

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 97-016

January 29, 1998

ALBERTA ENVIRONMENTAL PROTECTION

Review Number 1311

I. BACKGROUND

[1.] The Applicant wanted to know who was nominating certain public (Crown) land under the Special Places 2000 initiative, including the public land on which the Applicant held a grazing lease. Consequently, on February 19, 1997, the Applicant applied to the Public Body, under the *Freedom of Information and Protection of Privacy Act* (the "Act"), as follows:

Please send the names and/or organization names of nominators for Special Places 2000 sites in grasslands region. The site numbers are as follows: 21, 31, 73, 112, 196, 201, 223, 230, 238, 265, 266, 270, 271, 274, 275, 276, 277, 280, 281, 282, 283, 284, 285, 286, 287, 289, 290, 291, 292, 293, 329, and 330. Also requested is name of person/organization who nominated all Provincial, National and Internation [sic] Environmentally Significant Areas and person/organization that nominated all Crown land south of the Red Deer River.

[2.] The Public Body confirmed that the Applicant's request for "...name of person/organization who nominated all Provincial, National and Internation [sic] Environmentally Significant Areas" was the nomination for site 288, and that the Applicant's request for "...person/organization that nominated all Crown land south of the Red Deer River" was the nomination for site 267.

[3.] Of the 34 sites requested, the Public Body gave notice to all but one of the nominators and contact persons, requesting permission to disclose their personal information. The Public Body disclosed to the Applicant the records containing the personal information of those individuals who consented to disclosure, but severed from the records the personal information of those individuals who refused to consent to disclosure of their personal information. The Public Body said it provided the Applicant with unsevered records of sites which did not contain personal information, namely, sites nominated by corporations, organizations, or societies.

[4.] The Public Body said it did not give notice to the nominator for site 223 because that nomination had been withdrawn. The Public Body also said that as the nominations for both site 223 and site 267 had been withdrawn, it did not provide those site profiles to the Applicant.

[5.] The Applicant asked that my office review the Public Body's decision to sever the records. Mediation was authorized, but was not successful. The matter was set down for inquiry on October 9, 1997.

[6.] My Office retained the services of an amicus counsel to represent the numerous third parties who are or could potentially be affected by having their personal information disclosed on an access request for their personal information under Special Places 2000. In addition to presenting oral argument at the inquiry, the amicus counsel submitted a written submission on September 30, 1997.

[7.] I received the Public Body's written submission on September 18, 1997. I did not require that the Applicant submit a written submission. Instead, the Applicant was permitted to give oral argument at the inquiry. Because of this procedure, the Public Body asked for, and was granted, the right to give rebuttal evidence after the Applicant's oral presentation, upon agreement of the Applicant and the amicus counsel.

II. RECORDS AT ISSUE

[8.] The Records are the Special Places nomination site profiles, consisting of approximately two to six pages per site. The Public Body numbered the records consecutively as pages 1-63, and included an additional page related to the nomination for site 223, which was withdrawn. Site 267, which the Public Body also said was withdrawn, was numbered as page 61.

[9.] During the inquiry, the Applicant expressed interest in obtaining the nominator's names for the withdrawn sites, particularly if those sites could

nevertheless be designated as Special Places. The Public Body gave evidence that it was possible that a withdrawn site such as site 223 could continue through the process and be designated as a Special Place. Consequently, I have included site 223 (unnumbered page) in this Order.

[10.] As to site 267, which the Public Body also said was withdrawn, I note that on April 2, 1997, the Public Body obtained consent to disclose the personal information for site 267. Consequently, even though that site has been withdrawn, I intend to order that the Public Body disclose the site profile for site 267, including the name of the nominator and the other personal information that the nominator gave consent to disclose, for the following reasons:

- (i) the Applicant requested the name of the nominator of that site;
- (ii) the nominator consented to disclosure of personal information, so disclosure of that personal is not an unreasonable invasion of a third party's personal privacy under section 16(4)(a);
- (iii) the Applicant did not withdraw the request for the name of the nominator of site 267;
- (iv) the Applicant expressed continued interest in knowing the names of nominators, even for nominations that have been withdrawn, particularly if it is possible that the site could still be considered for designation as a Special Place;
- (v) the Public Body gave evidence that a site could still be considered for designation as a Special Place, even though the nomination was withdrawn; and
- (vi) the Public Body gave evidence that all the information on a site profile was public information, except personal information for which there was no consent to disclosure.

