



This is the 4th affidavit
of SOPHIE HARNEY in this case
and was made on November 23, 2022

Case No. S-224731
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

YORK HSIANG, DAVID WILLIAM MORGAN, and HILARY VANDERGUGTEN

Petitioners

and:

PROVINCIAL HEALTH OFFICER OF BRITISH COLUMBIA


Respondent

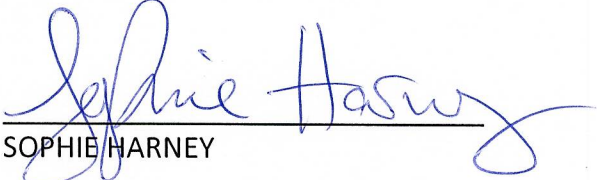
AFFIDAVIT #4 OF SOPHIE HARNEY

I, SOPHIE HARNEY, of 1000 - 1199 West Hastings Street, Vancouver, British Columbia, legal assistant at Gall Legge Grant Zwack LLP, AFFIRM THAT:

1. I am employed as a legal assistant at the firm of Gall Legge Grant & Zwack LLP, 1000 - 1199 West Hastings Street, Vancouver, British Columbia, counsel for the Petitioners in the BCSC Supreme Court Hsiang et al. (S-224731) & Hoogerbrug (S-224652) matters.
2. As such, I have personal knowledge of the facts and matters deposed to in this affidavit, save and except where they are stated to be made on information and belief, and where so stated, I believe them to be true.
3. Attached to this affidavit and marked as **Exhibit "A"**, is a true copy of a letter dated October 18, 2022, sent by counsel for the Provincial Health Officer to counsel for the Petitioners, regarding the documents required to complete the record.
4. Attached to this affidavit and marked as **Exhibit "B"**, is a true copy of a letter dated October 26, 2022, sent by counsel for the Petitioners to counsel for the Provincial Health Officer, in response to counsel for the Provincial Health Officer's letters dated October 14, 2022 (i.e. **Exhibit "S"** to my Affidavit #3 in this Action), and October 18, 2022.

5. Attached to this affidavit and marked as **Exhibit "C"**, is a true copy of a letter dated October 28, 2022, sent by counsel for the Petitioners to counsel for the Provincial Health Officer, regarding the documents required to complete the record.
6. Attached to this affidavit and marked as **Exhibit "D"**, is a true copy of a letter dated October 31, 2022, sent by counsel for the Provincial Health Officer to counsel for the Petitioners, in response to counsel for the Petitioners' letter dated October 28, 2022.
7. Attached to this affidavit and marked as **Exhibit "E"**, is a true copy of the BC Government's response to a Freedom of Information Request of Dr. Kevin Koopman regarding the documents in the record.
8. Attached to this affidavit and marked as **Exhibit "F"**, is a true copy of email exchange between Dr. Koopman and the BC Government regarding the BC Government's FOI response and the documents in the record.

AFFIRMED BEFORE ME in the City of)
 Vancouver, in the Province of British)
 Columbia, on this 23rd day of November,)
 2022)
)
)
 A Commissioner for taking affidavits in)
 the Province of British Columbia)



 SOPHIE HARNEY

MEREDITH SHAW
 GALL LEGGE GRANT ZWACK LLP
 Barristers & Solicitors
 Suite 1000-1199 West Hastings Street
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This is **Exhibit "A"** referred to in the Affidavit #4 of Sophie Harney, affirmed before me in the City of Vancouver this 23 day of November, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
THE PROVINCE OF BRITISH COLUMBIA



October 18, 2022

Gall Legge Grant Zwack LLP
Barristers and Solicitors
1000-1199 West Hastings Street
Vancouver, BC V6E 3T5

Attention:

Peter Gall, Q.C., PGall@glgzlaw.com

Dear Counsel:

**RE: Hsiang et al v. Provincial Health Officer of British Columbia
SCBC Vancouver Registry No. S224731**

**Hoogerbrug v. Provincial Health Officer of British Columbia
SCBC Vancouver Registry No. S224652**

I write further to our exchange of correspondence about documents your clients say should be included in the record.

In my letter of October 17, 2022, we offered to include these additional categories of documents:

1. Modelling presentations and media briefings (and transcripts of those briefings) from January 2022 to September 12, 2022, to the extent those are not already in Dr. Emerson's affidavit #1.
2. Documents from the Public Health Agency of Canada that were available to the PHO.
3. Documents from the National Advisory Committee on Immunization that were available to the PHO.

These three categories of documents contain voluminous records. To provide what the Court needs for the judicial review, but without excess documents that may impair efficiency, and given the upcoming hearing date, please let us know if there are any of

**Ministry of
Attorney General**

Legal Services Branch
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these documents that you agree are not necessary. For example, you may agree that documents that are earlier in the date range are not necessary.

COVID-19 Briefing Transcripts and Modelling Presentations

Affidavit # 1 of Dr. Brian Emerson attaches COVID-19 briefing transcripts and modelling presentations for the following dates:

1. August 31, 2021 (Exhibits 7 and 8)
2. November 1, 2021 (Exhibit 51, briefing only – there are no slides for this date)
3. November 4, 2021 (Exhibits 9 and 10)
4. November 9, 2021 (Exhibit 53, briefing only – there are no slides for this date)
5. November 16, 2021 (Exhibit 55, briefing only – there are no slides for this date)
6. December 14, 2021 (Exhibits 11 and 12)
7. January 14, 2022 (Exhibits 13 and 14)
8. September 6, 2022 (Exhibit 15, briefing only)

Affidavit #2 of Ms. Amanda Dragland attaches COVID-19 briefing transcripts and modelling presentations for the following dates:

1. September 28, 2022 (Exhibits A, B and C)

We can attach additional briefing transcripts and modelling presentations for the following dates:

1. March 27, 2020
2. April 17, 2020
3. May 4, 2020
4. June 4, 2020
5. June 23, 2020
6. July 20, 2020
7. August 13, 2020
8. September 3, 2020
9. October 5, 2020
10. November 12, 2020
11. December 23, 2020
12. February 5, 2021
13. March 11, 2021
14. April 15, 2021
15. June 10, 2021
16. June 28, 2021
17. March 10, 2022
18. April 5, 2022
19. September 6, 2022 (slides only as transcript already attached as exhibit 15 to Dr. Emerson affidavit #1 above)

To assist with your consideration of our request that you indicate if there are any of the above dates for which you agree it is not necessary to file the transcripts or slides as part of the record, you can review the slides at link [COVID-19 Briefings \(bccdc.ca\)](https://www.bccdc.ca/covid-19/briefings).

