO-2010.

APPENDIX A

The law firm requested the following specific information:

- Consultations between [the hospital] and [Health Unit] relating to the supports [the hospital] would provide to [a specific long-term care home];
- The state of [the long-term care home] before and during the outbreak;
- The state of IPAC practices within the home;
- The scope of [the hospital's] leadership support at [the long-term care home];
- Defining the roles of other organizations like Royal Victoria Regional Health Centre, the County of Simcoe, the Red Cross, Georgian College;
- Actions taken to ensure proper staffing, training, equipment and supplies at [the long-term care home]
- Efforts implemented to care for the home's residents;
- Goals established for managing the outbreak and preventing an additional outbreak;
- Transition plans created with the [health unit] for both entering and exiting the agreement;
- Anonymized results of rapid or PCR testing conducted during [the hospital's] involvement at [the long-term care home];
- The actions taken to address the evolving care needs of the residents who required more acute services, as well as end-of-life care;
- The actions taken related to stabilizing residents and securing appropriate staffing levels;
- Securing/deploying staff from other long-term care homes to further support [the long-term care home] and offset possible gaps.