[11.] Only 20 of the 63 pages are at issue. The 20 pages concern the following sites: 21, 31, 112, 196, 201, 230, 238, 276, 280, 281, 282, 283, 287, 288, 289, 290, 291, 292, 293, and 329. Only personal information has been severed on those 20 pages, and the remaining information provided to the Applicant.

[12.] I have added site 223 (unnumbered page) to the pages at issue.

[13.] Page 63 (the nomination for site 330) was originally at issue because it contained an incorrect fax number to which the Public Body said that section 16(3)(g) (personal information likely to be inaccurate or unreliable) applied

under the Act. However, the nominator for site 330 had given permission to disclose the rest of the nominator's personal information. The Public Body ultimately obtained the nominator's consent to release, and did release, the correct fax number to the Applicant. Therefore, page 63 (site 330) is no longer at issue.

[14.] In this Order, I will refer to each page individually by page number, to site 223 by site number, and to all the pages collectively as the "Records".

[15.] During the inquiry, I asked the Public Body whether it had received nomination forms from the nominators, and why those forms would not also be records for the purpose of this inquiry. The Public Body responded that because the Applicant had asked only for names of nominators, it decided to provide the site profiles it had created, instead of the nomination forms, for the following reasons:

(i) The information from the nomination forms had been reproduced, almost verbatim, in the site profiles.

(ii) The information on nomination forms was handwritten, and was hard to read.

(iii) The site profiles contained more information than the nomination forms, and the Public Body was able to provide that additional information to the Applicant.

[16.] In this case, I have accepted the Public Body's reasons for providing the site profiles, as opposed to the nomination forms, as records for this inquiry. In coming to this decision, I note, in particular, that the Applicant's request was for names, the Public Body gave evidence of almost verbatim reproduction of information from the nomination forms to the site profiles, and the site profiles were records that were responsive to the Applicant's request.

III. ISSUE

[17.] There is one issue for this inquiry. I have reworded the issue as follows:

Did the Public Body correctly apply section 16 of the Act (personal information) when it refused to disclose names of individuals who nominated public land for Special Places 2000?

IV. PROCEDURAL ISSUE

[18.] The Applicant asked to submit nine letters from individuals who supported the Applicant's position that the names of nominators should be disclosed. I told the Applicant that I would decide whether those letters could be considered as evidence, and inform the Applicant accordingly. It has been my general practice to ask for evidence to be given under oath.

[19.] However, because I am not bound by rules of evidence, it has also been my practice to look at other information that parties provide during inquiries, but to give that information much less weight than evidence given under oath.

[20.] I have reviewed the Applicant's letters of support. I note that the Applicant summarized the content of the letters during the course of the inquiry, and used the arguments in those letters to support the Applicant's own legal arguments. Therefore, I do not find it necessary to decide whether the letters should be considered as evidence, or what weight to give the letters.

[21.] The summarized content of the letters has become part of the inquiry record relating to the Applicant's legal arguments. Both the Public Body and the amicus counsel have had the opportunity to rebut those arguments, and did so. Consequently, it was not necessary to provide the letters to the Public Body and the amicus counsel.

[22.] As the Applicant provided the letters, I intend to return the letters to the Applicant upon release of this Order.

V. DISCUSSION OF THE ISSUE

[23.] Did the Public Body correctly apply section 16 of the Act (personal information) when it refused to disclose names of individuals who nominated public land for Special Places 2000?

1. What is Special Places 2000?

[24.] The Public Body gave a summary of the Special Places 2000 initiative, which sets out the following policy statement:

The vision for Special Places 2000, Alberta's strategy is to complete a network of Special Places that represent the environmental diversity of the province's six Natural Regions (20 sub-regions) by the end of 1998.

