

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 96-021

January 9, 1998

ALBERTA HEALTH

Review Number 1121

BACKGROUND

[1.] Alberta Health (the “Public Body”) conducted an investigation of the Applicant’s health facility. The investigation was conducted under the authority of the *Hospitals Act*, R.S.A. 1980, c. H-11 and the *Nursing Homes Act*, S.A. 1985, c. N-14.1.

[2.] At the same time, the Alberta Health Facilities Review Committee, another public body, conducted an investigation of the Applicant’s health facility under the *Health Facilities Review Committee Act*, R.S.A. 1980, c. H-4. The Public Body and the Alberta Health Facilities Review Committee said that this was a joint investigation. Although the records in the custody of the Alberta Health Facilities Review Committee are the subject of a separate request for review by the Applicant, I conducted both inquiries simultaneously because each public body had in its custody some of the other public body’s records or information. Furthermore, most of the legal arguments were applicable to records in the custody of both public bodies. However, the records in the custody of the Alberta Health Facilities Review Committee are the subject of a separate Order.

[3.] On November 2, 1995, the Applicant applied to the Public Body under the *Freedom of Information and Protection of Privacy Act* (the “Act”) for access to records concerning the Public Body’s investigation. The Applicant asked “...to

examine all records relating to this investigation including the entire contents of your files pertaining to this investigation.”

[4.] Because of the massive volume of records, I granted the Public Body two extensions of time to reply to the Applicant. On May 17, 1996, the Public Body provided access to an “A” File and a “B” File of the records, but severed information in many of those records. The Public Body also refused to disclose some records. The Public Body cited the following sections of the Act to support its non-disclosure of the severed information and its refusal to disclose other records:

- Section 4 (records to which the Act does not apply)
- Section 16 (personal information)
- Section 17 (safety or health)
- Section 19 (law enforcement)
- Section 23 (advice, and consultations)
- Section 26 (privilege)

[5.] On June 13, 1996, the Applicant requested that my Office review the manner in which the Public Body severed the Records. At the same time, the Applicant asked for and was granted the right to proceed directly to inquiry rather than go through mediation. Before the inquiry, I asked the Applicant to tell me which pages of the records I was to review. The Applicant provided a summary, from which I determined that I was to review 224 pages in the Public Body’s “A” File of records and 166 pages in the Public Body’s “B” File of records.

[6.] The matter was set down for inquiry on October 1 and 2, 1996. I received the Public Body’s submission on September 18, 1996 and the Applicant’s submission on September 26, 1996.

[7.] During the inquiry, I found that an extra day would be needed to complete the inquiry. October 7, 1996 was agreed upon by the parties.

[8.] Also, during the inquiry, the Public Body notified me that it had just located several hundred more records that it believed were responsive to the Applicant’s request.

[9.] As a result of the Public Body’s late discovery of additional records, the Applicant was concerned that the Public Body had not produced all the records.

[10.] The Public Body said it would complete its review of the additional records in November 1996. On November 15, 1996, the Public Body provided the

Applicant with access to an additional 782 pages of records. However, numerous pages were severed. The Applicant asked me to review 136 pages of those records. I will refer to those records as the "C" File.

[11.] I asked the Public Body and the Applicant whether they wished to reconvene the inquiry. Both parties agreed that they would give a further written submission instead of reconvening. I received both the Public Body's and the Applicant's further written submissions on January 24, 1997.

[12.] On March 25, 1997, the Public Body provided the Applicant with an additional 42 pages of records that the Public Body said had originally been misfiled and were only just recently located. Those records have been included in this inquiry. I will refer to those records as the "D" File. In the "D" File, there are 18 pages which were severed in whole or in part.

RECORDS AT ISSUE

[13.] The Public Body released approximately 2200 pages of records, in their entirety, to the Applicant. Access was denied, in whole or in part, to approximately 544 pages, which are the subject of this inquiry.

[14.] In summary, less than 20 per cent of the records are at issue. The Public Body released more than 80 per cent of the records, in their entirety, to the Applicant.

[15.] The Public Body said that the records it found in its original search had been collected from the files of two main sources: the central filing system and staff files. The records that had been in the central filing system had been filed in chronological order and were given the "A" designation on the Applicant's access request. However, the records from the staff files were in the order kept by staff members, and some of those records were undated. Rather than lose the integrity of the ordered central filing system records, the Public Body said it decided to keep the staff records separate and to give those records the "B" designation on the Applicant's access request.

[16.] The Applicant asked me to review the following pages of the Records from the Public Body's "A" File:

"A" File:

1, 35-37, 43-55, 57-63, 66, 67, 70, 71, 71a, 72, 79, 80, 102-109, 111, 112, 114, 116, 117, 119, 121, 122, 124, 138, 141, 145-150, 157-161, 167, 169, 173, 174, 178, 179, 181, 186, 187, 189, 190, 194, 196-209, 213, 228-249, 253, 255, 258, 259, 308, 314, 323, 355, 359-361, 363-366, 369-372, 378, 427-429, 500, 501, 586-592, 594,

673-676, 681, 684, 693-695, 698, 723, 724, 726-733, 738, 740-742, 766, 809, 810, 813-822, 835, 839-842, 852, 854-860, 871, 901-903, 909, 910, 938, 940, 943, 945, 946, 963-965, 968, 970-972, 974-988, 991, 993-998, 1000-1007, 1010-1015

[17.] From the September 18, 1996, September 27, 1996, and October 15, 1997 letters that the Public Body sent to the Applicant, I have determined that the following pages from the "A" File are no longer at issue because those pages were not severed in the first place or, after third party notification, those pages have now been reissued to the Applicant, without any severing:

"A" File

59, 103-107, 109, 116, 119, 121, 122, 253, 360, 361, 427, 766, 809, 810, 991, 993-996

[18.] In the case of page 997 of "A" File, I have determined that the Public Body was missing a page and consequently had misnumbered pages 994-996, which should have been numbered 994-997 if the missing page had been included. That missing page has already been released to the Applicant as page number 344 in Request for Review Number 1084. As a result of the missing page, there is no page 997 to be considered here.

[19.] Consequently, the only pages remaining to be considered in the Public Body's "A" File are the following:

"A" File

1, 35-37, 43-55, 57, 58, 60-63, 66, 67, 70, 71, 71a, 72, 79, 80, 102, 108, 109, 111, 112, 114, 117, 124, 138, 141, 145-150, 157-161, 167, 169, 173, 174, 178, 179, 181, 186, 187, 189, 190, 194, 196-209, 213, 228-249, 255, 258, 259, 308, 314, 323, 355, 359, 363-366, 369-372, 378, 428, 429, 500, 501, 586-592, 594, 673-676, 681, 684, 693-695, 698, 723, 724, 726-733, 738, 740-742, 813-822, 835, 839-842, 852, 854-860, 871, 901-903, 909, 910, 938, 940, 943, 945, 946, 963-965, 968, 970-972, 974-988, 998, 1000-1007, 1010-1015

[20.] The Applicant asked me to review the following pages of the Records from the Public Body's "B" File:

"B" File

1, 4, 6, 8-12, 14-18, 20-23, 28, 29, 31-35, 43-63, 69-82, 84, 85, 87-89, 104-108, 144, 179, 182, 186, 187, 249, 250, 273, 274, 312, 322, 323, 325, 335, 336, 361, 362, 364, 365, 367-370, 394, 396-398, 426, 428-438, 442-444, 452-457, 499, 513, 522, 544, 550-559, 620-628, 631, 632, 636-641, 655, 656, 668-671, 673-682, 685, 687, 690-692, 769, 770, 772, 774-776, 779-782, 784, 787, 792-796, 798, 799, 803-

805, 807, 810-814, 817, 818, 821-825, 828-840, 856-860, 866, 870-877, 879-884, 890, 891, 893, 894, 896-899, 907, 910, 913

[21.] From the September 18, 1996, September 27, 1996, and October 15, 1997 letters that the Public Body sent to the Applicant, I have determined that the following pages from the “B” File are no longer at issue because those pages were not severed in the first place or, after third party notification, those pages have now been reissued to the Applicant, without any severing:

“B” File

8, 9, 12, 14, 17, 29, 31, 44, 45, 48-50, 74-82, 433, 453-456, 620, 622, 623, 625, 626, 628, 631, 632, 636-639, 641, 655, 668, 670, 673, 675-682, 685, 687, 776, 817, 821-824, 830, 832-837, 839, 840

[22.] Furthermore, the Public Body said that following pages were exact duplicates and were removed from the “B” File:

“B” File

522, 544, 550-559, 856

[23.] Finally, the Public Body said that as a result of an error in numbering, page 656 of the “B” File does not exist.

[24.] Consequently, the only pages remaining to be considered in the “B” File are the following:

“B” File

1, 4, 6, 10, 11, 15, 16, 18, 20-23, 28, 32-35, 43, 46, 47, 51-63, 69-73, 84, 85, 87-89, 104-108, 144, 179, 182, 186, 187, 249, 250, 273, 274, 312, 322, 323, 325, 335, 336, 361, 362, 364, 365, 367-370, 394, 396-398, 426, 428-432, 434-438, 442-444, 452, 457, 499, 513, 621, 624, 627, 640, 669, 671, 674, 690-692, 769, 770, 772, 774, 775, 779-782, 784, 787, 792-796, 798, 799, 803-805, 807, 810-814, 818, 825, 828, 829, 831, 838, 857-860, 866, 870-877, 879-884, 890, 891, 893, 894, 896-899, 907, 910, 913

[25.] The Applicant asked me to review the following pages of the Records included in the Public Body’s “C” File:

“C” File

18, 24, 25, 27, 33, 95-97, 115, 116, 124, 125, 141, 232-246, 248-255, 258-261, 266-269, 271, 272, 276-278, 281, 283-286, 288, 289, 366-369, 371-377, 401, 403, 406-414, 422, 425, 426, 428-432, 449, 450, 452-457, 459-461, 463-468, 476, 477, 495, 496, 498, 507, 624, 625, 627-634, 666, 670, 714, 718, 728, 729, 731-738, 773, 778, 779

[26.] The Public Body said it severed part of page 773 of “D” File as being non-responsive to the Applicant’s request for access. I have reviewed that page and agree with the Public Body’s conclusion, as the information severed does not relate in any way to the Applicant’s request.

[27.] I intend to review all eighteen of the following severed pages of the Records included in the Public Body’s “D” File:

“D” File

6, 7, 9, 10, 13-15, 24, 25, 27-35

[28.] In this Order, I will refer to each page individually by page number and file designation, and to all the pages in all four files collectively as “the Records”.

ISSUES

[29.] There are eight issues in this inquiry:

A. Does section 4 exclude certain records from the application of the Act?

B. Did the Public Body correctly apply section 26 (privilege) to the Records?

C. Did the Public Body correctly apply section 16 (personal information) to the Records?

D. Did the Public Body correctly apply section 19 (law enforcement) to the Records?

E. Did the Public Body correctly apply section 17 (safety or health) to the Records?

F. Did the Public Body correctly apply section 23 (advice, and consultations) to the Records?

G. Did the Public Body collect personal information in violation of the Act?

H. Did the Public Body produce all the Records at issue?

[30.] For the most part, the Public Body applied several exceptions to disclosure to each severed item in the Records. Other than section 26(1)(a) (public interest privilege), I have considered each severed item under only one exception to disclosure, beginning with section 16 (personal information) and

proceeding to each exception in the order indicated above. Where I have found that an exception to disclosure applies to that severed item, I have not considered any other exception for that same severed item.

DISCUSSION

Issue A: Does section 4 exclude certain records from the application of the Act?

[31.] Section 4 marks out the jurisdiction of the Act and my jurisdiction as well. Consequently, the standard in determining that jurisdiction must be a standard of correctness. In other words, a record or information is either subject to the Act or not subject to the Act; there is no discretion involved.

[32.] The Public Body says that section 4(1)(l) applies to the following pages of the Records:

“A” File

111, 112, 169, 378, 673-676, 693-695, 854, 855, 857, 858, 975-981, 985-987, 998, 1000-1007, 1010-1015

[33.] Section 4(1)(l) reads:

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

(l) a record created by or for

(i) a member of the Executive Council,

(ii) a Member of the Legislative Assembly, or

(iii) a chair of a Provincial agency as defined in the Financial Administration Act who is a Member of the Legislative Assembly

that has been sent or is to be sent to a member of the Executive Council, a Member of the Legislative Assembly or a chair of a Provincial agency as defined in the Financial Administration Act who is a Member of the Legislative Assembly.

[34.] In Order 97-007, which was issued before this Order, I discussed the interpretation of section 4(1)(l). I said that for a record to fall outside the Act by reason of section 4(1)(l), the record must be created by or *on behalf of* [my emphasis] any of those classes of persons listed in section 4(1)(l)(i) to (iii). I interpreted *for* to mean *on behalf of*, and said that *for* did not mean *intended to go to* or *destined for* because that interpretation would allow a record created by anyone in the world at large to be excluded from the application of the Act.