NACI Documents

We can attach NACI documents found at this link [National Advisory Committee on Immunization \(NACI\): Statements and publications - Canada.ca](https://www.canada.ca/en/health-canada/services/naci/naci-statements-publications.html) as follows:

1. October 7, 2022: [Updated guidance on COVID-19 vaccine booster doses in Canada](#)
 - a. [Summary of NACI statement of October 7, 2022](#)
2. September 9, 2022: [Updated guidance on COVID-19 vaccines for individuals who are pregnant or breastfeeding](#)
 - a. [Summary of NACI statement of September 9, 2022](#)
3. September 1, 2022: [Recommendations on the use of bivalent Omicron-containing mRNA COVID-19 vaccines](#)
 - a. [Summary of NACI statement of September 1, 2022](#)
4. August 19, 2022: [Recommendations on the use of a first booster dose of Pfizer-BioNTech Comirnaty COVID-19 vaccine in children 5 to 11 years of age](#)
 - a. [Summary of NACI statement of August 19, 2022](#)
5. July 14, 2022: [Recommendations on the use of Moderna Spikevax COVID-19 vaccine in children 6 months to 5 years of age](#)
 - a. [Summary of NACI statement of July 14, 2022](#)
6. June 29, 2022: [Interim guidance on planning considerations for a fall 2022 COVID-19 vaccine booster program in Canada](#)
 - a. [Summary of NACI statement of June 29, 2022](#)

And archived guidance as follows:

1. [Archived 37: Updated guidance on a first booster dose of COVID-19 vaccines in Canada \[2022-04-12\]](#)
 - a. [Summary of NACI statement of April 12, 2022](#)
2. [Archived 36: Initial guidance on a second booster dose of COVID-19 vaccines in Canada \[2022-04-05\]](#)
 - a. [Summary of NACI statement of April 5, 2022](#)
3. [Archived 35: Recommendations on the use of Moderna Spikevax COVID-19 vaccine in children 6 to 11 years of age \[2022-03-17\]](#)
 - a. [Summary of NACI statement of March 17, 2022](#)
4. [Archived 34: Recommendations on the use of Medicago COVID-19 vaccine \(Covifenz\) \[2022-03-11\]](#)
 - a. [Summary of NACI statement of March 11, 2022](#)
5. [Archived 33: Recommendations on the use of Novavax Nuvaxovid COVID-19 vaccine \[2022-02-17\]](#)
 - a. [Summary of NACI statement of February 17, 2022](#)

6. [Archived 32: NACI rapid response: Updated guidance on COVID-19 vaccination timing for individuals previously infected with SARS-CoV-2 \[2022-02-04\]](#)
 - a. [Summary of NACI rapid response of February 4, 2022](#)
7. [Archived 31: NACI rapid response: Guidance on the use of booster COVID-19 vaccine doses in adolescents 12 to 17 years of age \[2022-01-28\]](#)
 - a. [Summary of NACI rapid response of January 28, 2022](#)
8. [Archived 29: Updated recommendations on the use of COVID-19 vaccines in children 5 to 11 years of age \[2022-01-25\]](#)
 - a. [Amendment to January 25, 2022: Updated recommendations on the use of COVID-19 vaccines in children 5 to 11 years of age](#)
 - b. [Summary of NACI statement of January 25, 2022](#)
9. [Archived 26: Updated guidance on booster COVID-19 vaccine doses in Canada \[2021-12-03\]](#)
 - a. [Summary of NACI updated guidance of December 3, 2021](#)
10. [Archived 25: NACI rapid response: Updated recommendation on the use of authorized COVID-19 vaccines in individuals aged 12 years and older in the context of myocarditis and pericarditis reported following mRNA COVID-19 vaccines \[2021-12-03\]](#)
 - a. [Summary of NACI rapid response of December 3, 2021](#)
11. [Archived 24: Recommendation on the use of the Pfizer-BioNTech COVID-19 vaccine \(10mcg\) in children 5 to 11 years of age \[2021-11-19\]](#)
 - a. [Summary of NACI statement of November 19, 2021](#)
12. [Archived 23: Table of updates: Recommendations on the use of COVID-19 vaccines \[2020-12-20 to 2021-10-22\]](#)
13. [Archived 22: Recommendations on the use of COVID-19 vaccines \[2021-10-22\]](#)
 - a. [Summary of updated NACI vaccine statement of October 22, 2021](#)
14. [Archived 21: NACI interim guidance on booster COVID-19 vaccine doses in Canada \[2021-10-29\]](#)
 - a. [Summary of NACI interim guidance statement of October 29, 2021](#)
15. [Archived 20: NACI rapid response: Booster dose of COVID-19 vaccine in long-term care residents and seniors living in other congregate settings \[2021-09-28\]](#)
 - a. [Summary of NACI rapid response of September 28, 2021](#)
16. [Archived 19: NACI rapid response: Additional dose of COVID-19 vaccine in immunocompromised individuals following a 1- or 2-dose primary series \[2021-09-10\]](#)
 - a. [Summary of NACI rapid response of September 10, 2021](#)
17. [Archived 18: Recommendation on the use mRNA COVID-19 vaccines in adolescents 12 to 17 years of age \[2021-08-27\]](#)
 - a. [Summary of NACI statement of August 27, 2021](#)
18. [Archived 17: Recommendations on the use of COVID-19 vaccines \[2021-09-28\]](#)
 - a. [Summary of updated NACI vaccine statement of September 28, 2021](#)
19. [Archived 16: Recommendations on the use of COVID-19 vaccines \[2021-07-22\]](#)
 - a. [Summary of updated NACI vaccine statement of July 22, 2021](#)
20. [Archived 15: Recommendations on the use of COVID-19 vaccines \[2021-07-02\]](#)
 - a. [Summary of updated NACI vaccine statement of July 2, 2021](#)
21. [Archived 14: Recommendations on the use of COVID-19 vaccines \[2021-06-17\]](#)