[25.] The four goals of Special Places 2000 are preservation, outdoor recreation, heritage appreciation, and tourism/economic development.

[26.] The Public Body explained that the Special Places 2000 initiative was created and announced before October 1, 1995, which is the date the *Freedom of Information and Protection of Privacy Act* came into force. The Public Body says there is no legislation governing the Special Places 2000 initiative other than the Act.

[27.] The Special Places 2000 initiative allows Albertans to nominate land that may be designated as a Special Place. Only public (Crown) land may be nominated, unless an individual landowner wishes to nominate his or her own land. According to the Public Body, nominated land goes through extensive provincial and local review before it is designated as an official Special Place.

[28.] The Public Body gave a summary of the Special Places 2000 review process, as follows.

[29.] The Provincial Coordinating Committee (the “Committee”), made up of members from 23 organizations (including government), first reviews a nomination, with input from a number of government departments. The Committee decides whether to recommend a nominated site to the Minister of Environmental Protection (the “Minister”).

[30.] Committee members may contact a nominator to obtain further information or to inform the nominator about the status of the nomination. According to the Public Body, a nominator’s name is not disclosed beyond the Committee level, nor is a nominator’s name relevant to any of the Committee’s decisions.

[31.] If the Committee recommends a nominated site to the Minister, the Minister strikes a local committee to get the local point of view. The local committee may make a recommendation to the Committee or directly to the Minister. The local committee is not given the name of a nominator.

[32.] The Minister ultimately makes a recommendation to Cabinet, which decides whether to approve the nominated site as a Special Place. Once land is designated as a Special Place, a management plan must be designed, and local stakeholders are to be involved in a management committee. The Minister approves a management plan.

[33.] The Public Body noted that even if public land is ultimately designated as a Special Place, the government intends to honour existing commitments to persons who have certain rights to use that public land. The Public Body says such rights include forestry quotas, forestry management agreements, licences of occupation, grazing leases, and oil and gas, pipeline and coal activities.

2. Do the Records contain personal information?

[34.] The Public Body says that the Applicant seeks to have disclosed the names of individuals who nominated certain lands as sites to be designated as Special Places. The Records also contain names of individuals designated as contacts on the Special Places 2000 nomination forms. Moreover, the Records include the addresses, telephone numbers and, in some cases, the fax numbers of those individuals. Consequently, the Public Body says that this information is personal information for the purposes of section 16(1) of the Act.

[35.] The Public Body says it severed the personal information on the following pages of the Records:

2, 5, 8, 9, 11, 25, 27, 29, 31, 33, 37, 39, 41, 43, 45, 48,
49, 50, 54, 56

[36.] I also intend to include site 223 (unnumbered page) in this discussion.

[37.] “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.

[38.] I have reviewed the foregoing pages of the Records, and find that all those pages, including the unnumbered page for site 223, contain personal information as defined in section 1(1)(n)(i).

[39.] I also find that each of the 12 home fax numbers is personal information because each fax number is “recorded information about an identifiable individual”. Furthermore, in this case, the one business fax number is personal information because it is also “recorded information about an identifiable individual”. That identifiable individual refused to consent to disclose his or her personal information.

[40.] Therefore, the Public Body was correct when it said that the foregoing pages of the Records contained personal information for the purposes of section 16(1) of the Act.

3. Do section 16(1) and section 16(2) apply to the Records?

[41.] The Public Body says that section 16(1) and section 16(2)(g) apply to the following pages of the Records:

2, 5, 8, 9, 11, 25, 27, 29, 31, 33, 37, 39, 41, 43, 45, 48,
49, 50, 54, 56

[42.] I also intend to consider site 223 (unnumbered page) under section 16(1) and section 16(2)(g).

[43.] Section 16(1) and section 16(2)(g) read:

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.

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.

[44.] I have reviewed the foregoing pages of the Records and find that the presumption in section 16(2)(g) applies to the personal information contained in those pages of the Records, including the unnumbered page for site 223. Consequently, disclosure of that personal information is presumed to be an unreasonable invasion of those third parties personal privacy for the purposes of section 16(1).