[35.] The concluding part of section 4(1)(l) requires that the record “has been sent or is to be sent” to one of the same three classes of persons listed in section 4(1)(l)(i) to (iii). Therefore, section 4(1)(l) is intended to exclude from the application of the Act communications among only those persons listed in section 4(1)(l)(i) to (iii).

[36.] In Order 96-020, I also said that if a record is created by a person who acts on behalf of one of the classes of persons listed in section 4(1)(l)(i) to (iii), either the record must indicate that the individual is acting on that person’s behalf, or it must be evident in some other way.

[37.] I have carefully reviewed all the above pages of the Records. The following pages of the Records clearly meet the requirements of section 4(1)(l), in that those are records created by one of the classes of persons listed in section 4(1)(l)(i) to (iii), and sent to one of those same classes of persons:

“A” File

111, 112, 378, 854, 855, 857, 858, 975-981, 985-987, 998, 1000-1007, 1010-1015

[38.] Page 169 of “A” File, on its face, is a record created on behalf of a member of the Executive Council and sent to a member of the Executive Council. Therefore, section 4(1)(l) excludes page 169 of “A” File from the application of the Act.

[39.] Pages 673, 674, and 693-695 of “A” File, on their face, are records created on behalf of a member of the Executive Council and sent to an employee in the office of a member of the Executive Council. It is also clear from the context of those records that, although sent to the employee in the office of the member of the Executive Council, the records are not for that employee, but are to be sent to the member of the Executive Council. Therefore, section 4(1)(l) excludes pages 673, 674 and 693-695 of “A” File from the application of the Act.

[40.] However, pages 675 and 676 of “A” File do not meet any of the requirements of section 4(1)(l). Therefore, section 4(1)(l) does not exclude those pages from the application of the Act.

[41.] In summary, I find that section 4(1)(l) excludes the following pages of the Records from the application of the Act:

“A” File

111, 112, 169, 378, 673, 674, 693-695, 854, 855, 857, 858, 975-981, 985-987, 998, 1000-1007, 1010-1015

[42.] Consequently, I have no jurisdiction over those pages of the Records.

[43.] However, section 4(1)(l) of the Act does not exclude the following pages of the Records from the application of the Act:

“A” File

675, 676

[44.] Those pages are subject to the Act. Since the Public Body did not claim that any exception to disclosure applies to those pages, the Public Body must disclose those pages to the Applicant.

[45.] However, those pages contain some personal information. In Order 96-008, I set out my jurisdiction to consider a mandatory (“must”) prohibition to disclosure under the Act, such as personal information under section 16, whether or not a public body has considered it. Therefore, before disclosing those pages, the Public Body must first sever the personal information, as follows:

“A” File

675: initials at the top right-hand corner

Issue B: Did the Public Body correctly apply section 26 (privilege) to the Records?

[46.] The Public Body says that section 26(1)(a) (legal privilege) applies to certain pages of the Records.

[47.] Section 26(1)(a) reads:

26(1) The head of a public body may refuse to disclose to an applicant

(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege.

1. Application of section 26(1)(a) (public interest privilege)

[48.] The Public Body says that section 26(1)(a) (public interest privilege) applies to the following pages of the Records:

“A” File

43-50, 51 (first severed part), 52-55, 57, 58, 60-63, 66, 67, 70, 71, 71a, 72, 79, 102, 196-203, 209, 359, 363-366, 500, 501, 681, 741, 742, 871

“B” File

18, 20, 21, 22 (second severed item), 54-56, 57 (everything severed except the first severed item), 58-62, 63 (first severed item), 84, 426, 429, 430, 431, 432 (top half of page), 434-436, 442-444, 875, 876, 879, 880 (last severed item), 910

“C” File

18 (first severed item at top of page), 25, 27, 33, 266-269, 271, 272, 276-278, 281, 283-286, 773 (first, second, eighth, ninth and tenth severed lines), 778, 779

[49.] I intend to consider section 26(1)(a) (public interest privilege) for the following pages of the Records:

“B” File

880 (first severed item), 893 (fifth severed line)

“C” File

288, 289

[50.] Page 196 of “A” File and pages 429 and 876 of “B” File are not contained in the Public Body’s submission. However, by letter dated September 18, 1996, the Public Body notified me and the Applicant that public interest privilege was being applied in addition to and in all places where section 19(1)(d) had been applied. Although the letter does not list page 196 of “A” File or pages 429 and 876 of “B” File, the Records clearly show that section 19(1)(d) has been applied to those three pages. Furthermore, the Public Body’s October 2, 1996 errata sheet lists page 196 under public interest privilege. In spite of this confusion, I have allowed public interest privilege to be considered for page 196 of “A” File and pages 429 and 876 of “B” File because the Public Body notified me and the Applicant well in advance of the inquiry that this exception would be applied.

[51.] Furthermore, the Public Body’s submission says that section 26(1)(a) (public interest privilege) is being claimed for page 69 of “B” File. However, the Public Body’s October 2, 1996 errata sheet said that page 69 of “B” File was to

be deleted from consideration under section 26(1)(a) (public interest privilege), and I have deleted it.

[52.] Finally, the Public Body asked to correct its submission to read page 880 of “B” File instead of page 800 of “B” File. I have allowed this correction of an obvious typographical error.

[53.] In Order 96-020, I discussed public interest privilege at length, and do not intend to reproduce that discussion here. In summary, I said that a public interest privilege could be found either (a) by analogy to police informer privilege or (b) under the Wigmore criteria.

[54.] To find a public interest privilege by analogy to police informer privilege, I must determine whether the public interest weighs in favour of disclosing or not disclosing the informers’ information to the Applicant. If the public interest weighs in favour of non-disclosure of the information in this case, the following information does not have to be disclosed: information provided by the informers (see *Director of Investigation and Research, Competition Act v. D & B Cos. of Canada Ltd.* (1994), 176 N.R. 62 (Fed. C.A.)), the names of informers, and any information that would reveal informers’ identities (see *R. v. Leipert*). In this Order “informers’ information” refers to any or all of the above kinds of information.

[55.] Alternatively, I intend to apply the four Wigmore criteria to determine whether a public interest privilege exists in this particular case.

a. Does the public interest weigh in favour of disclosing or not disclosing the informers’ information to the Applicant?

[56.] As discussed in Order 96-020, the privilege afforded to police informers has been granted in order to give protection to a category of individuals who may very well be vulnerable to reprisals from those against whom they inform. The policy reason behind the privilege is to protect this source of information since, without the privilege, the information would likely vanish, and the end result would be that policing agencies would be impaired in their efforts to detect and prevent crime.

[57.] The court in *Dudley v. Doe*, [1997] A.J. No. 847 (Alta. Q.B.) noted that courts in England and in Canada have applied the rationale behind the police informer rule to somewhat similar situations, such as *D. v. National Society for Prevention of Cruelty to Children*, [1978] A.C. 171 (H.L.). The court went on to say that in that case, the House of Lords noted that the principle source of such information is generally those who are close to the family, such as neighbours, relatives, educators or health care professionals, who maintain their relationship with the family. The House of Lords was of the view that the

policy behind extending the privilege was that without an effective protection of confidentiality in relation to information provided, these types of individuals would be very hesitant to come forward to report abuse and neglect, and the Society's ability to learn of such cases would be drastically reduced.

[58.] The facts in the case before me are that informers provided the Public Body with information about potential breaches of the *Hospitals Act* and the *Nursing Homes Act*. The Public Body is one of the investigative and reporting arms of the Minister of Health, who has authority under both the *Hospitals Act* and the *Nursing Homes Act* to require that matters be investigated. Based on the Public Body's investigation and report, the Minister of Health may order a further investigation by Alberta Health, and may suspend or reduce payments under the *Hospitals Act*, and also may order a correction plan, suspend or reduce payments, cancel a contract, or restrict or prohibit admissions to a facility under the *Nursing Homes Act*.

[59.] On the evidence, I find that when the informers gave information to the Public Body, there was a sense of urgency about the situation, such that information needed to be provided so that immediate action could be taken to address a pressing problem. The sense of urgency in this case is similar to that which impels someone to give information to the police about a possible crime or to give information to a children's society about possible child abuse.

[60.] I accept the Public Body's evidence that the informers' information was provided with an assurance of confidentiality.

[61.] Finally, I accept the view of the court in *Director of Investigation and Research, Competition Act v. D & B Cos. of Canada Ltd.* that the public interest in protecting communications to government agencies by informers in order to enable those agencies to obtain information necessary for administration of the law outweighs the public interest in requiring that the information be produced in proceedings under the relevant legislation, in this case, *the Freedom of Information and Protection of Privacy Act*.

[62.] By analogy to police informer privilege, I find that the public interest weighs in favour of not disclosing the informers' information to the Applicant.

b. Does a privilege exist in this case under the Wigmore criteria?

[63.] In the alternative, I will now consider whether a privilege exists in this case under the following four Wigmore criteria:

- (1) The communications must originate in a confidence that they will not be disclosed.

(2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.

(3) The relation must be one which in the opinion of the community ought to be sedulously fostered.

(4) The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of the litigation.

[64.] The evidence clearly establishes that the communications to the Public Body originated in a confidence that they would not be disclosed. This meets the first criterion.

[65.] The second criterion has also been met. The evidence is that the informers would not have provided the information without the guarantees of confidentiality. These guarantees of confidentiality established the relationships between the informers and the Public Body, and were necessary for the full and satisfactory maintenance of the relationships: *see Dudley v. Doe*, [1997] A.J. No. 847 (Alta. Q.B.).

[66.] Furthermore, the third criterion has been met, in that I have found that the public interest weighs in favour of protecting informers' communications to government agencies, in order to enable those agencies to obtain information necessary for administration of the law.

[67.] The fourth criterion requires an assessment of the interests served by protecting the communications from disclosure, including privacy interests and the inequalities which may be perpetuated by the absence of protection: *A.M. v. Ryan*, [1997] 1 S.C.R. 157. Moreover, the balancing exercise under the fourth criterion is essentially one of common sense and good judgment: *A.M. v. Ryan*.

[68.] As to Wigmore's fourth criterion, it must be kept in mind that a request for access to a record and an inquiry under the *Freedom of Information and Protection of Privacy Act* is not litigation. Consequently, under Wigmore's fourth criterion, the balance I need to strike is that the injury to the relationship from the disclosure of the information must be greater than an applicant's right of access to the information under section 6(1) of the Act. That right itself is subject to the exceptions under the Act. The purpose for which an applicant wants access to information is not a relevant consideration under the Act.

[69.] What is at issue then is the informers' privacy interests in the context of their relationships with the Public Body, and whether those privacy interests should, in the circumstances of the case, prevail over the Applicant's right of access under the Act.

[70.] Based on the evidence provided, I find that under Wigmore's fourth criterion, the injury to the informers' relationships with the Public Body is greater than the Applicant's right of access to that information under the Act.

[71.] In *A.M. v. Ryan*, the Supreme Court of Canada said:

[T]he balance between the interest in disclosure and the complainant's interest in privacy may be struck at a different level in the civil and criminal case; documents produced in a criminal case may not always be producible in a civil case, where the privacy interest of the complainant may more easily outweigh the defendant's interest in production.

[72.] So too I believe that an informer's privacy interests are struck at a different level in a proceeding under the *Freedom of Information and Protection of Privacy Act* than in civil proceedings, and more easily outweigh an applicant's right of access under the Act. I find that to be the case here.

[73.] Consequently, I find that, under Wigmore's four criteria, the public interest weighs in favour of not disclosing the informers' information to the Applicant.

c. Conclusion under section 26(1)(a) (public interest privilege)

[74.] The Public Body correctly applied section 26(1)(a) (public interest privilege) to the following pages of the Records:

"A" File

43-50, 51 (first severed part only), 52-55, 57, 58, 60-63, 66, 67, 70, 71, 71a, 79, 102, 196-203, 209, 359, 363-365, 500, 501, 681, 741, 742, 871

"B" File

18, 20, 21, 22 (second severed item), 54-56, 57 (everything severed except the first severed item), 58-62, 63 (first severed item), 84, 426, 429, 430, 431, 432 (top half of page), 434-436, 442-444, 875, 876 (everything severed except the first two severed lines), 879, 880 (last severed item), 910

"C" File

18 (first severed item at top of page), 25, 27, 33, 266-268, 271, 272, 276-278, 281, 283-286, 773 (first, second, eighth, ninth and tenth severed lines), 778, 779

[75.] I also find that section 26(1)(a) (public interest privilege) applies to the following pages of the Records:

“B” File

880 (first severed item), 893 (fifth severed line)

“C” File

288, 289

[76.] I make this finding for pages 880 (first severed item) and 893 (fifth severed item) of “B” File and pages 288 and 289 of “C” File because I have traced the information on those pages to other pages of the Records in which I have found that public interest privilege applies to the same information. I have applied section 26(1)(a) (public interest privilege) because of section 26(2), which is a mandatory (“must”) section of the Act. In Order 96-008, I discussed my jurisdiction to apply mandatory exceptions. For a discussion of section 26(2), see below.

