

This is the 1st affidavit
of Anthony Roy in this proceeding
and it was made on February 26, 2021

File No. S-210209
Vancouver Registry

In the Supreme Court of British Columbia

Between

ALAIN BEAUDOIN, BRENT SMITH, JOHN KOOPMAN, JOHN VAN MUYEN,
RIVERSIDE CALVARY CHAPEL, IMMANUEL COVENANT REFORMED CHURCH,
and FREE REFORMED CHURCH OF CHILLIWACK, B.C.

Petitioners

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER
FOR THE PROVINCE OF BRITISH COLUMBIA


Respondents


AFFIDAVIT OF ANTHONY ROY

I, ANTHONY ROY, of Victoria, in the Province of British Columbia, MAKE OATH AND
SAY AS FOLLOWS THAT:

1. I am a longtime resident of British Columbia and a member of St. Barnabas Church in Victoria, and as such I have personal knowledge of the matters herein deposed to except where stated to be on information and belief and where so stated, I verily believe them to be true.
2. On January 12, 2021, I submitted a request for records pursuant to the *Freedom of Information and Protection of Privacy Act*.
3. On February 24, 2021, I received a response enclosing a one-page "Gym/Fitness facility exposure analysis-November 10, 2020," attached hereto as Exhibit A.
4. I swear this Affidavit *bona fide* and for no improper purpose.

SWORN BEFORE ME at the
City of Victoria,
in the Province of British Columbia,
on this 26 day of February, 2021.


A Commissioner for Taking Affidavits
within the Province of British Columbia

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ANTHONY ROY



This is Exhibit " A " to the affidavit
of ANTHONY ROY
Sworn before me the 26 Day of Feb., 2021
K. Graham
Commissioner for taking affidavits
within British Columbia

February 24, 2021

Via email to anthonyhroy@shaw.ca

Anthony Roy

Dear Anthony Roy:

**Re: Response Letter
Freedom of Information and Protection of Privacy Act
Our File No: PHSA F21-0868**

KAREN E. GRAHAM
NOTARY PUBLIC
1839 Fort Street
Victoria, BC V8R 1J6
T:(250) 590-2626

I write in response to your January 12, 2021 request for records made under the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, (the "Act").

Request

You requested the following records (the "Request"):

1. *Any records containing analysis, information and recommendations to the Provincial Health Officer, Bonnie Henry, pertaining, directly or indirectly, or via inference in the ordinary course, to the re-introduction of the prohibition of in-person worship services via verbal announcement December 3, 2020, confirmed by her order of December 4, 2020.*
2. *Any records containing analysis, information and recommendations to the Provincial Health Officer, Bonnie Henry, pertaining, directly or indirectly, or via inference in the ordinary course, to the continued permission to hold low-intensity indoor exercise and support group meetings as announced December 3, 2020, confirmed by her order of December 4, 2020.*
3. *Any records containing analysis, information and recommendations to senior staff of the BCCDC and PHSA pertaining [...] to the permission to hold low-intensity indoor exercise and support group meetings as announced December 3, 2020 and confirmed by her order of December 4, 2020, including but not limited to:*
 - a. *Dr. Réka Gustafson, Vice President, Public Health and Wellness and Deputy Provincial Health Officer*
 - b. *Noorjean Hassam, Chief Operating & Professional Practice Officer*
 - c. *Benoît Morin*
 - d. *Alexandra (Lexie) Flatt*

Timeframe of request: October 01, 2020 – December 03, 2020.

Response

Please find enclosed a release of records, consisting of 1 page, provided to our office by the BC Centre for Disease Control.

These records are disclosed to you in their entirety.

Section 25 (Information must be disclosed if in the public interest)

In the Request you stated that:

“PHSA and BCCDC, under Section 25 of the Freedom of Information and Protection of Privacy Act, have a positive obligation to disclose information that is “in the public interest” and is “about a risk of significant harm to the environment or the health or safety of the public.” The circumstances of the pandemic clearly meet the public interest test to mandate proactive disclosure. The subject matter of this request directly pertains to information immediately relevant to a risk of significant harm to the public and the public’s ability to make their own assessment of risk mitigation choices. I would further argue that the information requested regarding analysis, information and recommendations leading to the imposition of severe restrictions on the Charter rights of every citizen of the Province is itself of such grave public interest, and of such importance to each citizens’ ability to assess their personal risk and options, that it would add to the existing information already released in a material and compelling manner. For this reason, although I make this request for information formally under the Act, it is my belief that these public records should be already be released and that the failure of the PHSA and the BCCDC to do so is in direct contravention of Section 25 of the Act.”

The Provincial Health Services Authority (“PHSA”) recognizes Covid-19 presents a risk of significant harm to the health of the public and that section 25 of the Act requires that, as a public body, we provide to the public information that discloses the existence of the risk, describes the nature of the risk and the nature and extent of any anticipated harm, and which allows the public to take the necessary action to mitigate the risk or avoid the harm (see *Re Office of the Premier and Executive council operations and Ministry of Skills Development and Labour*, 2002 CanLII 42472 (BC IPC), at paras 45-46).