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

a. General

[45.] Under section 16(3) of the Act, a public body must consider all the relevant circumstances when deciding whether disclosure of personal

information would be an unreasonable invasion of a third party's personal privacy.

[46.] The Public Body says that it considered section 16(3)(a) (public scrutiny), section 16(3)(e) (unfair exposure to financial or other harm), and section 16(3)(f) (personal information supplied in confidence).

[47.] The Public Body also says that it considered section 16(3)(g) (personal information likely to be inaccurate or unreliable) for a fax number. However, the Public Body ultimately obtained consent to release the correct fax number to the Applicant, so section 16(3)(g) is no longer a relevant circumstance.

[48.] The Public Body also relied on Order 97-011, in which I said that a third party's refusal to consent to release that third party's personal information is also a relevant circumstance to consider under section 16(3).

[49.] The Applicant implied that the Public Body should also have considered section 16(3)(c) (personal information relevant to a fair determination of applicant's rights).

[50.] In addition, the amicus counsel discussed section 16(3)(b) (public health and safety or protection of the environment) and section 16(3)(h) (unfair damage to reputation).

b. Disclosure of personal information desirable for public scrutiny (section 16(3)(a))

[51.] 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.

[52.] If considered to be a relevant circumstance, section 16(3)(a) weighs in favour of disclosing personal information.

[53.] The Public Body says that although it considered section 16(3)(a), it decided that section 16(3)(a) is not a relevant circumstance when determining whether disclosure of the third parties' personal information would be an

unreasonable invasion of the third parties' personal privacy under section 16(1) and section 16(2).

[54.] The Public Body submits that in determining whether the disclosure of the personal information is desirable for the purposes of subjecting the activities of the Government of Alberta or a public body to public scrutiny, the following points must be considered:

(i) The Minister refers, for decisions, all recommendations for site designations to the Standing Policy Committee on Natural Resources and Sustainable Development, and to Cabinet.

(ii) Consultations with key stakeholders are used to determine the details of the site selection process.

(iii) The Provincial Coordinating Committee, made up of members from the larger community, makes recommendations to the Minister.

(iv) Local committees hold public meetings, which allow for further input from the community and stakeholders, and for representation of local interests and users.

(v) Any impacts on persons who have rights to use the land are addressed through the review process and through the management planning process.

[55.] The Public Body maintains that the foregoing points are evidence that the Special Places 2000 initiative was expressly designed to be subject to public scrutiny. The Public Body concludes, therefore, that release of the personal information of those who have nominated a site as a Special Place will not increase or decrease the ability to scrutinize the activities of the Government of Alberta in general or the Special Places 2000 initiative in particular or, presumably, the activities of the Public Body itself.

[56.] However, the Applicant is concerned that employees of the Public Body are nominating Special Places. The Applicant believes that, without the names of nominators, there cannot be a determination of whether any of the Public Body's employees have a conflict of interest. The Applicant also wants to know whether an employee of the Public Body can sit as an advisor on the local committee that provides input to the Provincial Coordinating Committee.

[57.] The Public Body gave evidence that although government employees are not prohibited from nominating public land as Special Places (approximately 12 employees have done so), a government employee is not permitted to sit on the local committee that provides input to Provincial Coordinating Committee.

[58.] The Applicant also wonders why there is secrecy surrounding the names of nominators. The Applicant speculates that the Public Body may be trying to drive its own agenda without the input of local people. It would appear the Applicant believes that any potential conspiracy cannot be exposed if the names of nominators are kept secret.

[59.] By these arguments, I understand the Applicant to be saying that disclosure of the names of nominators would allow the Applicant to scrutinize the activities of the Government of Alberta or the Public Body.

[60.] In Order 97-002, I discussed the interpretation of section 16(3)(a). In that Order, I said 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: (1) Ontario Order P-347, which held that it was not sufficient for one person to have decided that public scrutiny was necessary; (2) 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 (3) 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 the public body to public scrutiny. This was particularly so if the public body had also investigated the matter in issue.