- a. [Summary of updated NACI vaccine statement of June 17, 2021](#)
22. [Archived 13: Recommendations on the use of the Pfizer-BioNTech COVID-19 vaccine in adolescents 12 to 18 years of age \[2021-05-18\]](#)
 - a. [Summary of NACI statement of May 18, 2021](#)
23. [Archived 12: NACI rapid response: Interchangeability of authorized COVID-19 vaccines \[2021-06-01\]](#)
 - a. [Summary of NACI rapid response of June 1, 2021](#)
24. [Archived 11: Recommendations on the use of COVID-19 vaccines \[2021-05-28\]](#)
 - a. [Summary of updated NACI vaccine statement of May 28, 2021](#)
25. [Archived 10: Extended dose intervals for COVID-19 vaccines to optimize early vaccine rollout and population protection in Canada in the context of limited vaccine supply \[2021-04-07\]](#)
 - a. [Summary of NACI extended dose intervals statement of April 7, 2021](#)
26. [Archived 9: Recommendations on the use of COVID-19 vaccines \[2021-05-03\]](#)
 - a. [Summary of updated NACI vaccine statement of May 3, 2021](#)
27. [Archived 8: NACI rapid response: Recommended use of AstraZeneca COVID-19 vaccine in younger adults \[2021-03-29\]](#)
28. [Archived 7: Recommendations on the use of COVID-19 vaccines \[2021-04-23\]](#)
 - a. [Summary of updated NACI vaccine statement of April 23, 2021](#)
29. [Archived 6: Recommendations on the use of COVID-19 vaccines \[2021-03-16\]](#)
 - a. [Summary of updated NACI vaccine statement of March 16, 2021](#)
30. [Archived 5: NACI rapid response: Extended dose intervals for COVID-19 vaccines to optimize early vaccine rollout and population protection in Canada \[2021-03-03\]](#)
31. [Archived 4: Recommendations on the use of COVID-19 vaccines \[2021-03-01\]](#)
32. [Archived 3: Recommendations on the use of COVID-19 vaccines \[2021-01-12\]](#)
33. [Archived 2: Recommendations on the use of COVID-19 vaccines \[2020-12-23\]](#)
34. [Archived 1: Recommendations on the use of COVID-19 vaccine\(s\) \[2020-12-12\]](#)

Again, this is a large volume of documents. Please let us know if you can agree that any of the above are not necessary to include.

PHAC Documents

Our client is continuing to locate PHAC documents in this category. If you could specify a date range that is agreeable that would assist, as PHAC reporting from the beginning of the pandemic to present represent a large volume of materials. I am providing a copy of the Weekly COVID-19 Evidence Review Tracker document for October 4, 2021 and the 108 page PHAC Omicron Monitoring Report 5 dated 5 January 2022, as enclosures via secure file transfer as attachments to this letter.

Update to Exhibit 6 and 16

As I proposed in my October 17, 2022 letter, we can provide BCCDC Situation Reports and Weekly Reports up to September 30, 2022 as part of the record. These are

chronological updates to Exhibits 6 and 16 to Dr. Emerson's affidavit. These documents are BCCDC COVID-19 Situation Reports for August 21-27, 2022, August 28-September 3, 2022, September 4-10, 2022, September 11-17, 2022 and September 18-24, 2022 (a chronological update of Exhibit 6 from Dr. Emerson's affidavit #1) and the Weekly COVID-19 Reports for September 15, 22 and 29, 2022 (a chronological update of Exhibit 16 of Dr. Emerson's affidavit #1) which can be found at [BC COVID-19 Data \(bccdc.ca\): http://www.bccdc.ca/health-info/diseases-conditions/covid-19/data](http://www.bccdc.ca/health-info/diseases-conditions/covid-19/data).

Requested Study

Ms. Bastow asked for a copy of a study co-authored by Dr. Henry. We attach a pre-print (not yet peer reviewed) of the study titled "[Serial cross-sectional estimation of vaccine and infection-induced SARS-CoV-2 sero-prevalence in children and adults, British Columbia, Canada: March 2020 to August 2022 | medRxiv](#)".

Kindly confirm where there are any of the documents listed in this letter that you agree are not necessary.

If this response is not satisfactory, production of any further materials will require a formal application. We will respond and provide our availability for such an application to be heard.

Yours truly,



Julie K. Gibson
Barrister & Solicitor
JKG/kh

- cc. Gareth Morley Gareth.Morley@gov.bc.ca
- Alexander Bjornson Alexander.Bjornson@gov.bc.ca
- Karen Bastow karen@karenbastow.com
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- Charlene Le Beau clebeau@jccf.ca

This is **Exhibit "B"** referred to in the Affidavit #4 of Sophie Harney, affirmed before me in the City of Vancouver this 13 day of November, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
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VIA E-MAIL

October 26, 2022

Ministry of Attorney General
Legal Services Branch
PO BOX 9280 STN PROV GOVT
Victoria, BC V8W 9J7

Attention: Julie K. Gibson

Dear Julie:

**Re: Hsiang et al v. Provincial Health Officer of British Columbia SCBC Vancouver
Registry No. S224731**

**Hoogerbrug v. Provincial Health Officer of British Columbia SCBC Vancouver
Registry No. S224652**

I write in response to your letters dated October 14 and 18, 2022 letter regarding the completion of the record before the Provincial Health Officer (“PHO”) in this case when she made the September 12, 2022 Order.

As stated in our previous letter of October 14, 2022, the categories that we provided to the Respondent on October 3, 2022 are all relevant to the determination of the main issues raised in the Petitions – that is, whether the present conditions, scientific evidence, and circumstances support or justify the ongoing use of the emergency powers in the *Public Health Act*, and whether the PHO’s decision to maintain the vaccination mandate is reasonable in light of the evidence before her in making this decision.

Further, as explained in more detail in our draft notice of application, it is not legally open to the Respondent to unilaterally determine which documents in the record are “necessary to allow for the petitions to be fully and fairly determined”, as it does in its October 14 and 18 letters.

Simply put, the categories of documents in question are, by definition, part of the record, as they pertain to materials that are relevant to the issues raised in the Petitions and that were directly or indirectly before the PHO in making the decisions and orders challenged in the Petitions.