In the circumstances of the Request, however, PHSA takes the position that this obligation has been satisfied by the disclosures which have been made on an ongoing basis by PHSA as well as the other public bodies responsible for managing this public health crisis. As Commissioner McEvoy recently held in *Re British Columbia (Health)* (2020 BCIPC 66 (CanLII)), a decision on the section 25 obligation in the context of the Novel Coronavirus:

There is [...] a great deal of publicly available information about the nature of the risk, including information about the infectiousness of the virus and how it is transmitted. The available information enables the public, at the government, community, public agency and individual levels, to understand what action is necessary to avoid or reduce the risk. For instance, the information includes a great deal of guidance on steps that governments, communities, public agencies and individuals can and should take to avoid or reduce the risk. (at para 95)

PHSA takes the position that the reasoning expounded by the Commissioner in this decision is equally applicable to the information at issue in the present request. In our view, section 25 of the Act does not require the proactive disclosure of the information requested in the Request because these requirements have been met through the enormous volume of information which is already publically available—and which is continuously being updated—on, *inter alia*, the transmissibility of Covid-19 in in-door

settings in order to enable the people of BC to mitigate the risk of contracting the novel coronavirus.

A copy of the Act is available online at:

http://www.bclaws.ca/Recon/document/ID/freeside/96165_00

Office of the Information and Privacy Commissioner for British Columbia

The Office of the Information and Privacy Commissioner for British Columbia (the "OIPC") is the regulator of access and privacy laws in the province. If you have a concern with any decision in the processing of the Request you have the right to request a review of PHSA's decision from the OIPC. For ease of reference, information about the OIPC is included in Appendix A of this letter.

Additionally, should you have any questions about this letter, please contact the author at dallas.yuan@phsa.ca.

Sincerely,



Dallas Yuan
Manager, Information Access, Education & Intake
Information Access & Privacy Services
Provincial Health Services Authority

Appendix A: How to Request a Review

Under section 52 of the Act, you may request a review by the Office of the Information and Privacy Commissioner (OIPC) of any decision, action or failure to act by PHSA in responding to your request.

If you wish to request a review, you must contact the OIPC in writing within 30 business days of your receipt of this letter and provide the OIPC with:

1. Your name, address and telephone number;
2. A copy of the original request that you sent;
3. A copy of this letter; and
4. The reasons or grounds upon which you are requesting the review.

All inquiries should be directed to:

By Mail:

Office of the Information and Privacy Commissioner for British Columbia
PO Box 9038, Stn. Prov. Govt.
Victoria, BC
V8W 9A4

By Email: info@oipc.bc.ca

By Tel: (250) 387-5629

By Fax: (250) 387-1696

Callers outside Victoria can contact the office toll-free by calling Enquiry BC at 1-800-663-7867 and requesting a transfer to (250) 387-5629.

Gym/Fitness facility exposure setting analysis-November 10, 2020

Data source: Line lists provided by the regional health authorities to BCCDC.

Date data is current as of: October 28, 2020

- 132/13875 (0.95%) cases have been associated with an exposure setting of gym/fitness facility
- Cases have been reported between Aug 9-Oct 24 (Phase 3a and 3b)
- All cases are reported as residents of:
 - VCH (n=58) (Vancouver-36, North Shore/Coast Garibaldi-22)
 - FHA (n=72) (FN-35, FS-35, FE-1)
 - VIHA (n=1-exposed in VCH) (CVI)
 - unknown (n=1-exposed in VCH)
- 11 different facilities have been identified:
 - Range of cases/facility:2-27 cases, median= 14 cases
 - Types of facilities and HSDA of facility:
 - Fitness gym/Crossfit-5 (Vancouver-4, North Shore-1)
 - Fitness/Yoga studio-2 (FS-1, FN-1)
 - MMA/contact martial arts-2 (Vancouver)
 - Dance studio-1 (FN)
 - Multi-use facility/country club-1 (North Shore)
- Cases have occurred primarily in adults:
 - < 10 years=2 cases (1.5%)
 - 10-19 years=8 cases (6.0%)
 - 20-29 years=63 cases (47.7%)
 - 30-39 years=31 cases (23.5%)
 - 40-49 years=10 cases (7.5%)
 - 50-59 years=13 cases (9.8%)
 - 60-69 years=4 cases (3.0%)
 - Unknown age =1 case (0.76%)

Note: The reported outbreak in a dance school in FE occurred after the data extract for this analysis. As of Nov 9, it includes 44 cases and all cases are FHA residents. All cases are reported between Oct 25 and Nov 8 (Phase 3b). Cases are between 7 and 44 years of age, 36 (81.8%) are between the ages of 10-19 years.