[77.] The Public Body did not correctly apply section 26(1)(a) (public interest privilege) to the following pages of the Records:

“A” File

72, 366

“B” File

876 (first two severed lines)

“C” File

269

2. Application of section 26(2)

[78.] Having found that section 26(1)(a) (public interest privilege) applies, I turn to section 26(2).

[79.] Section 26(2) reads:

26(2) The head of a public body must refuse to disclose information described in subsection (1)(a) that relates to a person other than a public body.

[80.] Section 26(2) is mandatory (“must”) section of the Act. In other words, if there is information described in section 26(1)(a) that relates to a person other

than a public body, a public body must not disclose that information; it does not have any discretion.

[81.] I have found that section 26(1)(a) (public interest privilege) applies to the foregoing pages of the Records. The information to which section 26(1)(a) (public interest privilege) applies in this case relates to persons other than a public body or the Public Body. The information “relates to” those persons because they supplied the information and the information can identify them. Consequently, section 26(2) applies, and the Public Body must not disclose that information to the Applicant.

3. Application of section 26(1)(a) (solicitor-client privilege)

[82.] The Public Body says that section 26(1)(a) (solicitor-client privilege) applies to the following pages of the Records:

“A” File

138, 141, 157-160, 229-249, 814-822, 835, 901-903

[83.] In Order 96-017, I discussed section 26(1)(a) (solicitor-client privilege). To correctly apply solicitor-client privilege, a public body must meet the criteria for that privilege, as set out in *Solosky v. The Queen*, [1980] 1 S.C.R. 821. In that case, the Supreme Court of Canada stated that solicitor-client privilege must be claimed document by document, and each document must meet the following criteria:

- (i) it is a communication between solicitor and client,
- (ii) which entails the seeking or giving of legal advice, and
- (iii) which is intended to be confidential by the parties.

[84.] I have reviewed all the documents to which the Public Body applied solicitor-client privilege. I have also checked whether these documents were “cc’d” (copied), and to whom, to determine whether the privilege has been waived. I find that certain documents were copied to lawyers in the Attorney General’s Department (as it was then called), which provided the solicitors to represent the Public Body or to the Minister to whom the Public Body reported. Consequently, I find that solicitor-client privilege has not been waived.

[85.] Pages 157-159, 229-249, 814-819, 835 and 901 clearly meet the criteria for solicitor-client privilege. Page 820, even though it is a fax cover sheet, also meets the criteria for solicitor-client privilege, in particular because it contains information which entails the giving or seeking of legal advice.

[86.] Pages 821 and 822 are an attachment to page 820. In Order 96-020, I discussed whether solicitor-client privilege could apply to attachments to solicitor-client communications. I adopted the following reasoning set out in *Balabel v. Air India*, [1988] 2 All E.R. 246 (C.A.), at p. 254: “Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach.” Consequently, I find that solicitor-client privilege applies to pages 821 and 822.

[87.] Pages 902 and 903 are a communication between employees of the Public Body, who are discussing legal advice given by the Public Body’s solicitor. I have traced that legal advice directly to page 901 of “A” File, a document to which solicitor-client privilege applies.

[88.] In Order 96-020, I adopted the reasoning in *Mutual Life Assurance Co. of Can. v. Canada (Deputy A.G.)* (1988), 28 C.P.C. (2d) 101 (Ont. H.C.), which held that a document between employees of a company that transmits or comments on a privileged communication with the company’s solicitor was privileged. Consequently, I find that solicitor-client privilege applies to pages 902 and 903.

[89.] However, pages 138, 141 and 160 are fax cover sheets, and nothing more. I find that these pages do not meet the criteria for solicitor-client privilege.

[90.] In conclusion, the Public Body correctly applied section 26(1)(a) (solicitor-client privilege) to the following pages of the Records:

“A” File
157-159, 229-249, 814-822, 835, 901-903

[91.] The Public Body did not correctly apply section 26(1)(a) (solicitor-client privilege) to the following pages of the Records:

“A” File
138, 141, 160

[92.] The Public Body must disclose pages 138, 141 and 160 of “A” File to the Applicant. However, before disclosing those pages, the Public Body must first sever the personal information (names and business telephone numbers).

4. Exercise of discretion under section 26(1)(a) (solicitor-client privilege)

[93.] Section 26(1)(a) (solicitor-client privilege), by itself, is a discretionary (“may”) exception under the Act. In other words, even though section 26(1)(a) (solicitor-client privilege) applies to information, a public body may nevertheless decide to disclose that information.

[94.] In Order 96-017, I said that to exercise its discretion properly, a public body must show that it took into consideration the access provisions of the Act.

[95.] The Public Body's evidence is that it disclosed as much information as it could to the Applicant, other than informers' information which was shared with legal advisors. The Public Body's evidence as to disclosure of information is also supported by the approximately 2200 pages (more than 80 per cent) of the Records disclosed in their entirety to the Applicant.

[96.] Therefore, I find that the Public Body exercised its discretion properly under section 26(1)(a) (solicitor-client privilege).

Issue C: Did the Public Body correctly apply section 16 (personal information) to the records?

1. General

[97.] The Public Body says that section 16(1) applies to the following pages of the Records:

"A" File

1, 35-37, 51 (last severed part), 72, 79, 80, 114, 117, 124, 145-150, 167, 173, 174, 178, 179, 181, 186, 187, 189, 190, 194, 213, 255, 308, 314, 323, 355, 366, 369-372, 500 (second severed item), 501, 684, 698, 729-732, 740, 741, 938, 940, 943, 945, 946, 963, 965 (first severed item), 968, 970

"B" File

1, 4, 6, 10, 11, 15, 16, 22 (first severed item), 23, 28, 32-35, 43, 46, 47, 51-53, 57 (first severed item), 63 (last severed item), 69-73, 85, 87-89, 104-108, 144, 179, 182, 186, 187, 249, 250, 273, 274, 312, 322, 323, 325, 335, 336, 394, 396-398, 428, 432 (bottom half of page), 437, 438, 452, 457, 499, 513, 621, 624, 627, 640, 669, 671, 674, 690-692, 769, 770, 772, 774, 775, 779, 780-782, 784, 787, 792-796, 798, 799, 803-805, 807, 810-814, 818, 825, 828, 829, 831, 838, 860 (everything severed except the last two paragraphs), 874, 876, 877, 881-884, 890 (first severed part), 893 (first to fourth severed lines), 894, 899, 907, 913

"C" File

18 (first severed item at top of page), 24, 124, 125, 141, 269

[98.] Although page 691 of "B" File was not listed under section 16(1) in the Public Body's submission, section 16(1) is clearly indicated on that page of the

Records and has been added by the Public Body's October 2, 1996 errata sheet. For these reasons, I have allowed page 691 of "B" File to be considered under section 16(1).

[99.] Although the Public Body's submission says it has abandoned reliance on section 16(1) for page 825 of "B" File, I believe the Public Body's submission is in error, for the following reasons. The Public Body has disclosed the personal information of certain third parties who have consented to the disclosure of their personal information which appears on these pages. However, there is personal information remaining on these pages, for which there has been no consent to disclosure. That personal information remaining meets the requirements of section 16(1). Furthermore, page 825 of "B" File, which has been reissued to the Applicant to disclose the personal information of those third parties who have consented to disclosure, clearly indicates that section 16(1) still applies to the remaining severed personal information. Consequently, I believe that the Public Body intended to abandon section 16(1) only for the personal information for those third parties who consented to disclosure, but intended to rely on section 16(1) for the remaining personal information to be considered on page 825 of "B" File. Therefore, I have left that page to be considered under section 16(1).

[100.] I also intend to consider the following pages of the Records under section 16(1):

"A" File

733 (first severed sentence)

"B" File

859, 890 (last severed part), 891, 893 (last severed part), 896-898

"C" File

18 (last severed item at bottom of page)

As a note of clarification, I intend to consider pages 896-898 of "A" File under section 16(1), even though the Public Body said that section 23 applied to those pages.

[101.] Section 16(1) reads:

16(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[102.] Section 16(1) is a mandatory (“must”) section of the Act. If section 16(1) applies, a public body has no choice; it must refuse to disclose the personal information.

2. Do the foregoing pages of the Records contain “personal information”?

[103.] “Personal information” is defined in section 1(1)(n) of the Act. The relevant portions of section 1(1)(n) read:

1(1)(n) “personal information” means recorded information about an identifiable individual, including

(i) the individual’s name, home or business address or home or business telephone number,

(iii) the individual’s age, sex, marital status or family status,

(vi) information about the individual’s health and health care history, including information about a physical or mental disability,

(vii) information about the individual’s educational, financial, employment or criminal history, including criminal records where a pardon has been given,

(viii) anyone else’s opinions about the individual,

(ix) the individual’s personal views or opinions, except if they are about someone else.

[104.] The Public Body stated that it not only severed those kinds of personal information listed in section 1(1)(n), but also severed any information that may have identified an individual because it considers such information to be “personal information”. The Applicant objects to severing any information that could identify an individual, because the Applicant believes that is too broad an interpretation of “personal information”.

[105.] In Orders 96-002, 96-010, 96-019, and 96-020, I have held that events and facts discussed, observations made, and the circumstances in which information is given, as well as the nature and the content of the information, may be shown to be personal information because it can be shown to be “recorded information about an identifiable individual”.

[106.] Furthermore, I find that handwriting is personal information because it is “recorded information about an identifiable individual”.

[107.] I have carefully reviewed all of the foregoing pages of the Records. I find that all of the information severed by the Public Body under section 16(1) is “personal information”, except for the following, which do not contain personal information:

“A” File

72 (everything severed except the last sentence in the second paragraph), 366 (everything severed except the last sentence in the second paragraph)

“C” File

269 (everything severed except the last sentence in the second paragraph)

3. What presumptions apply under section 16(2)?

[108.] Under section 16(2) of the Act, a disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy if any of the presumptions under section 16(2) are met.

[109.] The Public Body says that a number of presumptions apply to the personal information. I have considered these presumptions, although not in the order set out in the Act.

a. Application of section 16(2)(g)

[110.] The Public Body says that section 16(2)(g) applies to the following pages of the Records:

“A” File

1, 35-37, 51 (last severed part), 79, 80, 114, 117, 124, 167, 173, 174, 178, 179, 181, 186, 187, 189, 190, 194, 213, 255, 308, 314, 355, 369-372, 500 (second severed item), 501, 684, 698, 729-732, 740, 741, 938, 943, 945, 946, 965 (first severed item), 968, 970

“B” File

1, 4, 6, 10, 11 (severed item at top of page), 15, 16, 22 (first severed item), 23, 28, 32-35, 43 (first two severed items), 46, 47, 51-53, 57 (first severed item), 63 (last severed item), 69-73, 85, 87-89, 104-108, 144, 179, 182, 186, 187, 249, 250, 273, 274, 312, 322, 323, 325, 335, 336, 394, 396-398, 428, 432 (bottom half of page), 437, 438, 452, 457, 499, 513, 621, 624, 627, 640, 669, 671, 674, 690, 692,

769 (first severed item), 770, 772, 774, 775, 780, 784, 796, 803-805, 807, 810-812, 814, 825, 828, 829, 831, 860 (everything severed except the last two paragraphs), 874, 877, 881-884, 890 (first severed part), 893 (first to fourth severed lines), 894, 899, 913

“C” File

24, 124, 125, 141

[111.] I intend to consider the following pages of the Records under section 16(2)(g):

“B” File

859, 890 (last severed part)

“C” File

18 (last severed item at bottom of page)

[112.] Although the Public Body’s submission says it has abandoned reliance on section 16(2)(g) for page 51 of “A” File and page 825 of “B” File, I believe the Public Body’s submission is in error, for the following reasons. The Public Body has disclosed the personal information of certain third parties who have consented to the disclosure of their personal information which appears on these pages. However, there is personal information remaining on these pages, for which there has been no consent to disclosure. That personal information remaining meets the requirements of section 16(2)(g). Furthermore, both page 51 of “A” File and page 825 of “B” File, which have been reissued to the Applicant to disclose the personal information of those third parties who have consented to disclosure, clearly indicate that section 16(2)(g) still applies to the remaining severed personal information. Consequently, I believe that the Public Body intended to abandon section 16(2)(g) only for the personal information for those third parties who consented to disclosure, but intended to rely on section 16(2)(g) for the remaining personal information to be considered on page 51 of “A” File and page 825 of “B” File. Therefore, I have left those pages to be considered under section 16(2)(g).