Thus, we maintain our position that the Petitioners are legally entitled to, at least, the documents coming within the listed categories. However, as mentioned at the conclusion of this letter, we will endeavor to further narrow the categories of documents we request at this stage in an attempt to ensure that the merits of the Petitions can be heard as soon as possible.

With that by way of brief introduction, we provide our specific responses to your two letters below.

Respondent's Letter dated October 14, 2022

Contrary to what is stated in your letter, Dr. Emerson's affidavit includes very few documents with respect to the main issues in this case, and perhaps more concerning, only includes a sample of the documentation from the record that was selected to support the conclusions that the Respondent has drawn from the evidence.

For example, Dr. Emerson's affidavit does not include much, if any, documentation, with respect to the current situation with the Omicron variants, which have been the dominant strain of the virus in the province, and around the world, since in or around January 2022.

Nor does it include much, if any, documents that, for instance, discuss or compare the effectiveness of two-doses of vaccination with infection-based immunity as it relates to contracting or transmitting COVID-19, and severe outcomes such as hospitalization, since the Omicron variants became the dominant strain of the virus.

Further, in response to request #1, you state that the documents responsive to this request are the PHO's reasons in the recitals of the September 12, 2022 Order and the media briefings attached to Dr. Emerson and Ms. Dragland's affidavits. However, the PHO's statements in the September 12, 2022 Order and in previous or subsequent media briefings are not *evidence* in the record – at best, they contain the conclusions that the PHO has drawn from evidence in the record, many of which conclusions are disputed.

The Petitioners are entitled to the actual evidence – including any summaries of the evidence – that were directly or indirectly before the PHO, not merely the conclusions that the PHO has reached.

In response to requests #3, you state that the decisions of the PHO with respect to other regulations and restrictions issued under the *Public Health Act* are not under review in this case, and thus are not relevant or useful to the Court.

Again, it is not legally open to the Respondent to narrow the record of evidence in this case based on its view of what documents it believes would be “useful” to the Court.



As explained in our draft notice of application, these documents are highly relevant to the case, as they relate to the information that led the PHO to conclude that other measures with respect to the COVID-19 virus, including measures tied to vaccination, are no longer necessary.

Indeed, presumably the Respondent believes that facts and information pertaining to these other measures are at least relevant to the Petition, as it has included paragraphs in Dr. Emerson's affidavit discussing these very measures (see e.g. paragraphs 34-37, and 94).

It is simply not plausible to assert that this material is relevant and helpful to the Court only to the extent that the Respondent wants to reveal this information as part of the Respondent's narrative, but otherwise irrelevant and unhelpful to the extent it might be used by the Petitioners in support of their position.

In response to request #12, you state that the two letters to the UBC President from the Vancouver Coastal Health Chief Medical Officer and the UBC faculty professors are not relevant to the issues under review, as they involve a different context (i.e. primarily younger people at university residences).

The informed views set out in those letters clearly pertain to the efficacy of two doses of vaccination generally and the necessity of imposing measures tied to vaccination on members of the population, both of which are matters at the heart of the issues to be decided in these Petitions. To the extent that the Respondent believes that the views of these experts were properly given little or no weight by the PHO in the context at issue in this proceeding, and if there is any evidence in the record that would support this assertion, the Respondent can make that argument during the hearing. It does not in any way affect whether the materials are relevant and properly included in the record.

Again, the Respondent cannot narrow the record based solely on its views of the case. These letters and the studies cited within them pertain to a number of matters raised in the Petitions and were provided to the PHO by the Petitioners, are clearly relevant to the issues raised in the Petitions, and therefore any other documents in the possession of the PHO relating to consideration given to these letters and studies are part of the record.

The fact that the Court in *Beaudoin* found that "there is no indication of the bases for" the views set out in these letters, based on the record before the Court in that case, highlights the importance of having a full and complete record of proceedings in this case, which was evidently not present in the *Beaudoin* proceeding. The views of these experts is fully consistent with the evidence that has been tendered by the Petitioners, and likely consistent with and supported by other evidence in the PHO's possession as well. That is exactly why it is essential to have a full and complete record before the Court in this proceeding.

With respect to requests #13-16, you state in your letter that there is no religious exemption process under the vaccination orders, and that none of the *Hsiang* and *Hoogerbrug* Petitioners applied for



a medical exemption. With respect, that is beside the point. The documents relating to the PHO's decision to grant medical exemptions, but not to similarly grant religious exemptions to the orders, clearly relate to a fundamental issue raised in the Hoogerbrug Petition. The Petitioners and the Court are entitled to any evidence in the record pertaining to the decision to refuse to permit religious exemptions in the same way that medical exemptions were permitted.

For instance, the PHO clearly came to the conclusion that it would be possible for unvaccinated persons with a medical exemption to continue to work without posing a threat to the health and wellbeing of the public or otherwise undermining the objectives of the mandatory vaccination orders. The Petitioners are entitled to any evidence relevant to that conclusion (and not merely any evidence in support of that conclusion).

Similarly, the PHO presumably came to the conclusion that allowing individuals with valid religious exemptions to continue to work would in some way pose an "unacceptable" threat, in a way that permitting individuals with medical exemptions would not. The Petitioners are entitled to any evidence before the PHO relevant to that conclusion (and not merely the evidence in support of that conclusion).

If the PHO had no evidence in support of either of these conclusions, the Respondent should confirm that in writing, which can then be placed before the Court.

In response to request #24, you state that visitor policies at hospitals and community health care facilities after the emergence of the COVID-19 virus "are not under review in these Petitions". With respect, that does not demonstrate that the evidence is irrelevant. The measures under review in these Petitions prevent unvaccinated registered health professionals from working in designated health care settings, based on the assertion that this is necessary to protect the health of persons living and working in those locations. Therefore, the other protective measures that are, or are not, being undertaken in relation to these locations are clearly relevant to the issues raised in this case.

Further, the Respondent also seems to believe that visitor policies at these facilities are relevant to the Petitions, as they are discussed in Dr. Emerson's affidavit at paragraphs 72 and 73. Therefore, the Respondent cannot now reasonably claim that this information is not at least relevant to the Petitions.

While we do not agree with the Respondent's assertion that requests #31-32 are not relevant to the issues raised in the Petitions, we agree not to pursue these requests further for the time being.