[61.] In this case, I find the following:

(1) It appears from the Applicant's argument, which summarized the letters of support, that more than one person may think that scrutiny is necessary. However, I am not convinced that the concern is about public scrutiny of the Government of Alberta or the Public Body, for the reasons stated below.

(2) Although the Applicant has voiced concerns about the Public Body's employees who nominate Special Places and about the Public Body's own agenda, the Applicant appears to be scrutinizing the individual(s) who nominated, as a Special Place, the public land for which the Applicant holds the grazing lease. The letters of support summarized by the Applicant echo the same theme: scrutiny of the persons who nominate, as Special Places, public land for which those persons have rights of use.

(3) Even if I could find that the Applicant is scrutinizing the activities of the Government of Alberta or the Public Body, I would nevertheless find that the disclosure of the personal information is not desirable for that purpose because the Public Body has already disclosed to the Applicant

all the other information relating to the nominations for Special Places, except for that personal information (names, addresses, and telephone and fax numbers) for which it could not obtain consent to disclosure.

[62.] Consequently, for the reasons stated by the Public Body, I find that section 16(3)(a) is not a relevant circumstance to consider when determining whether disclosure of the third parties' personal information would be an unreasonable invasion of the third parties' personal privacy under section 16(1) and section 16(2).

c. Disclosure of personal information likely to promote public health or safety or the protection of the environment (section 16(3)(b))

[63.] Section 16(3)(b) 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

(b) the disclosure is likely to promote public health and safety or the protection of the environment.

[64.] If considered to be a relevant circumstance, section 16(3)(b) weighs in favour of disclosing personal information.

[65.] The amicus counsel considered whether the disclosure of personal information is likely to protect the environment, and concluded that disclosure of the nominators' names will do nothing to promote protection of the environment.

[66.] I agree with the amicus counsel that section 16(3)(b) is not a relevant circumstance to consider when determining whether disclosure of the third parties' personal information would be an unreasonable invasion of the third parties' personal privacy under section 16(1) and section 16(2).

d. Personal information relevant to a fair determination of the Applicant's rights (section 16(3)(c))

[67.] Section 16(3)(c) 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

(c) the personal information is relevant to a fair determination of the applicant's rights.

[68.] If considered to be a relevant circumstance, section 16(3)(c) weighs in favour of disclosing personal information.

[69.] The Applicant implied that the Public Body should also have considered section 16(3)(c) when determining whether disclosure of the third parties' personal information would be an unreasonable invasion of the third parties' personal privacy under section 16(1) and section 16(2).

[70.] The recurring theme in the Applicant's arguments is that the Applicant's rights as a grazing lease holder on public land have been affected by the nomination of that land as a Special Place. The Applicant stated that there is a right to know the personal information since it may affect the Applicant's management decisions and livelihood. The Applicant believes that although the Applicant has a contract with the government, Special Places 2000 will affect the Applicant's practices and directly impact on the Applicant's operations.

[71.] The amicus counsel maintains that the Applicant's rights as a grazing lease holder are not in issue because those rights are set out in the Applicant's contract or lease, and no determination of those rights is underway.

[72.] Furthermore, both the Public Body and the amicus counsel maintain that the Applicant's rights are not affected by a nomination. The Public Body points to the government's stated intention not to displace persons who have existing rights to use the public land.

[73.] However, the Public Body's evidence is that persons holding rights to use the land could be affected once the Provincial Coordinating Committee identifies those sites which have the highest likelihood of being designated. The Public Body says that a recommendation could be made for interim protection of such sites so that development interests are restricted. The Public Body noted that interim protection for grazing leases has not been onerous. The Public Body further notes that, at this point, there is no impact on the land on which the Applicant holds the grazing lease, nor is that land likely to be designated because the features on that land are fairly represented elsewhere in the province.

[74.] The Public Body's evidence is that, although not affected by a nomination as such, persons holding rights to use the land may be affected by a Special Places 2000 designation.