[113.] Section 16(2)(g) reads:

16(2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy if

(g) the personal information consists of the third party’s name when

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party.

[114.] I have carefully reviewed the above pages of the Records, and find that the Public Body correctly applied section 16(2)(g) to the following pages of the Records:

“A” File

51 (last severed part), 79, 80, 114, 117, 124, 167, 173, 174, 178, 179, 181, 186, 187, 189, 190, 194, 213, 255, 308, 314, 355, 369-372, 500 (second severed item), 501, 684, 698, 729-732, 740, 741, 938, 943, 945, 946, 965 (first severed item), 968, 970

“B” File

1, 4, 6, 10, 11 (severed item at top of page), 15, 16, 22 (first severed item), 23, 28, 32 (everything severed except the fourth severed item), 33-35, 43 (first two severed items), 46, 47, 51-53, 57 (first severed item), 63 (last severed item), 69-73, 85, 87-89, 104-108, 144, 179, 182, 186, 187, 249 (everything severed except the third severed item, left column), 250, 273, 274, 312, 322, 323, 325, 335, 336, 394, 396-398, 428, 432 (bottom half of page), 437, 438, 452, 457, 499, 513, 621, 624, 627, 640, 669, 671, 674, 690, 692, 769 (first severed item), 770, 772, 774, 775, 780, 784, 796, 803-805, 807, 810-812, 814, 825, 828, 829, 831, 860 (everything severed except the last two paragraphs), 874, 877 (last four severed lines), 881 (fourth to seventh severed lines), 882 (applicable to the names), 883, 884, 890 (first severed part), 893 (second, third and fourth severed lines), 894, 899 (fifth to eighth severed lines), 913

“C” File

24, 124, 125

[115.] I also find that section 16(2)(g) applies to the following pages of the Records:

“B” File

859, 890 (last severed part)

“C” File

18 (last severed item at bottom of page)

[116.] The Public Body did not correctly apply section 16(2)(g) to the following pages of the Records:

“B” File

32 (fourth severed item), 249 (third severed item, left column), 877 (everything severed except the last four severed lines), 881 (everything severed except the fourth to seventh severed lines), 882 (everything severed except the names), 893 (first severed line), 899 (everything severed except the fifth to eighth severed lines)

“C” File

141

[117.] However, all the information to which the Public Body incorrectly applied section 16(2)(g) is nevertheless personal information for the purposes of section 16(1).

b. Application of section 16(2)(a)

[118.] The Public Body says that section 16(2)(a) applies to the following pages of the Records:

“A” File

145 (third severed starred item only), 146 (seventh severed starred item only), 147 (ninth severed starred item only), 149 (second, third, fifth to seventh severed starred items only), 150 (everything after “concerns”)

“B” File

787, 792-795, 798, 799, 899 (everything severed except the fifth to eighth severed lines)

[119.] Section 16(2)(a) reads:

16(2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation.

[120.] I have carefully reviewed the above pages of the Records, and find that the Public Body correctly applied section 16(2)(a) to the following pages of the Records:

“A” File

145 (third starred, severed item), 146 (seventh starred, severed item), 147 (ninth starred, severed item), 149 (second, third, and fifth to seventh starred, severed items), 150 (severed part after “concerns”)

“B” File

787, 792-795, 798, 799

[121.] The Public Body did not correctly apply section 16(2)(a) to the following pages of the Records:

“B” File

899 (everything severed except the fifth to eighth severed lines)

[122.] However, the information to which the Public Body incorrectly applied section 16(2)(a) is nevertheless personal information for the purposes of section 16(1).

c. Application of section 16(2)(d)

[123.] The Public Body says that section 16(2)(d) applies to the following pages of the Records:

“A” File

147 (fourth starred, severed item), 148 (eighth, ninth, eleventh and twelfth starred, severed items)

“B” File

781, 877 (everything severed except the last four severed lines)

[124.] Section 16(2)(d) reads:

16(2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy if

(d) the personal information relates to employment or educational history.

[125.] I have carefully reviewed the above pages of the Records, and find that the Public Body correctly applied section 16(2)(d) to the following pages of the Records:

“A” File

147 (fourth starred, severed item), 148 (eighth, ninth, and eleventh starred, severed items)

“B” File

781

[126.] The Public Body did not correctly apply section 16(2)(d) to the following pages of the Records:

“A” File

148 (twelfth starred, severed item)

“B” File

877 (everything severed except the last four severed lines)

[127.] However, the information to which the Public Body incorrectly applied section 16(2)(d) is nevertheless personal information for the purposes of section 16(1).

d. Application of section 16(2)(b)

[128.] The Public Body says that section 16(2)(b) applies to the following pages of the Records:

“A” File

72, 366

“B” File

876

“C” File

18 (first severed item at top of page), 269 (last sentence in the second paragraph)

[129.] Page 366 of “A” File is not contained in the Public Body’s submission under section 16(2)(b), but section 16(2)(b) is clearly indicated on that page of the Records. Because section 16(2)(b) is indicated on page 366, I have allowed that page to be considered under section 16(2)(b).

[130.] Section 16(2)(b) reads:

16(2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[131.] In Order 96-006, I discussed the application of section 16(2)(b):

In applying section 16(2)(b), I believe that I should interpret "law" in the same way as "law" in the definition of "law enforcement", contained in section 1(1)(h)(ii) and applied in section 19(1). Both "law" and "law enforcement" should encompass the notion of a violation of a statute or regulation, and a penalty or sanction imposed under the same statute or regulation.

[132.] The Public Body says that it correctly applied section 16(2)(b) because it compiled the personal information as part of its investigation under the *Hospitals Act* and the *Nursing Homes Act*. The Public Body's investigative authority is under section 42 and section 43 of the *Hospitals Act* and section 19 of the *Nursing Homes Act*. That same legislation containing the investigative authority also contains penalties or sanctions, namely, section 52 and section 66 of the *Hospitals Act* (and Alta. Reg. 247/90 under the *Hospitals Act*), and section 20, section 21 and section 29 of the *Nursing Homes Act* (and Alta. Reg. 232/85 and Alta. Reg. 258/85 under the *Nursing Homes Act*). See also the discussion under section 19(1)(d) in this Order.

[133.] Page 876 (everything severed except the first two severed lines) of "B" File and page 18 (first severed item at top of page) of "C" File meet the requirements of section 16(2)(b). However, the other pages do not.

[134.] I have said that there is personal information only in the last sentence in second paragraph on pages 72 and 366 of "A" File and page 269 of "C" File. However, even though I find there is an "investigation into a possible violation of law", section 16(2)(b) does not apply because the particular personal information was not "compiled" as part of that investigation, as contemplated by section 16(2)(b). I have already said that the rest of the severed information on pages 72 and 366 of "A" File and page 269 of "B" File is not personal information.

[135.] Furthermore, the first two severed lines of page 876 in “B” File are also not personal information “compiled” as part of the Public Body’s investigation.

[136.] In summary, the Public Body correctly applied section 16(2)(b) to the following pages of the Records:

“B” File

876 (everything severed except the first two severed lines)

“C” File

18 (first severed item at top of page)

[137.] The Public Body did not correctly apply section 16(2)(b) to that personal information in following pages of the Records:

“A” File

72 (last sentence in the second paragraph), 366 (last sentence in the second paragraph)

“B” File

876 (first two severed lines)

“C” File

269 (last sentence in the second paragraph)

[138.] However, the information to which the Public Body incorrectly applied section 16(2)(b) is nevertheless personal information for the purposes of section 16(1).

4. What “relevant circumstances” did the Public Body consider under section 16(3)?

[139.] To determine whether disclosure of personal information would be an unreasonable invasion of a third party’s personal privacy, section 16(3) of the Act requires that the Public Body consider all the relevant circumstances, including those listed in section 16(3). Section 16(3) is a non-exhaustive list.

[140.] The Public Body says it considered section 16(3)(e) (unfair exposure to financial or other harm), section 16(3)(f) (personal information supplied in confidence), and section 16(3)(h) (unfair damage to reputation). The Applicant says the Public Body should also have considered section 16(3)(a) (public scrutiny).

a. Section 16(3)(e) as a relevant circumstance

[141.] The Public Body says that it considered that section 16(3)(e) was a relevant circumstance for the following pages of the Records:

“A” File

51 (last severed part), 72, 79, 366, 500 (second severed item), 501

“B” File

22, 57, 63, 432

“C” File

18 (first severed item at top of page), 269

[142.] Section 16(3)(e) reads:

16(3) In determining under subsection (1) or (2) whether a disclosure of personal information constitutes an unreasonable invasion of a third party’s personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(e) the third party will be exposed unfairly to financial or other harm.

[143.] The “harm” in this case concerns the retribution the third parties believe will be taken against them if they are found out. The evidence is that the third parties are apprehensive, and in some cases fearful, of the following kinds of harm: changes in patient care, changes in patient residence, loss of hours of employment, loss of employment, and mental and emotional distress. The Public Body says it also considered exposure to civil liability under section 16(3)(e).

[144.] The Applicant argues that exposure to civil liability cannot be considered as “harm” for the purposes of section 16(3)(e). The Applicant maintains that exposure to civil liability is not unfair, and that whether a lawsuit is unfair is for the courts to decide.

[145.] I do not find any limitation on the kinds of harm that can be considered under section 16(3)(e). While I believe that exposure to civil liability can constitute “harm” because it can place a person in a financially precarious position or cause mental or emotional distress, section 16(3)(e) does not focus solely on the kind of harm. The focus of section 16(3)(e) is whether there is *unfair* [my emphasis] exposure to harm. It is up to the Public Body to decide that issue, based on a consideration of the circumstances.

[146.] The evidence is that third parties were promised confidentiality if they came forward with their complaints and information relating to patient care and other matters. In these circumstances, the third parties would be exposed unfairly to financial or other harm if their personal information were disclosed. Even if exposure to civil liability does not constitute “harm”, the Public Body has presented evidence of many other kinds of harm which it took into consideration under section 16(3)(e). Therefore, I find that section 16(3)(e) is a relevant circumstance to consider when deciding whether disclosure of personal information would be an unreasonable invasion of a third party’s personal privacy.

b. Section 16(3)(f) as a relevant circumstance

[147.] The Public Body says that it considered that section 16(3)(f) was a relevant circumstance for the following pages of the Records:

“A” File

51 (last severed part), 72, 79, 366, 500 (second severed item), 501, 729-732, 740, 741

“B” File

22, 57, 63, 432, 860

“C” File

18 (first severed item at top of page), 269

[148.] Section 16(3)(f) reads:

16(3) In determining under subsection (1) or (2) whether a disclosure of personal information constitutes an unreasonable invasion of a third party’s personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(f) the personal information has been supplied in confidence.

[149.] I am satisfied by the evidence that, except for pages 72 and 366 of “A” File and page 269 of “C” File, the personal information was supplied in confidence. An explicit assurance of confidentiality was given to all the third parties who came forward with information.

[150.] Furthermore, the Public Body gave evidence that it contacted all those third parties that it could to determine whether the Public Body could disclose

the personal information. The Public Body's evidence is that it refused to disclose the personal information of those third parties who did not consent to disclosure of their personal information, but disclosed the personal information of those third parties who consented to disclosure.

[151.] Therefore, except for pages 72 and 366 of "A" File and page 269 of "C" File, I find that section 16(3)(f) is a relevant circumstance to consider when deciding whether disclosure of personal information would be an unreasonable invasion of a third party's personal privacy.

c. Section 16(3)(h) as a relevant circumstance

[152.] The Public Body says that it considered that section 16(3)(h) was a relevant circumstance for the following pages of the Records:

"A" File
729, 730, 732

[153.] Section 16(3)(h) reads:

16(3) In determining under subsection (1) or (2) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

[154.] In Order 97-002, which was issued before this Order, I discussed the interpretation of section 16(3)(h). I said that the focus of section 16(3)(h) is *unfair* [my emphasis] damage to reputation. Consequently, it is not necessary to prove that the damage is present or foreseeable.

[155.] In this case, the personal information contained in the Records at issue would allow certain inferences to be made about two third parties, whose personal information is intertwined. Disclosure of the personal information of either third party may unfairly damage their reputations when neither third party has had the opportunity to comment on the personal information and the effect of its disclosure. As the personal information is intertwined, it is likely not possible to give one of the third parties the opportunity to comment.

[156.] Therefore, I find that section 16(3)(h) is a relevant circumstance to consider when deciding whether disclosure of personal information would be an unreasonable invasion of a third party's personal privacy.

d. Section 16(3)(a) as a relevant circumstance

[157.] The Applicant says that the Public Body should have considered section 16(3)(a) as a relevant circumstance.

[158.] Section 16(3)(a) reads:

16(3) In determining under subsection (1) or (2) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny.