Finally, while Dr. Emerson's affidavit alludes to the fact that documents provided to the PHO by the Petitioners are included in the record, we ask for the PHO's confirmation in writing that the record of evidence includes all of the correspondence and documents provided by the Petitioners' counsel to the PHO's counsel, as well as the documents filed by the Petitioners' in these proceedings, up until the date of the September 12, 2022 Order.



Respondent's Letter dated October 18, 2022

In response to the three additional categories of documents identified in your letter, we have the following response:

1. *Modelling presentations and media briefings (and transcripts of those briefings) from January 2022 to September 12, 2022, to the extent those are not already in Dr. Emerson's Affidavit #1*

As noted in our draft notice of application, we object to the paragraphs of Dr. Emerson's affidavit where he attaches the transcripts of the media briefings of the PHO, to the extent the Respondent intends to use those previous statements as "evidence" in the record upon which the PHO could rely.

While PHO's previous statements may or may not have been supported by evidence in the record, the statements are clearly not themselves evidence in the record, and cannot be relied on by the PHO to support the imposition of the vaccination mandate.

Put another way, the Respondent cannot file statements of the PHO having previously reached certain conclusions as *evidence* that those conclusions are reasonable. The question as it pertains to the record is what evidence (if any) was before the PHO that led to these factual conclusions, and what evidence (if any) was before the PHO that undermined, questioned, or contradicted those conclusions.

And, as also set out in our draft application, our position is that media briefings or other statements of this nature cannot be used to supply additional or supplementary reasons in support of the impugned measures beyond the reasons set out in the Order itself.

Therefore, in our view, these types of materials are either inadmissible in their entirety, or they are entitled to no weight in relation to the reasonableness and legality of the impugned measures. They cannot properly be considered evidence in the record or the reasons upon which the impugned measures are based.

That being said, given that we anticipate that the Respondent will take the position that these briefings are admissible for some purpose, we would appreciate the production of these additional media briefings and modelling presentations from January 2022 to September 12, 2022 for the sake of completeness, as Dr. Emerson has attached media briefings and modelling presentations to his affidavit that, in the most part, pre-date the Omicron variants.

However, for the reasons stated above, this should not be taken as a concession that the media briefings (or any other previous statements by the PHO made in support of the



measures in question) are properly treated as “evidence” in the record or are admissible as supplementing the PHO’s reasons in support of the impugned measures.

2. *Documents from the Public Health Agency of Canada that were available to the PHO*

Please provide us with any updates that have been prepared by the Public Health Agency of Canada to its Omicron Monitoring Report 5 dated January 11, 2022.

3. *Documents from the National Advisory Committee on Immunization*

We do not require production of documents from the National Advisory Committee on Immunization. The documents from the Public Health Agency of Canada are sufficient, in our view.

Proposal for Completing the Record

As can be seen, we do not agree with the reasons set out in your letters for not disclosing the documents identified in our October 3 letter. In our view, all of the categories of documents are relevant and are properly considered part of the record.

However, in the interest of moving this case forward as expeditiously as possible, we will endeavor to provide you with an updated list of document categories before the end of the week, in which we hope to limit our requests to those that we believe are absolutely essential to a determination of the issues raised in the Petitions, and, therefore, to a meaningful judicial review.

Yours very truly,

GALL LEGGE GRANT ZWACK LLP

A handwritten signature in black ink that reads 'Peter A. Gall'. The signature is fluid and cursive.

Peter A. Gall, K.C.*

PAG/al

Copy. Karen Bastow, karen@karenbastow.com
 Polina Furtula, pfurtula@citadellawyers.ca
 Charlene E. Le Beau, clebeau@jccf.ca
 Clients

This is **Exhibit "C"** referred to in the Affidavit #4 of Sophie Harney, affirmed before me in the City of Vancouver this 23 day of November, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
THE PROVINCE OF BRITISH COLUMBIA



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Peter A. Gall, K.C.*
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VIA E-MAIL

October 28, 2022

Ministry of Attorney General
Legal Services Branch
PO BOX 9280 STN PROV GOVT
Victoria, BC V8W 9J7

Attention: Julie K. Gibson

Dear Julie:

**Re: Hsiang et al v. Provincial Health Officer of British Columbia SCBC Vancouver
Registry No. S224731**

**Hoogerbrug v. Provincial Health Officer of British Columbia SCBC Vancouver
Registry No. S224652**

We write further to our letter dated October 26, 2022, to provide an updated list of document categories we request the Respondent to produce as part of the record before the Provincial Health Officer (“PHO”).

As stated in our previous correspondence, our position is that documents falling into these categories are only a subset of the documents contained in the record, to which the Petitioners are entitled. However, in an effort to ensure that the Petitions can be heard as soon as possible, we have endeavored to limit the categories of documents identified in our initial letter dated October 3, 2022, to those that we consider essential to a determination of the issues in this case.

We must emphasize that the categories of documents we have identified in this letter are based on our review of the material that is currently in the record – that is, the documents that we know were before the PHO in issuing the September 12, 2022 Order, including the material the Petitioners provided to the PHO and have filed in these proceedings, the Public Health Agency of Canada documents, and the admissible documents in Dr. Emerson’s affidavit.

To the extent that the Respondent intends to subsequently supplement the record with additional documents, whether spontaneously or as a result of rulings on the admissibility of Dr. Emerson’s



affidavit, we will need to reconsider the scope of our requests and may need to seek additional categories of documents, potentially up to the full record of relevant evidence before the PHO, in order to ensure that the Court has access to a full and balanced record in this case.

We would add that if the Respondent does seek to introduce further documents from the record at a later date, this will raise the question of why it did not provide this material much earlier, and whether the Respondent is simply “cherry-picking” documents from the record that support its case and only to the extent it considers it strategically beneficial to do so.

But that will be an argument for another day. For the time being, as the record currently stands, we request production of the categories of documents set out in this letter.