[159.] I asked the Applicant to tell me whose actions were being scrutinized here: the Public Body's actions or the actions of the third parties who gave information to the Public Body. The Applicant says that the two cannot be separated since the Public Body acted on the third parties' information. Furthermore, the Applicant says that it does not know the allegations made against it, and that the character of the persons who made the allegations has to be looked at. The Applicant believes that the allegations were unfounded.

[160.] The Applicant also objects to the fact that, when deciding what information to sever from the Records, the Public Body consulted with the Public Body employees who authored certain records. The Applicant argues that such consultation injects a note of subjectivity into the process. The Applicant says that severing should be looked at by persons who have no interest in the severing. The Applicant believes that the review of the records needs to be undertaken from a greater distance because a person who authored records may have an interest in preventing the release of those records.

[161.] In Order 97-002, which was issued before this Order, I considered the interpretation of section 16(3)(a). In that Order, I said that evidence had to be provided to demonstrate that the activities of the public body had been called into question, necessitating disclosure of personal information to subject the activities of the public body to scrutiny. I followed the following Ontario Orders: (i) Ontario Order P-347, which held that it was not sufficient for one

person to have decided that public scrutiny was necessary; (ii) Ontario Order M-84, which held that the applicant's concerns had to be about the actions of more than one person within the public body; and (iii) Ontario Order P-673, which held that where the public body had previously disclosed a substantial amount of information, the release of personal information was not likely to be desirable for the purpose of subjecting the activities of a public body to public scrutiny. This was particularly so if the public body had also investigated the matter in issue.

[162.] In this case, I find that (i) only the Applicant has decided that public scrutiny is necessary; (ii) the Applicant appears to be focusing on the actions of the third parties, as opposed to the actions of any of the Public Body's employees; even if the Applicant is focusing on the actions of the Public Body's employees generally, the Applicant has only alluded to an improper motive for the Public Body's investigation, has not provided any evidence itself of an improper motive, and there is no improper motive evident on the facts of this case; (iii) the Public Body has provided evidence that it disclosed a substantial amount of information to the Applicant, and that it investigated the third parties' complaints against the Applicant. Ultimately, after the Public Body investigated the complaints, the Minister of Health required that the Applicant submit a correction plan under section 20 of the *Nursing Homes Act*. A correction plan is a plan of action which must be submitted to the Minister to correct anything found to be in contravention of the *Nursing Homes Act* or regulations.

[163.] Furthermore, I find nothing unusual about a public body's consulting with any one of its employees about information to be severed in records, even if, as here, the employee has authored any of the records or has particular knowledge about the circumstances surrounding the records. The Public Body said that it routinely asks employees for input on all requests because employees are the content specialists. The Public Body's evidence in this case is that employees who authored records did not have a veto with respect to decisions on severing records; information or records were released even if employees were not comfortable with that release. The Public Body's evidence is also that the decision to release or not to release information was made jointly by a number of people, including, in some cases, the Deputy Minister.

[164.] In any event, I have the responsibility to provide for an independent review of any decision made by a public body under the Act, including a decision to sever records.

[165.] In this case, I find that section 16(3)(a) is not a relevant circumstance to consider when deciding whether disclosure of personal information would be an unreasonable invasion of a third party's personal privacy.

e. Other relevant circumstances

[166.] The Public Body gave evidence that it contacted as many of the third parties as it was able to contact. Where the third parties consented to have their personal information disclosed, that personal information was disclosed to the Applicant. However, many third parties refused to consent to the disclosure of their personal information.

[167.] I find that these third parties' refusal to consent to the disclosure of their personal information is, of itself, a relevant circumstance to consider when deciding whether disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy.

[168.] As to the personal information of other third parties, the Public Body said it did a "streetproofing" exercise with that personal information. The Public Body explained that streetproofing was a concept the Public Body developed within the year after the Act first came into force, and consists of removing individual's names from all records released by the Public Body, after the other criteria are applied under the Act.

[169.] The Public Body said that some time after the Act came into force, it became concerned about releasing personal information generally, particularly personal information collected from health facilities, as that information was protected under legislation and its use restricted. The Public Body was of the view that by releasing personal information to an applicant, it would be releasing that personal information into the public domain, and an applicant would be under no corresponding obligation to maintain the confidentiality of the personal information or to protect the privacy of the individual whose personal information an applicant had obtained. The potential for the information to lead someone to be able to identify an individual to a person on the street led the Public Body to the concept of streetproofing, which was intended to protect an individual's personal privacy.

[170.] The Public Body says that its thinking about severing personal information evolved over time, that the Records in this case were viewed at a later time in the Public Body's evolution, and the Records were accordingly streetproofed. The Public Body said that regardless of whether the Records had been created by the Applicant or by the Public Body, the names of third parties were removed, such as patient names and the Applicant's employees' names, but government employee names were left in the Records. However, if the Records had been created by the Public Body, it removed the name and any contextual information that could identify the person, including medical information and employment information. The Public Body said that if it was unsure about releasing any personal information, it notified the third party under section 29 of the Act, if it was possible to give that notice.

[171.] I find that the Public Body's concern that personal information, once released to an applicant, is in the public domain, and that there is no requirement that an applicant maintain the confidentiality of that personal information, is a relevant circumstance to consider under section 16(3).

[172.] I also find that where it is not possible (which I will decide on a case-by-case basis) for a public body to notify a third party under section 29, as was the case for some third parties here, that is also a relevant circumstance to consider under section 16(3).

f. My role under section 16(3)

[173.] If, after considering all the relevant circumstances, including those listed in section 16(3), the Public Body has determined that there is an unreasonable invasion of a third party's personal privacy, the Public Body is required to refuse access. My role under section 16(3) is to determine whether the Public Body used the right process. I find that the Public Body used the right process in this case.

5. Would disclosure of the personal information be an unreasonable invasion of a third party's personal privacy under section 16(1), even if no presumptions apply under section 16(2)?

[174.] The Public Body says that section 16(1) alone applies to the following pages of the Records:

"A" File

145 (first and second severed items, first starred, severed item), 146 (first severed item; severed item before #2; severed item before #3; first, fourth, sixth, eighth, ninth, tenth and eleventh starred, severed items), 147 (first severed item; severed item before #4; first, third, fifth, sixth, eighth and twelfth starred, severed items), 148 (first severed item; second, fifth, and sixth starred, severed items), 149 (first to fourth severed items; severed item before #5; first starred, severed item), 150 (first severed item), 323, 940, 963

"B" File

11 (severed item at bottom of page), 43 (last severed item), 691, 769 (last severed item at bottom of page), 779, 782, 813, 818, 838, 907

[175.] I have found that no presumptions apply to the following pages of the Records, and that those pages are to be considered under section 16(1) by itself:

“A” File

148 (twelfth starred, severed item)

“B” File

32 (fourth severed item), 249 (third severed item, left column), 876 (first two severed lines), 877 (everything severed except the last four severed lines), 881 (everything severed except the fourth to seventh severed lines), 882 (everything severed except the names), 893 (first severed line), 899 (everything severed except the fifth to eighth severed lines)

“C” File

141, 269 (last sentence in the second paragraph)

[176.] I also intend to consider the following pages of the Records under section 16(1) alone:

“A” File

733 (first severed sentence)

“B” File

891, 893 (last severed part), 896-898

[177.] In Order 96-020, I said it was possible for a disclosure of personal information to be an unreasonable invasion of a third party’s personal privacy under section 16(1), even if no presumptions applied under section 16(2).

[178.] Having carefully reviewed all the foregoing pages of the Records, and having concluded that the Public Body used the right process under section 16(3), I find that the Public Body correctly applied section 16(1) alone to the following pages of the Records:

“A” File

145 (first and second severed items, first starred, severed item), 146 (first severed item; severed item before #2; severed item before #3; first, fourth, sixth, eighth, ninth, tenth and eleventh starred, severed items), 147 (first severed item; severed item before #4; first, third, fifth, sixth, eighth and twelfth starred, severed items), 148 (first severed item; second, fifth, sixth, and twelfth starred, severed items), 149 (first to fourth severed items; severed item before #5; first starred, severed item), 150 (first severed item), 323, 940, 963

“B” File

11 (severed item at bottom of page), 32 (fourth severed item), 43 (last severed item), 249 (third severed item, left column), 691, 769 (last

severed item at bottom of page), 779, 782, 813, 818, 838, 876 (first two severed lines), 877 (everything severed except the last four severed lines), 881 (everything severed except the fourth to seventh severed lines), 882 (everything severed except the names), 893 (first severed line), 899 (everything severed except the fifth to eighth severed lines), 907

“C” File

141, 269 (last sentence in the second paragraph)

[179.] I have found that section 16(1) alone applies to the following pages of the Records:

“A” File

733 (first severed sentence)

“B” File

891, 893 (last severed part), 896-898

6. Did the Applicant meet the burden of proof under section 67(2)?

[180.] Section 67(2) of the Act places the burden of proof on the Applicant to prove that disclosure of personal information would not be an unreasonable invasion of a third party’s personal privacy.

[181.] Certain information supplied by individuals during the Public Body’s investigation can be described as those individuals’ personal views or opinions about the Applicant. The Applicant says that those personal views or opinions are its “personal information”, and that it is entitled to its “personal information” under the Act.

[182.] I discussed this issue in Order 96-019 and Order 96-020. I said that “personal information” is that information about an identifiable individual, and that “individual” can only mean a single human being. Since the Applicant is not an “individual”, the Applicant has no “personal information” to which the Applicant would have a right of access under section 6(1) of the Act. I also said, in Order 96-020, that the Applicant cannot shelter under the umbrella of any or all of its individual employees in order to be “someone else” for the purposes of section 1(1)(n)(ix) of the Act.

[183.] The Applicant argues that, since it already has in its possession and knows the personal information of its employees and patients in its health facility, that personal information should not be severed under the Act. The Applicant says that a public body should consider who the applicant is when

deciding whether to sever personal information under section 16(2)(a) and section 16(2)(d) of the Act.

[184.] I do not accept the Applicant's argument. In Order 96-008, I commented that "...there is a difference between knowing a third party's personal information and having the right of access to that personal information under the Act." A right of access to personal information under the Act is not concerned with who the applicant is when the issue to be decided is access to a third party's personal information. The Applicant must still prove that disclosure of the personal information would not be an unreasonable invasion of the third party's personal privacy under the Act.

[185.] In the Applicant's supplementary submission, the Applicant says that it seems clear from the Records that some person or persons are disclosing the Applicant's confidential patient information from its files. The Applicant notes that under section 27(3) of the *Nursing Homes Act*, it is an offence, punishable by a fine, to disclose such information without authorization. The Applicant argues that the Act should not be used to shield such illegal activities. The Applicant also says that disclosure of this patient information to the Applicant cannot be unreasonable as the Applicant already has the information. The Applicant concludes by saying "The failure to disclose this information to [the Applicant] would in itself be an invasion of the third party's personal privacy as it would assist in rendering immune from discovery and prosecution the person who has illegal access to health records."

[186.] I must say I am at a loss to understand the logic of the Applicant's conclusion, as the Applicant must prove that disclosure of the personal information would not be an unreasonable invasion of a third party's personal privacy. Furthermore, there is no evidence before me that a person or persons have, illegally, provided the Public Body with the Applicant's patients' information.

[187.] The Applicant also argues that it should be given access to the personal information because it does not know the complaints made against it.

[188.] To decide whether this is the case, I have reviewed the Records concerning the investigation, the Public Body's report to the Applicant, and the subsequent correspondence between the Applicant and the Public Body. The correction plan that the Minister required the Applicant to submit is particularly revealing of the complaints made against the Applicant. Consequently, I do not accept the Applicant's argument that it should have the personal information because it does not know the complaints made against it.

[189.] The Applicant says that it has suffered damages as a result of the Public Body's investigation and that it continues to suffer damages. The Applicant has not provided any evidence of those damages.

[190.] I find that the Applicant has not met the burden of proof under section 67(2).