First, we summarize and reiterate the requests set out in our October 26 letter:

- (i) Please provide written confirmation that the record of evidence includes all of the correspondence and documents provided by the Petitioners’ counsel to the PHO’s counsel, as well as the documents filed by the Petitioners’ in these proceedings, up until the date of the September 12, 2022 Order;
- (ii) Notwithstanding our position on the admissibility of the statements of the PHO, including in the transcripts of the media briefings of the PHO, as “evidence” in the record, we request production of the transcripts of the PHO’s media briefings and the modelling presentations from January 2022 to September 12, 2022; and
- (iii) We request production of any updates that have been prepared by the Public Health Agency of Canada to its Omicron Monitoring Report 5 dated January 11, 2022.

Next, we set out below an updated list of document categories based on the initial list we provided to you on October 3rd, that we have sought to narrow to only those categories of documents in the record that we consider most essential in light of the admissible documents from the record that have been filed and/or produced in the proceedings to date.

For each of the categories listed below, we ask that the Respondent indicate whether they will produce the documents, and if not, the basis of their objection in refusing to produce the documents. In cases where the Respondent says that there were no documents before the PHO that are responsive to these requests, we ask that the Respondent put this in writing so that we may place this before the Court.

With respect to the categories of documents set out below, a reference to “documents” includes any and all forms of records, such as correspondence, reports, studies, presentations, briefing documents, summaries, notes, memos, statistics, analysis and data in the possession of the PHO or her office:



1. Any and all documents explaining the basis, justification and/or rationale for the discontinuation or removal of other COVID regulations and restrictions, including those tied to vaccination, as well as the discontinuation or removal of any emergency designation tied to COVID, in BC and other jurisdictions.
2. Any and all documents related to the consideration given to the two publicly available letters to UBC President & Vice-President Chancellor, Dr. Santa Ono, from the Vancouver Coastal Health Chief Medical Officer, Dr. Patricia Daly et al, dated February 16, 2022, and the UBC Faculty professors Dr. David Patrick, Dr. Sarah (Sally) Otto, and Dr. Daniel Coombs, dated February 20, 2022.
3. Any and all documents relating to the decision to permit unvaccinated individuals with a medical exemption to continue working at hospitals and community health care facilities, but not extending the same opportunity to unvaccinated persons with valid religious reasons for not being vaccinated.
4. Any and all documents relating to the measures put in place for those working at hospitals and community health care facilities with a medical exemption.
5. Any and all documents relating to the transmission of COVID at hospitals and community health care facilities by persons who are not subject to the vaccination mandate (e.g. patients, family members, etc.).
6. Any and all documents relating to the transmission of COVID by registered health professionals at hospitals and community health care facilities to patients and vice versa, including by vaccination status.
7. Any and all documents relating to the decision of the BC Government, Ministry of Health, Health Authorities and/or Office of the PHO to allow:
 - a. Health care workers who share a household with, or are a close contact of, a person who has tested positive for COVID to continue working at public health care settings, with the use of other measures;
 - b. Health care workers that have tested positive for COVID to return to work at public health care settings with mild and/or improved symptoms, with the use of other measures; and
 - c. Visitors to attend hospitals and community health care settings without being vaccinated, with the use of other measures.



8. Any and all documents relating to the decision of the BC Government, Ministry of Health, Health Authorities and/or Office of the PHO to stop notifying hospitals and community health care settings about health care workers that work in these settings that have tested positive for COVID.
9. Any and all documents showing the number of registered health professionals who have been prevented from providing services within hospitals and community health care facilities as a result of the vaccination mandate, as well as any documents relating to whether the elimination of these workers from the workforce would cause or exacerbate any pressure on the public health care system.
10. Any and all documents that support the statement made by the PHO in a media conference on January 21, 2022 that the provincial government's approach to the COVID virus has shifted to be "much like how we manage other respiratory illnesses – influenza, or RSV (respiratory syncytial virus), or enteroviruses that cause the common cold", including documents from January 2022 to September 12, 2022 that support this statement.
11. Any and all documents that support the following underlined statements made by the PHO in a media briefing dated September 28, 2022:

"What we've seen since the beginning of 2022, in the pink on this chart, is that omicron has really dominated, and it's changed a little bit but it is still omicron. And we remain in a period of uncertainty. But we know a lot more now and we continue to learn.

We know that when variants arise, they, they're very unlikely now, given the evolutionary pressures we're seeing around the world and the amount of immunization and immunity that we have, we're very unlikely to see a new strain arise in BC or in Canada that evades all of our immune system and vaccination. That's good news. We've been working with all our teams at BC CDC, at UBC and Simon Fraser, to really try and understand what are the things that could happen and how likely would they be.

So yes, we have a scenario where there's something completely new and different that's likely to emerge somewhere else in the world, but even that goes down in probability as more and more people have immunity, particularly through vaccination, and that's more available around the world.

What we are likely to see in the next three to four to six months is more omicron and maybe slight changes over time. That's important for us."

[emphasis added]



If we are not able to come to an agreement on these categories of documents, we reserve the right to seek production of further categories of documents, up to the proper and complete record of evidence in this case, in order to ensure a meaningful judicial review.

Yours very truly,

GALL LEGGE GRANT ZWACK LLP

Peter A. Gall, K.C.*

PAG/al

Copy. Karen Bastow, karen@karenbastow.com
Polina Furtula, pfurtula@citadelawyers.ca
Charlene E. Le Beau, clebeau@jccf.ca
Clients

This is **Exhibit "D"** referred to in the Affidavit #4 of Sophie Harney, affirmed before me in the City of Vancouver this 13 day of November, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
THE PROVINCE OF BRITISH COLUMBIA



October 31, 2022

BY EMAIL

<p>Gall Legge Grant Zwack LLP Barristers and Solicitors 1000-1199 West Hastings Street Vancouver, BC V6E 3T5</p> <p>Attention: Peter Gall, K.C., PGall@glgzlaw.com</p>	<p>Justice Centre for Constitutional Freedoms #253, 7620 Elbow Drive SW Calgary, Alberta T2V 1K2</p> <p>Attention: Charlene E. Le Beau, clebeau@jccf.ca</p>
<p>Citadel Law Corp 1400-1125 Howe Street Vancouver, BC V6Z 2K8</p> <p>Attention: Polina Furtula (by email and hard copy) pfurtula@citadellawyers.ca</p>	<p>David G. Millburn, Trial Lawyers Begbie Square 102 – 668 Carnarvon Street New Westminster, BC V3M 5Y6</p> <p>Attention: Karen Bastow, karen@karenbastow.com</p>

Dear Sirs/Mesdames:

**RE: Hsiang et al v. Provincial Health Officer of British Columbia
SCBC Vancouver Registry No. S224731**

**Hoogerbrug v. Provincial Health Officer of British Columbia
SCBC Vancouver Registry No. S224652**

**Tatlock et al v. Attorney General for the Province of British Columbia et al
SCBC Vancouver Registry No. S222427**

**CSASPP et al v. Dr. Henry et al
SCBC Vancouver Registry File No. S2110229**

We write in response to your respective letters of October 28, 2022 concerning the record.

**Ministry of
Attorney General**

Legal Services Branch
Litigation Group

Mailing Address:
PO BOX 9280 STN PROV GOVT
Victoria, BC V8W 9J7
Phone: 778-587-4748
Fax: 250-953-3557
Email: Julie.Gibson@gov.bc.ca

Location:
1001 Douglas Street
Victoria, BC

Mr. Gall's Letter

We agree with the point that argument over the law in relation to the scope of the record is for another day and will therefore just address the points of possible convergence.

In response to item (i) at page 2 of Mr. Gall's letter, we agree that the record before the PHO includes all correspondence and documents provided by Petitioners' counsel to the PHO's counsel and documents filed by the Petitioners in these proceedings up until September 12, 2022. Of course, this correspondence and documents can only be relied on in relation to decisions taken after they are received by PHO's counsel.

As far as item (ii), transcripts of the additional media briefings are attached to Dr. Emerson's affidavit #2.

Turning to item (iii), we will inquire as to whether the OPHO has any updates to the Public Health Agency of Canada's Omicron Monitoring Report 5 dated January 11, 2022 and, if available, will provide them to you.

At pages 3 and 4 of Mr. Gall's letter, there are a series of 11 requests for categories of documents. These remain broad requests aimed at "any and all documents" which are likely impractical to address completely.

Item 1 is a very broad request that is already addressed in the record to the extent that it relates to the impugned Orders.

I responded to your item 2 request in earlier correspondence.

In terms of items 3 and 4, we do not dispute that some health care workers received medical exemptions and continued to work in these settings. The record already addresses these requests.

Items 5 and 6 are already addressed in the record. We do not dispute that patients, whether vaccinated or unvaccinated, have been and continue to be able to attend to receive health care.

We do not agree to provide the documents requested under items 7 or 8, as these relate to decisions other than those under review in these proceedings.

We will make inquiries about item 9 and provide documents, if any are available.

Item 10 refers to a comment that stands for itself. It is otherwise addressed generally in the record provided in Dr. Emerson's two affidavits.

Items 10 and 11 are overly broad requests that encompass all of immunology, epidemiology and modelling science. The record already includes materials on these issues.

Ms. Bastow's Letter

Turning to Ms. Bastow's request for further documents regarding the hiring of remote-working contract workers. We will make inquiries as to whether there are any such relevant documents. However, hiring decisions and related notices are not the purview of the Office of the PHO but, as you point out, rest with health authorities.

Ms. Furtula's Letter

In response to Ms. Furtula's October 28, 2022 letter and the broad requests within it, we have already provided materials in the record, and further materials are being provided with Dr. Emerson's second affidavit today.

Next Steps

Today, by secure file transfer, we are providing all counsel with an unfiled copy of Dr. Emerson's affidavit #2, affirmed October 27, 2022. This is a supplemental record affidavit addressing your document requests pertaining to the record. As with Dr. Emerson's affidavit #1, we intend to file one copy in all four petitions but may require Justice Coval's directions or an order to do so.

The respondents' position is that, once we have delivered Dr. Emerson's second affidavit and addressed the requests noted in this correspondence, the respondents have complied with their obligations to produce the record for the purposes of the *JRPA* and this proceeding.

To the extent the petitioners disagree that the record is sufficient, they can raise that argument at the hearing on the merits or seek further disclosure by application.

In light of the impasse on settling the record, we plan to ask the registry to release all but the first three days currently scheduled (November 28, 29 and 30, 2022); we will instead seek dates in April 2023 for the hearing on the merits. Please advise by close of business November 1, 2022 with your availability.

Yours truly,



Julie K. Gibson
Barrister & Solicitor
JKG/kh

- cc. Gareth Morley Gareth.Morley@gov.bc.ca
- Alexander Bjornson Alexander.Bjornson@gov.bc.ca
- Julie Gibson Julie.Gibson@gov.bc.ca
- Mark Nohra mnohra@nohralaw.com
- Justina Sebastiampillai jsebastiampillai@qlgzlaw.com

This is **Exhibit "E"** referred to in the Affidavit #4 of Sophie Harney, affirmed before me in the City of Vancouver this 23 day of November, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
THE PROVINCE OF BRITISH COLUMBIA



File: 292-30/HTH-2022-22466

October 28, 2022

Sent via email: kkoopman8@gmail.com

Kevin Koopman
5966 Oldmill Lane
Sechelt BC V7Z 0S2

Dear Kevin Koopman:

Re: Request for Access to Records
Freedom of Information and Protection of Privacy Act (FOIPPA)

I am writing further to your request received by the Ministry of Health. Your request is for:

On September 12th, 2022 the Ministry of Health updated a previous Public Health Order originally published in November 2021 (<https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-hospital-and-community-vaccination-status-information-preventive-measures.pdf>). The September 12th, 2022 document has no appendix including citations or sources; I am seeking a list of all the references/resources/studies/evidence used to develop this Public Health Order. (Date Range for Record Search: From 3/17/2020 To 9/13/2022)

No records were located in response to your request. The Ministry did not locate records as no such list was created; however, many of the scientific studies, articles and resources used by the Provincial Health Officer over the course of the pandemic have been requested and subsequently released in various FOI requests.

Your file is now closed.

If you have any questions regarding your request, please contact Suzanne Kardoush, the analyst assigned to your request, at 778 698-3353. This number can also be reached toll-free at 1 833 283-8200. Please provide the FOI request number, found at the top right of the first page of this letter, in any communications.

.../2

You have the right to ask the Information and Privacy Commissioner to review this decision. I have enclosed information on the review and complaint process.