7. Conclusions under section 16

[191.] The Public Body correctly applied section 16(1) to the following pages of the Records:

"A" File

72 (last sentence in the second paragraph), 145 (first and second severed items, first starred, severed item), 146 (first severed item; severed item before #2; severed item before #3; first, fourth, sixth, eighth, ninth, tenth and eleventh starred, severed items), 147 (first severed item; severed item before #4; first, third, fifth, sixth, eighth and twelfth starred, severed items), 148 (first severed item; second, fifth, sixth, and twelfth starred, severed items), 149 (first to fourth severed items; severed item before #5; first starred, severed item), 150 (first severed item), 323, 366 (last sentence in the second paragraph), 940, 963

"B" File

11 (severed item at bottom of page), 32 (fourth severed item), 43 (last severed item), 249 (third severed item, left column), 691, 769 (last severed item at bottom of page), 779, 782, 813, 818, 838, 876 (first two severed lines), 877 (everything severed except the last four severed lines), 881 (everything severed except the fourth to seventh severed lines), 882 (everything severed except the names), 893 (first severed line), 899 (everything severed except the fifth to eighth severed lines), 907

"C" File

141, 269 (last sentence in the second paragraph)

[192.] I have applied section 16(1) to the following pages of the Records:

"A" File

733 (first severed sentence)

"B" File

891, 893 (last severed part), 896-898

[193.] The Public Body correctly applied section 16(1) and section 16(2) to the following pages of the Records:

“A” File

1, 35-37, 51 (last severed part), 79, 80, 114, 117, 124, 145 (third starred, severed item), 146 (seventh starred, severed item), 147 (fourth and ninth starred, severed items), 148 (eighth, ninth, and eleventh starred, severed items), 149 (second, third, and fifth to seventh starred, severed items), 150 (second severed item) 167, 173, 174, 178, 179, 181, 186, 187, 189, 190, 194, 213, 255, 308, 314, 355, 369-372, 500 (second severed item), 501, 684, 698, 729-732, 740, 741, 938, 943, 945, 946, 965 (first severed item), 968, 970

“B” File

1, 4, 6, 10, 11 (severed item at top of page), 15, 16, 22 (first severed item), 23, 28, 32 (everything severed except the fourth severed item), 33-35, 43 (first two severed items), 46, 47, 51-53, 57 (first severed item), 63 (last severed item), 69-73, 85, 87-89, 104-108, 144, 179, 182, 186, 187, 249 (everything severed except the third severed item, left column), 250, 273, 274, 312, 322, 323, 325, 335, 336, 394, 396-398, 428, 432 (bottom half of page), 437, 438, 452, 457, 499, 513, 621, 624, 627, 640, 669, 671, 674, 690, 692, 769 (first severed item), 770, 772, 774, 775, 780, 781, 784, 787, 792-796, 798, 799, 803-805, 807, 810-812, 814, 825, 828, 829, 831, 860 (everything severed except the last two paragraphs), 874, 876 (everything severed except the first two severed lines), 877 (last four severed lines), 881 (fourth to seventh severed lines), 882 (applicable to the names), 883, 884, 890 (first severed part), 893 (second, third and fourth severed lines), 894, 899 (fifth to eighth severed lines), 913

“C” File

18 (first severed item at top of page), 24, 124, 125

[194.] I have applied section 16(1) and section 16(2) to the following pages of the Records:

“B” File

859, 890 (last severed part)

“C” File

18 (last severed item at bottom of page)

[195.] The Public Body did not correctly apply section 16(1) and section 16(2) to the following pages of the Records:

“A” File

72 (everything severed except the last sentence in the second paragraph), 366 (everything severed except the last sentence in the second paragraph)

“C” File

269 (everything severed except the last sentence in the second paragraph)

Issue D: Did the Public Body correctly apply section 19 (law enforcement) to the records?

1. Application of section 19(1)(d)

[196.] The Public Body says that section 19(1)(d) applies to the following pages of the Records:

“A” File

43-50, 51 (first severed part), 52-55, 57, 58, 60-63, 66, 67, 70, 71, 71a, 72, 102, 196-203, 209, 359, 363-366, 500 (first severed item only), 681, 742, 871

“B” File

18, 20, 21, 22 (second severed item), 54-56, 57 (everything severed except the first severed item), 58-62, 63 (first severed item), 84, 426, 429, 430, 431, 432 (top half of page), 434-436, 442-444, 875, 879, 880 (last severed item), 910

“C” File

25, 27, 33, 266-269, 271, 272, 276-278, 281, 283-286, 773 (first, second, eighth, ninth and tenth severed lines), 778, 779

[197.] The Public Body said that section 19(1)(d) applied to page 102 of “A” File, but that section is not indicated on page 102 itself. However, I have allowed section 19(1)(d) to be considered for page 102 of “A” File because section 19(1)(d) is listed for that page in the submission, and because the Public Body’s September 18, 1996 letter to me and to the Applicant said that section 19(1)(d) has been applied to page 102 of “A” File.

[198.] Page 196 of “A” File and page 429 of “B” File are not contained in the Public Body’s submission under section 19(1)(d), but section 19(1)(d) is clearly indicated on those two pages of the Records. Because section 19(1)(d) is indicated on those pages, I have allowed page 196 of “A” File and page 429 of “B” File to be considered under section 19(1)(d).

[199.] The Public Body also said that section 19(1)(d) applied to page 55 of “B” File, but that section is not indicated on page 55 itself. However, I have allowed section 19(1)(d) to be considered for page 55 of “B” File because section 19(1)(d) is listed for that page in the submission, and because section 19(1)(d) has been applied to all the other pages of the document in which page 55 is contained.

[200.] Finally, the Public Body asked to correct its submission to read page 880 of “B” File instead of page 800 of “B” File. I have allowed this correction of an obvious typographical error.

[201.] Section 19(1)(d) reads:

19(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(d) reveal the identity of a confidential source of law enforcement information.

[202.] For section 19(1)(d) to apply, there must be (i) law enforcement information, (ii) a confidential source of law enforcement information, and (iii) information that could reasonably be expected to reveal the identity of that confidential source.

[203.] In this case, “law enforcement” means “investigations that lead or could lead to a penalty or sanction being imposed”: see section 1(1)(h)(ii). In Order 96-019, I accepted that the definition of “investigation” is “to follow up step by step by patient inquiry or observation; to trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry”.

[204.] In order to characterize information as being “law enforcement information”, the Public Body must show that it has specific statutory authority to conduct the investigation in question: see Order 96-019. There must also be a penalty or sanction that can be imposed under that same statute or regulation: see Order 96-006.

[205.] The evidence is that the Public Body conducted an investigation under the authority of section 42 and section 43 of the *Hospitals Act* and section 19 of the *Nursing Homes Act*. The penalties or sanctions are contained in section 52 and section 66 of the *Hospitals Act* (and Alta. Reg. 247/90 under the *Hospitals Act*) and in section 20, section 21, and section 29 of the *Nursing Homes Act* (and Alta. Reg. 232/85 and Alta. Reg. 258/85 under the *Nursing Homes Act*).

Because the authority to investigate and the penalties or sanctions are contained in the same legislation, the information obtained by the Public Body in its investigation meets the definition of “law enforcement information”.

[206.] The Applicant argues that the requirement that it provide a “correction plan” under section 20 of the Nursing Homes Act is not a penalty or sanction.

[207.] Section 20 of the *Nursing Homes Act* reads:

20 If the Minister or any person authorized by him is of the opinion that a nursing home is or has been operated in contravention of this Act or the regulations, he may order that the operator prepare a correction plan and submit it for the approval of the Minister or authorized person within the time specified in the order.

[208.] The *Concise Oxford Dictionary, Ninth Edition*, defines sanction broadly to include not only a penalty for disobeying a rule or law or a reward for obeying it, but also a consideration operating to enforce obedience to any rule of conduct, or an action to coerce conformity to an agreement or norms of conduct. Based on these definitions of sanction and on section 20 of the *Nursing Homes Act*, I disagree with the Applicant’s contention that a correction plan is not a sanction.

[209.] Furthermore, in Order 96-006, I did not limit the definition of penalty or sanction; instead, I said that a penalty or sanction could include such things as imprisonment or a fine, the revocation of a licence, or an order requiring a person to cease an activity. Order 96-006 has been upheld on judicial review: see *Her Majesty the Queen in Right of Alberta and The Minister of Justice v. Richard Roy and the Information and Privacy Commissioner*, (December 3, 1996), Doc. Edmonton 9603-16335 (Alta. Q.B.).

[210.] The Applicant also argues that this investigation cannot be “law enforcement” because there were no penalties or sanctions imposed. Even if the correction plan had not been imposed, I would not accept the Applicant’s argument. In Order 96-019, I discussed this issue at length, and held that there is no requirement that a penalty or sanction actually be imposed in order for there to be an “investigation” for the purposes of the definition of “law enforcement” under the Act.

[211.] In coming to the conclusion that there is “law enforcement information”, I have also checked the dates when the Public Body obtained the information. The complaints that triggered the investigation occurred at the end of July 1992. I have determined that the information excepted under section 19(1)(d)

was obtained after the July 1992 complaints, and before February 1993, when the Public Body was instructed to conclude its investigation.

[212.] In the one instance in which I found a record of another public body in the Public Body's custody (page 281 of "C" File), I have determined that the information in that record was obtained during the Public Body's investigation and is therefore "law enforcement information".

[213.] There is ample evidence that the law enforcement information was provided in confidence, with explicit assurances of confidentiality, such that there are confidential sources of law enforcement information for the purposes of section 19(1)(d). Furthermore, I find that the information in question could reasonably be expected to reveal the identity of the confidential sources of law enforcement information.

[214.] In Order 96-019, I said that section 19(1) is to be interpreted as including *any information* [my emphasis] that could reasonably be expected to reveal the identity of a confidential source of law enforcement information. In the two instances in which I determined that the Records in question were dated beyond what I determined to be the investigation period (pages 742 and 871 of "A" File), I found that the information in those two records was nevertheless information obtained during the investigation period, is therefore "law enforcement information", and could reasonably be expected to reveal the identity of a confidential source of law enforcement information.

[215.] Consequently, the Public Body correctly applied section 19(1)(d) to the following pages of the Records:

"A" File

43-50, 51 (first severed part), 52-55, 57, 58, 60-63, 66, 67, 70, 71, 71a, 102, 196-203, 209, 359, 363-365, 500, 501, 681, 742, 871

"B" File

18, 20, 21, 22 (second severed item), 54-56, 57 (everything severed except the first severed item), 58-62, 63 (first severed item), 84, 426, 429, 430, 431, 432 (top half of page), 434-436, 442-444, 875, 879, 880 (last severed item), 910

"C" File

25, 27, 33, 266-268, 271, 272, 276-278, 281, 283-286, 773 (first, second, eighth, ninth and tenth severed lines), 778, 779

[216.] The Public Body did not correctly apply section 19(1)(d) to the following pages of the Records:

"A" File
72, 366

"C" File
269

2. Application of section 19(2)(a)

[217.] The Public Body says that section 19(2)(a) applies to the following pages of the Records:

"A" File
72, 366

"C" File
269

[218.] Section 19(2)(a) reads:

19(2) The head of a public body may refuse to disclose information to an applicant if the information

(a) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or an individual who has been quoted or paraphrased in the record.

[219.] In Order 96-019, I discussed the interpretation of section 19(2)(a). However, I do not consider it necessary to discuss that interpretation here because, on the face of each page of the Records set out above, the information contained in those pages does not meet the requirement that the disclosure could reasonably be expected to expose to civil liability the author of the record or an individual who has been quoted or paraphrased in the record.

[220.] Consequently, the Public Body did not correctly apply section 19(2)(a) to the following pages of the Records:

"A" File
72, 366

"C" File
269

3. Exercise of discretion under section 19(1) and section 19(2)

[221.] Section 19(1) and section 19(2) are discretionary (“may”) provisions of the Act. Even if the section applies, the Public Body may still decide to disclose the information. The Public Body must take into consideration the access provisions of the Act when exercising its discretion.

[222.] The Public Body’s evidence is that it disclosed what information it could to the Applicant, without revealing the identity of the confidential sources of law enforcement information. The Records confirm that evidence.

[223.] Therefore, I find that the Public Body exercised its discretion properly under section 19(1)(d).

[224.] As I have found that section 19(2) does not apply to the Records set out under section 19(2) above, I do not find it necessary to consider the Public Body’s exercise of discretion under section 19(2).

Issue E: Did the Public Body correctly apply section 17 (safety or health) to the records?

[225.] The Public Body says that section 17(1)(b) applies to the following pages of the Records:

“A” File
72, 366

“C” File
269

[226.] Section 17(1)(b) reads:

17(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(b) interfere with public safety

[227.] In this case, I do not consider it necessary to discuss the interpretation of section 17(1)(b) here because, on the face of each page of the Records set out above, the information contained in those pages does not meet the requirement that the disclosure could reasonably be expected to interfere with public safety.

[228.] Consequently, the Public Body did not correctly apply section 17(1)(b) to the following pages of the Records:

“A” File
72, 366

“C” File
269

[229.] The Public Body must disclose pages 72 and 366 of “A” File and page 269 of “C” File to the Applicant. However, before disclosing those pages of the Records, the Public Body must first sever the last sentence in the second paragraph on each of those pages, as I have found that the last sentence in the second paragraph on each of those pages is personal information.

Issue F: Did the Public Body correctly apply section 23 (advice, and consultations) to the records?

1. Application of section 23(1)(a)

[230.] The Public Body says that section 23(1)(a) applies to the following pages of the Records:

“A” File
72, 108, 161, 204-208, 228, 258, 259, 366, 428, 429, 586-590, 723, 724, 726-728, 733 (everything after the first severed sentence), 813, 839-842, 852, 856, 859, 860, 971, 972, 974, 982-984, 988

“B” File
361, 362, 364, 365, 367-370, 857, 858, 860 (last two paragraphs), 870-873, 880 (first severed item)

“C” File
95-97, 115, 116, 232-246, 248-255, 258-261, 269, 366-369, 371-377, 401, 403, 406-414, 422, 425, 426, 428-432, 449, 450, 452-457, 459-461, 463-468, 476, 477, 495, 496, 498, 507, 624, 625, 627-634, 728, 729, 731-738

“D” File
6, 7, 9, 10, 13-15, 24, 25, 27-35

[231.] During the *in camera* portion of the inquiry, I confirmed that the Public Body made the following errors on either the Records or in its submission, and the Public Body provided subsequent errata pages to me, as follows:

“A” File

204-208: section 23(1)(a) on the record, but not in submission

429: section 23(1)(a) on the record, but not in submission

587: section 26(1)(a) on the record should read section 23(1)(a)

591: section 23(1)(b) in the submission should read section 23(1)(a)

738: should also read section 23(1)(a)

[232.] Because section 23(1)(a) is clearly indicated on each of pages 204-208 and 429, I have allowed those pages to be considered under section 23(1)(a).

[233.] I have allowed the correction to page 587 because section 26(1)(a) is an obvious typographical error on that page, considering that section 23(1)(a) is applied to the balance of the document in which page 587 is contained. Furthermore, the Public Body’s submission confirms that the Public Body intended that section 23(1)(a) be applied page 587.

[234.] I have also allowed the correction of the submission to include page 591 under section 23(1)(a), instead of section 23(1)(b), because section 23(1)(a) is clearly indicated on page 591 itself.

[235.] However, I have not allowed the Public Body to now claim that section 23(1)(a) also applies to page 738, when neither page 738 nor the Public Body’s submission has indicated that section 23(1)(a) applies. In Order 96-008, I said that I would not allow the late raising of discretionary (“may”) exceptions. I regard the raising of section 23(1)(a) after the oral part of the inquiry as the late raising of a discretionary exception for a record that was before the inquiry.

[236.] Finally, although the pages of “D” File were sent, late in the process, to the Applicant, I have allowed all the pages of “D” File to be considered in this inquiry, for the following reasons: (i) the Applicant had asked for all duplicate copies of documents that had different notations on them; (ii) the Applicant did not object to including these pages of the Records in the inquiry; and (iii) I have identified the contents of those pages as containing the same information as in a number of pages in “A” File, “B” File and “C” File, other than the different notations on some of the pages of “D” File.

[237.] Section 23(1)(a) reads:

23(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal

(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council.

[238.] In Order 96-006, I said that to correctly apply section 23(1)(a), a public body must show that there is advice, proposals, recommendations, analyses or policy options (“advice”), and that the “advice” must be:

(1) sought or expected, or be part of the responsibility of a person by virtue of that person’s position,

(2) directed toward taking an action, and

(3) made to someone who can take or implement the action.

[239.] In reviewing the Records under section 23(1)(a), I have paid particular attention to the Records about which the Applicant expressed concerns in its supplementary submission. I have confirmed that the information to which the Public Body correctly applied section 23(1)(a) contains more than “mere information”, that is, more than a mere factual summary.

[240.] I have also traced information from drafts of documents to final versions of documents. Where a final version of a record met the requirements of section 23(1)(a), I have held that the draft of the record also meets the requirements of section 23(1)(a) if the information in the draft and in the final version was the same. In my view, section 23(1)(a) supports this interpretation, as section 23(1)(a) refers to *information* [my emphasis] that could reasonably be expected to reveal advice, etc.

[241.] I have carefully reviewed all the foregoing pages of the Records. The information in most of these records is advice, proposals, recommendations or analyses, and meets the three requirements set out above.

[242.] Consequently, I find that the Public Body correctly applied section 23(1)(a) to the following pages of the Records:

“A” File

204-208, 228, 258, 259, 428, 429, 586-591, 723, 724, 726, 728, 839-842

“B” File

361, 362, 364, 365, 367-370, 857, 858, 860 (last two paragraphs), 870-873

“C” File

95-97, 115, 116, 232-246, 248-255, 258-261, 366-369, 371-377, 401, 403, 406-414, 422, 425, 426, 428-432, 449, 450, 452-457, 459-461, 463-468, 476, 477, 495, 496, 498, 507, 624, 625, 627-634, 728, 729, 731-738

“D” File

6, 7, 9, 10, 13-15, 24, 25, 27-35

[243.] The Public Body did not correctly apply section 23(1)(a) to the following pages of the Records:

“A” File

72, 108, 161, 366, 727, 733 (everything after the first severed sentence), 813, 852, 856, 859, 860, 971, 972, 974, 982-984, 988

“B” File

880 (first severed item)

“C” File

269

[244.] The Public Body must disclose to the Applicant the foregoing pages of the “A” File and the “C” File to which the Public Body did not correctly apply section 23(1)(a). However, before disclosing those pages, the Public Body must first sever the personal information on the following pages of the Records:

“A” File

859: name in the second severed line

[245.] However, even though the Public Body did not correctly apply section 23(1)(a) to page 880 (first severed item) of “B” File, the Public Body must not disclose that information because I have found that section 26(1)(a) (public interest privilege) and section 26(2) applies to that same information.

2. Application of section 23(1)(b)

[246.] The Public Body says that section 23(1)(b) applies to the following pages of the Records:

“A” File

592, 594, 738, 909, 910, 964, 965 (second severed item)

“B” File

866, 880 (first severed item)

“C” File

666, 670, 714, 718

[247.] During the *in camera* portion of the inquiry, I confirmed that the Public Body made the following errors on either the Records or in its submission, and the Public Body provided subsequent errata pages to me, as follows:

“A” File

594: section 23(1)(b) on the record, but not in submission

909, 910: section 23(1)(b) on the record, but not in submission

[248.] Because section 23(1)(b) is clearly indicated on each of pages 594, 909 and 910, I have allowed those pages to be considered under section 23(1)(b).

[249.] Section 23(1)(b) reads:

23(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal

(b) consultations or deliberations involving

(i) officers or employees of a public body,

(ii) a member of the Executive Council, or

(iii) the staff of a member of the Executive Council

[250.] In Order 96-006, I had the following to say about the interpretation of section 23(1)(b):

I therefore believe that a “consultation” occurs when the views of one or more officers or employees is sought as to the appropriateness of particular proposals or suggested actions. A “deliberation” is a discussion or consideration, by the persons described in the section, of the reasons for and against an action. Here again, I think that the views must either be sought or be part of the responsibility of the person from whom they are sought, and the views must be sought for the purpose of doing something, such as taking an action, making a decision or a choice...However, I cannot accept that the bare recitation of facts, without anything further, constitutes...”consultations or deliberations” under section 23(1)(b).

[251.] Keeping in mind the above, I have carefully reviewed the Records. I find that the Public Body correctly applied section 23(1)(b) to the following pages of the Records:

“A” File

592, 594, 738, 909, 910, 964, 965 (second severed item)

“B” File

866

“C” File

666, 670, 714, 718

[252.] The Public Body did not correctly apply section 23(1)(b) to the following pages of the Records:

“B” File

880 (first severed item)

[253.] However, even though the Public Body did not correctly apply section 23(1)(b) to page 880 (first severed item) of “B” File, the Public Body must not disclose that information because I have found that section 26(1)(a) (public interest privilege) and section 26(2) applies to that same information.

3. Exercise of discretion under section 23(1)(a) and section 23(1)(b)

[254.] Section 23(1) is another discretionary (“may”) provision of the Act. Even if the section applies, the Public Body may still decide to disclose the information. The Public Body must take into consideration the access provisions of the Act when exercising its discretion.

[255.] The Public Body’s evidence is that it disclosed what information it could to the Applicant, without revealing the “advice” or the consultations or deliberations. The Records confirm that where it could, the Public Body disclosed the “mere information” or facts, and severed only the “advice” or the consultations or deliberations.

[256.] Therefore, I find that the Public Body exercised its discretion properly under section 23(1)(a) and section 23(1)(b).

Issue G: Did the Public Body collect personal information in violation of the Act?

[257.] The Applicant's supplementary submission raised this issue indirectly in the context of the Applicant's alleged entitlement, without severing, to the personal information of the Applicant's patients. Therefore, I intend to deal briefly with the issue of the collecting of that personal information in itself.

[258.] The basis of the Applicant's complaint is that the Applicant believes that its patient files came into the possession of the Public Body other than through authorized channels. As such, the Applicant's complaint would be that the Public Body collected the Applicant's patients' personal information in violation of section 32 of the Act, which sets out the initial requirements for collecting personal information.

[259.] I have reviewed all the information, which is dated before October 1, 1995, when the *Freedom of Information and Protection of Privacy Act* came into force. Assuming, without deciding, that the Public Body "collected" the Applicant's patients' information, I find that the Public Body's collecting of the Applicant's patients' personal information occurred during the course of the Public Body's 1992-1993 investigation, and that the investigation was concluded before October 1, 1995.

[260.] In Order 97-004, which was issued before this Order, I said that the obligation on public bodies respecting personal information did not exist before October 1, 1995, and that the Act cannot be applied retroactively to events that have occurred entirely in the past. Since the Public Body's collecting of the Applicant's patients' personal information occurred entirely before October 1, 1995, and is not presently occurring, the Act does not apply to that collecting.

[261.] In summary, the Act does not apply retroactively to the Public Body's collecting of the Applicant's patients' personal information in 1992-1993. Consequently, the Public Body could not have collected that personal information in violation of section 32 of the Act in 1992-1993.

[262.] I make no finding as to whether the Public Body's collecting of the Applicant's patients' personal information in 1992-1993 would constitute a violation of the Act today.

Issue H: Did the Public Body produce all the Records at issue?

[263.] During the inquiry, the Public Body notified me that it had just located several hundred more records that it believed were responsive to the Applicant's request.

[264.] The Public Body said it was alerted to the possibility of further records after talking to the author of one of the records, who referred to back-up material that the Public Body did not find in its original search. Those records were finance records relating to the Applicant during the same time period in which the Public Body conducted its investigation, but which the Public Body said were not necessarily related directly to the investigation. The Public Body requested a further search and found some 1992 finance records at the Alberta Records Centre and some 1993 finance records in its semi-active record holdings. The Public Body said that because those records were at the Alberta Records Centre, those records did not show up on a computer search conducted by the Public Body during its original search.

[265.] The Public Body gave evidence that when it received the Applicant's request, its Freedom of Information and Privacy ("FOIP") office contacted Area Services, the area likely to have most of the records because that area was responsible for investigations of health facilities. When the FOIP office contacted the person who led the investigation of the Applicant's health facility, it was told that all the files were in a highly secured area in the vault. The evidence is that one of the investigators had received telephone threats during the investigation, and there had been an attempted break-in into that investigator's filing cabinet at Alberta Health. As a result of the attempted break-in, the investigation leader had asked all people who had records to remove the Records from the central filing area and from individual's desks, and place the Records in the secure vault. The Public Body said the FOIP office also contacted the Minister's office, the Deputy Minister's office, and a number of other areas, which were asked to provide any responsive records in their possession.

[266.] The Public Body said that its FOIP office thought it had all the Records because people involved in the investigation were to have put the Records in the vault, there were between 10,000 and 12,000 pages of records found in the vault, and some of the Records found were financial records.

[267.] During the inquiry, the Applicant asked for any records related to the attempted break-in at Alberta Health. The Public Body subsequently informed me that no records which document the alleged incident could be found in the program area, accommodation area, or central records. The Public Body did provide me with a June 4, 1993 memo, which referred to the relocation of the files to the vault "for security reasons".

[268.] As a result of the Public Body's late discovery of 782 pages of additional records, the Applicant was concerned that the Public Body had not produced all the records. The Applicant raised that concern both during the inquiry and in its supplementary submission.

[269.] Consequently, during the inquiry, the Applicant asked to see all the finance records relating to the Applicant. Although the Public Body was concerned that this was an expanded request, it agreed to provide those finance records related to the same time period as its investigation, and also those finance records from an earlier time period, which may have been referred to or used during the same time period as its investigation. The Applicant said it also wanted all duplicates of any records it had already obtained from the Public Body.

[270.] In the Applicant's supplementary submission, the Applicant said that the Public Body's overlooking records in the first search raised the possibility that there were further undisclosed records. For example, the Applicant pointed to named members of the Public Body's investigation team and asked where were the backup notes and documentation of those persons. The Applicant speculated on the Public Body's possible motives for not disclosing documents, said that severing documents in their entirety "raises suspicions of a cover-up", and concluded that there should be additional documents disclosed.