Sincerely,

S. Kardoush

Suzanne Kardoush, A/FOI Specialist
Information Access Operations

Enclosure

<p>How to Request a Review with the Office of the Information and Privacy Commissioner</p>
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If you have any questions regarding your request please contact the analyst assigned to your file. The analyst's name and telephone number are listed in the attached letter.

Pursuant to section 52 of the *Freedom of Information and Protection of Privacy Act* (FOIPPA), you may ask the Office of the Information and Privacy Commissioner to review any decision, act, or failure to act with regard to your request under FOIPPA.

A complete copy of FOIPPA is available online at:

http://www.bclaws.ca/civix/document/id/complete/statreg/96165_00

Please note that you have 30 business days to file your review with the Office of the Information and Privacy Commissioner. In order to request a review please write to:

Information and Privacy Commissioner
PO Box 9038 Stn Prov Govt
4th Floor, 947 Fort Street
Victoria BC V8W 9A4
Telephone 250 387-5629 Fax 250 387 1696

If you request a review, please provide the Commissioner's Office with:

1. A copy of your original request;
2. A copy of our response; and
3. The reasons or grounds upon which you are requesting the review.

This is **Exhibit "F"** referred to in the Affidavit #4 of Sophie Harney, affirmed before me in the City of Vancouver this 23 day of November, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
THE PROVINCE OF BRITISH COLUMBIA

----- Forwarded message -----

From: FOI Justice Health Team CITZ:EX <Justice.Social.FOI@gov.bc.ca>

Date: Thu, Nov 10, 2022 at 8:12 AM

Subject: RE: FOI Request HTH-2022-22466

To: Kevin Koopman <kkoopman8@gmail.com>

Good morning,

I have followed up with the ministry with a reminder.

Thank you for your patience – I will advise once I have received response.

Kind regards,

Suzanne

Suzanne Kardoush | A/ FOI Specialist, Justice-Health Team | Information Access Operations | Corporate Information and Records Management Office | Ministry of Citizens' Services

Ph: 778-698-3353 | **e:** suzanne.kardoush@gov.bc.ca | **m:** PO Box 9569 Stn Prov Gov, Victoria BC V8W 9K1

From: Kevin Koopman <kkoopman8@gmail.com>

Sent: November 8, 2022 12:06 PM

To: FOI Justice Health Team CITZ:EX <Justice.Social.FOI@gov.bc.ca>

Subject: Re: FOI Request HTH-2022-22466

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hello,

Just following up on the previous comments. Any update you have is appreciated.

Kevin

On Tue, Nov 1, 2022 at 8:53 AM FOI Justice Health Team CITZ:EX <Justice.Social.FOI@gov.bc.ca> wrote:

Good morning,

Thank you for you email. I am following up with the ministry on your query below and I will get back to you as I hear back.

Kind regards,

Suzanne

Suzanne Kardoush | A/ FOI Specialist, Justice-Health Team | Information Access Operations | Corporate Information and Records Management Office | Ministry of Citizens' Services
Ph: 778-698-3353 | **e:** suzanne.kardoush@gov.bc.ca | **m:** PO Box 9569 Stn Prov Gov, Victoria BC V8W 9K1

From: Kevin Koopman <kkoopman8@gmail.com>
Sent: November 1, 2022 8:22 AM
To: FOI Justice Health Team CITZ:EX <Justice.Social.FOI@gov.bc.ca>
Subject: Re: FOI Request HTH-2022-22466

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Again Ms. Kardoush,

I wanted to add that even if you could simply provide the relevant FOI case numbers I am happy to peruse them in the "open search".

Kevin

On Mon, Oct 31, 2022 at 6:35 PM Kevin Koopman <kkoopman8@gmail.com> wrote:

Hi Ms. Kardoush,

Thank you for your response.

Admittedly, I am slightly confused regarding the response to my FOI. If there is no "list" but rather the information before the Provincial Health Officer is in various FOI responses, is it not your office's responsibility to provide me with all the relevant FOIs? As it stands, it seems you are leaving me with the task to review every FOI in its entirety in the "Open Search".

If that is the case, would you advise that I submit a new FOI request asking for the evidence contained within specific FOIs related to the September 12th, 2022 Public Health Order?

Please advise,

Kevin

On Mon, Oct 31, 2022 at 2:39 PM FOI Justice Health Team CITZ:EX <Justice.Social.FOI@gov.bc.ca> wrote:

Good afternoon,

Thank you for your email. Previous FOI requests may be searched on the Open Information catalogue. You may access Open Information directly using the following link:

<https://www2.gov.bc.ca/gov/content/governments/about-the-bc-government/open-government/open-information/search-open-information-resources>

Kind regards,

Suzanne

Suzanne Kardoush | A/ FOI Specialist, Justice-Health Team | Information Access Operations | Corporate Information and Records Management Office | Ministry of Citizens' Services

Ph: 778-698-3353 | **e:** suzanne.kardoush@gov.bc.ca | **m:** PO Box 9569 Stn Prov Gov, Victoria BC V8W 9K1

From: Kevin Koopman <kkoopman8@gmail.com>

Sent: October 29, 2022 10:53 AM

To: FOI Justice Health Team CITZ:EX <Justice.Social.FOI@gov.bc.ca>; Kardoush, Suzanne CITZ:EX <Suzanne.Kardoush@gov.bc.ca>

Subject: Re: FOI Request HTH-2022-22466

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Dear Ms. Kardoush,

I am contacting you regarding the response from the Ministry of Health to FOI HTH-2022-22466 (see attached).

While it indicates there were no records found, the response also states: "*many of the scientific studies, articles and resources used by the Provincial Health Officer over the course of the pandemic have been requested and subsequently released in various FOI requests.*"

Is there a process to request and obtain the totality of FOI responses which includes the scientific studies, articles and resources used by the Provincial Health Officer as it specifically relates to FOI request HTH-2022-22466? Or does this require another FOI submission?

Please advise.

Sincerely,

Kevin

On Fri, Oct 28, 2022 at 2:20 PM <justice.social.foi@gov.bc.ca> wrote:

Please see the attached regarding your FOI request.

Thank you.

Information Access Operations | Ministry of Citizens' Services

www.gov.bc.ca/freedomofinformation

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iPhone

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Kevin T. Koopman, BSc (Hons), MD