[271.] On March 25, 1997, the Public Body provided the Applicant with an additional 42 pages of records that the Public Body said had originally been misfiled and were only just recently located. The Public Body said that those records included the financial information the Applicant had asked to be disclosed, which arose during the same time period as the Public Body's investigation, the duplicate records the Applicant had asked for during the inquiry (with slight differences such as margin notes), and earlier drafts of records the Applicant had already received. During the inquiry, the Public Body said that there was a lot of duplicate material because everybody had kept copies.

[272.] I find nothing in the evidence to suggest that the Public Body has any motives for not producing all the Records at issue. Furthermore, the severing of some documents in their entirety does not reveal a "cover-up".

[273.] Furthermore, I find nothing in the evidence to suggest that the Public Body did not produce all the Records at issue. In coming to this decision, I have taken into consideration the following: (i) the massive number of records; (ii) the volume of duplicated material (with slight differences such as margin notes or date stamps); (iii) the volume of handwritten material; (iv) the Public Body's evidence of the initial search conducted, and its explanation of why it did not locate some records during the initial search; (v) the Public Body's search for additional records after the Public Body discovered that it did not have all the records; (vi) the Public Body's disclosure of those additional records; and (vii) the Public Body's disclosure of misfiled records it subsequently found.

ORDER

[274.] I make the following order under section 68 of the Act.

A. Application of section 4 (exclusion of records from the Act)

[275.] **1.** Section 4(1)(l) excludes the following pages of the Records from the application of the Act:

“A” File

111, 112, 169, 378, 673, 674, 693-695, 854, 855, 857, 858, 975-981, 985-987, 998, 1000-1007, 1010-1015

[276.] Consequently, I have no jurisdiction over those pages of the Records.

[277.] **2.** Section 4(1)(l) of the Act does not exclude the following pages of the Records from the application of the Act:

“A” File

675, 676

[278.] Those pages are subject to the Act. Since the Public Body did not claim that any exception to disclosure applies to those pages, the Public Body must disclose those pages to the Applicant.

[279.] However, before disclosing those pages, the Public Body must first sever the personal information, as follows:

“A” File

675: initials at the top right-hand corner

B. Application of section 26 (privilege)

[280.] **1.** The Public Body correctly applied section 26(1)(a) (public interest privilege) to the following pages of the Records:

“A” File

43-50, 51 (first severed part only), 52-55, 57, 58, 60-63, 66, 67, 70, 71, 71a, 79, 102, 196-203, 209, 359, 363-365, 500, 501, 681, 741, 742, 871

“B” File

18, 20, 21 22 (second severed item), 54-56, 57 (everything severed except the first severed item), 58-62, 63 (first severed item), 84, 426, 429, 430, 431, 432 (top half of page), 434-436, 442-444, 875, 876 (everything severed except the first two severed lines), 879, 880 (last severed item), 910

“C” File

18 (first severed item at top of page), 25, 27, 33, 266-268, 271, 272, 276-278, 281, 283-286, 773 (first, second, eighth, ninth and tenth severed lines), 778, 779

[281.] I uphold the Public Body’s decision to refuse to disclose the information severed under section 26(1)(a) (public interest privilege) on the foregoing pages of the Records.

[282.] **2.** I have applied section 26(1)(a) (public interest privilege) to the following pages of the Records:

“B” File

880 (first severed item), 893 (fifth severed line)

“C” File

288, 289

[283.] **3.** The Public Body did not correctly apply section 26(1)(a) (public interest privilege) to the following pages of the Records”

“A” File

72, 366

“B” File

876 (first two severed lines)

“C” File

269

[284.] **4.** The Public Body correctly applied section 26(1)(a) (solicitor-client privilege) to the following pages of the Records:

“A” File

157-159, 229-249, 814-822, 835, 901-903

[285.] I uphold the Public Body's decision to refuse to disclose the information severed under section 26(1)(a) (solicitor-client privilege) on the foregoing pages of the Records.

[286.] **5.** The Public Body did not correctly apply section 26(1)(a) (solicitor-client privilege) to the following pages of the Records:

"A" File

138, 141, 160

[287.] The Public Body must disclose pages 138, 141 and 160 of "A" File to the Applicant. However, before disclosing those pages, the Public Body must first sever the personal information (names and business telephone numbers).

C. Application of section 16 (personal information)

[288.] **1.** The Public Body correctly applied section 16(1) to the following pages of the Records:

"A" File

72 (last sentence in the second paragraph), 145 (first and second severed items, first starred, severed item), 146 (first severed item; severed item before #2; severed item before #3; first, fourth, sixth, eighth, ninth, tenth and eleventh starred, severed items), 147 (first severed item; severed item before #4; first, third, fifth, sixth, eighth and twelfth starred, severed items), 148 (first severed item; second, fifth, sixth, and twelfth starred, severed items), 149 (first to fourth severed items; severed item before #5; first starred, severed item), 150 (first severed item), 323, 366 (last sentence in the second paragraph), 940, 963

"B" File

11 (severed item at bottom of page), 32 (fourth severed item), 43 (last severed item), 249 (third severed item, left column), 691, 769 (last severed item at bottom of page), 779, 782, 813, 818, 838, 876 (first two severed lines), 877 (everything severed except the last four severed lines), 881 (everything severed except the fourth to seventh severed lines), 882 (everything severed except the names), 893 (first severed line), 899 (everything severed except the fifth to eighth severed lines), 907

"C" File

141, 269 (last sentence in the second paragraph)

[289.] I uphold the Public Body's decision to refuse to disclose the information severed under section 16(1) on the foregoing pages of the Records.

[290.] **2.** I have applied section 16(1) to the following pages of the Records:

"A" File

733 (first severed sentence)

"B" File

891, 893 (last severed part), 896-898

[291.] **3.** The Public Body correctly applied section 16(1) and section 16(2) to the following pages of the Records:

"A" File

1, 35-37, 51 (last severed part), 79, 80, 114, 117, 124, 145 (third starred, severed item), 146 (seventh starred, severed item), 147 (fourth and ninth starred, severed items), 148 (eighth, ninth, and eleventh starred, severed items), 149 (second, third, and fifth to seventh starred, severed items), 150 (second severed item) 167, 173, 174, 178, 179, 181, 186, 187, 189, 190, 194, 213, 255, 308, 314, 355, 369-372, 500 (second severed item), 501, 684, 698, 729-732, 740, 741, 938, 943, 945, 946, 965 (first severed item), 968, 970

"B" File

1, 4, 6, 10, 11 (severed item at top of page), 15, 16, 22 (first severed item), 23, 28, 32 (everything severed except the fourth severed item), 33-35, 43 (first two severed items), 46, 47, 51-53, 57 (first severed item), 63 (last severed item), 69-73, 85, 87-89, 104-108, 144, 179, 182, 186, 187, 249 (everything severed except the third severed item, left column), 250, 273, 274, 312, 322, 323, 325, 335, 336, 394, 396-398, 428, 432 (bottom half of page), 437, 438, 452, 457, 499, 513, 621, 624, 627, 640, 669, 671, 674, 690, 692, 769 (first severed item), 770, 772, 774, 775, 780, 781, 784, 787, 792-796, 798, 799, 803-805, 807, 810-812, 814, 825, 828, 829, 831, 860 (everything severed except the last two paragraphs), 874, 876 (everything severed except the first two severed lines), 877 (last four severed lines), 881 (fourth to seventh severed lines), 882 (applicable to the names), 883, 884, 890 (first severed part), 893 (second, third and fourth severed lines), 894, 899 (fifth to eighth severed lines), 913

"C" File

18 (first severed item at top of page), 24, 124, 125

[292.] I uphold the Public Body's decision to refuse to disclose the information severed under section 16(1) and section 16(2) on the foregoing pages of the Records.

[293.] **4.** I have applied section 16(1) and section 16(2) to the following pages of the Records:

"B" File

859, 890 (last severed part)

"C" File

18 (last severed item at bottom of page)

[294.] **5.** The Public Body did not correctly apply section 16(1) and section 16(2) to the following pages of the Records:

"A" File

72 (everything severed except the last sentence in the second paragraph), 366 (everything severed except the last sentence in the second paragraph)

"C" File

269 (everything severed except the last sentence in the second paragraph)

D. Application of section 19 (law enforcement)

[295.] **1.** The Public Body correctly applied section 19(1)(d) to the following pages of the Records:

"A" File

43-50, 51 (first severed part), 52-55, 57, 58, 60-63, 66, 67, 70, 71, 71a, 102, 196-203, 209, 359, 363-365, 500, 501, 681, 742, 871

"B" File

18, 20, 21, 22 (second severed item), 54-56, 57 (everything severed except the first severed item), 58-62, 63 (first severed item), 84, 426, 429, 430, 431, 432 (top half of page), 434-436, 442-444, 875, 879, 880 (last severed item), 910

"C" File

25, 27, 33, 266-268, 271, 272, 276-278, 281, 283-286, 773 (first, second, eighth, ninth and tenth severed lines), 778, 779

[296.] I uphold the Public Body's decision to refuse to disclose the information severed under section 19(1)(d) on the foregoing pages of the Records.

[297.] **2.** The Public Body did not correctly apply section 19(1)(d) or 19(2)(a) to the following pages of the Records:

"A" File
72, 366

"C" File
269

E. Application of section 17 (safety or health)

[298.] The Public Body did not correctly apply section 17(1)(b) to the following pages of the Records:

"A" File
72, 366

"C" File
269

[299.] The Public Body must disclose pages 72 and 366 of "A" File and page 269 of "C" File to the Applicant. However, before disclosing those pages of the Records, the Public Body must first sever the last sentence in the second paragraph on each of those pages, as I have found that the last sentence in the second paragraph on each of those pages is personal information.

F. Application of section 23 (advice, and consultations)

[300.] **1.** The Public Body correctly applied section 23(1)(a) to the following pages of the Records:

"A" File
204-208, 228, 258, 259, 428, 429, 586-591, 723, 724, 726, 728,
839-842

"B" File
361, 362, 364, 365, 367-370, 857, 858, 860 (last two paragraphs),
870-873

"C" File
95-97, 115, 116, 232-246, 248-255, 258-261, 366-369, 371-377,
401, 403, 406-414, 422, 425, 426, 428-432, 449, 450, 452-457, 459-

461, 463-468, 476, 477, 495, 496, 498, 507, 624, 625, 627-634, 728, 729, 731-738

“D” File

6, 7, 9, 10, 13-15, 24, 25, 27-35

[301.] I uphold the Public Body’s decision to refuse to disclose the information severed under section 23(1)(a) on the foregoing pages of the Records.

[302.] **2.** The Public Body did not correctly apply section 23(1)(a) to the following pages of the Records:

“A” File

72, 108, 161, 366, 727, 733 (everything after the first severed sentence), 813, 852, 856, 859, 860, 971, 972, 974, 982-984, 988

“B” File

880 (first severed item)

“C” File

269

[303.] The Public Body must disclose to the Applicant the foregoing pages of the “A” File and the “C” File to which the Public Body did not correctly apply section 23(1)(a). However, before disclosing those pages, the Public Body must first sever the personal information on the following pages of the Records:

“A” File

859: name in the second severed line

[304.] However, even though the Public Body did not correctly apply section 23(1)(a) to page 880 (first severed item) of “B” File, the Public Body must not disclose that information because I have found that section 26(1)(a) (public interest privilege) and section 26(2) applies to that same information.

[305.] **3.** The Public Body correctly applied section 23(1)(b) to the following pages of the Records:

“A” File

592, 594, 738, 909, 910, 964, 965 (second severed item)

“B” File

866

“C” File

666, 670, 714, 718

[306.] I uphold the Public Body’s decision to refuse to disclose the information severed under section 23(1)(b) on the foregoing pages of the Records.

[307.] **4.** The Public Body did not correctly apply section 23(1)(b) to the following pages of the Records:

“B” File

880 (first severed item)

[308.] However, even though the Public Body did not correctly apply section 23(1)(b) to page 880 (first severed item) of “B” File, the Public Body must not disclose that information because I have found that section 26(1)(a) (public interest privilege) and section 26(2) applies to that same information.

G. Collecting of personal information

[309.] The Act does not apply retroactively to the Public Body’s collecting of the Applicant’s patients’ personal information in 1992-1993. Consequently, the Public Body could not have collected that personal information in violation of section 32 of the Act in 1992-1993.

[310.] I make no finding as to whether the Public Body’s collecting of the Applicant’s patients’ personal information in 1992-1993 would constitute a violation of the Act today.

H. Production of all the Records at issue

[311.] I find nothing in the evidence to suggest that the Public Body did not produce all the Records at issue.

[312.] I ask that the Public Body notify me in writing, within 30 days of receiving a copy of this Order, that the Public Body has complied with this Order.

Robert C. Clark
Information and Privacy Commissioner