[75.] The Applicant is concerned about what will happen down the road if the land is designated as a Special Place. It may well be that the Applicant's management decisions, practices and livelihood will be affected if the public land on which the Applicant holds the grazing lease is ultimately designated. However, the issue before me is whether a nomination affects those rights, not a designation which has not yet occurred.

[76.] In my view, the mere fact of a nomination is not determinative of any rights. The nomination goes through a public consultation process in which persons like the Applicant have ample opportunity to question or oppose the designation.

[77.] Even if I were to accept that a Special Places nomination affects the Applicant's "rights", I can in no way find that the personal information is relevant to a fair determination of the Applicant's "rights", for the following reasons.

[78.] First, I accept the Public Body's evidence that the reason for asking for names on the nomination forms is primarily for follow-up purposes. The necessary conclusion from that evidence is that nominators are not part of the subsequent decision-making process for Special Places 2000, except to the extent that the Public Body asks nominators for further information. Furthermore, the Public Body has provided the Applicant with all the other information relating to the nomination, so the Applicant knows the reasons why each nominator nominated particular public land. In my view, knowing this other information may assist the Applicant to make better management decisions, develop better practices or protect the Applicant's livelihood, but knowing the nominators' names does not.

[79.] Second, the Applicant has given evidence that the Applicant's grazing lease has recently been renewed. This is direct evidence that the Applicant's "rights" have not been affected by the nominations themselves. Consequently, if no "rights" have been affected by the nominations, the names cannot be considered to be relevant to a fair determination of those "rights".

[80.] Consequently, I find that section 16(3)(c) is not a relevant circumstance to consider when determining whether disclosure of the third parties' personal information would be an unreasonable invasion of the third parties' personal privacy under section 16(1) and section 16(2).

e. Unfair exposure to financial or other harm (section 16(3)(e))

[81.] 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.

[82.] If considered to be a relevant circumstance, section 16(3)(e) weighs in favour of not disclosing personal information.

[83.] Both the Public Body and the amicus counsel considered whether third parties would be exposed unfairly to harm in the form of harassment if their names were disclosed. The amicus counsel also considered financial harm.

[84.] The amicus counsel argued that the nomination of public land as a Special Place is an expression of a person's belief. If members of a nominator's community disagree with those beliefs, it is reasonable to expect that the nominator would be stigmatized in his or her community and exposed unfairly to financial harm or to harassment. Harassment may include unwanted or unwelcome telephone calls or confrontations.

[85.] The basis for the amicus counsel's argument is this. The Special Places 2000 initiative affects the rural landbase. People in rural communities are less anonymous than people in cities. The amicus counsel notes that all the sites for which the Applicant seeks personal information are in rural areas, and communities in those rural areas will be affected by a Special Places designation. The amicus counsel concludes that if a nominator is from that community, the likelihood of financial harm or harassment is higher than if the nominator is from outside that community.

[86.] I find it too speculative to say that a third party may be exposed to financial harm. However, I agree that harassment, in whatever form, may constitute "harm" for the purposes of section 16(3)(e). I also agree that a third party may be exposed to harassment in a small community if the community knows about and disagrees with a nomination made by that person. A third party would be exposed unfairly to harassment when, as here, the third party has refused to consent to the disclosure of his or her personal information.

[87.] I agree with the Public Body and the amicus counsel that section 16(3)(e) is a relevant circumstance to consider when determining whether disclosure of the third parties' personal information would be an unreasonable invasion of the third parties' personal privacy under section 16(1) and section 16(2).

f. Personal information supplied in confidence (section 16(3)(f))

[88.] 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.

[89.] If considered to be a relevant circumstance, section 16(3)(e) weighs in favour of not disclosing personal information.

[90.] The Public Body says that it considered that section 16(3)(f) was a relevant circumstance when determining whether disclosure of the third parties' personal information would be an unreasonable invasion of the third parties' personal privacy under section 16(1) and section 16(2).

[91.] The Public Body says that the Special Places nomination form states the following:

*Please give your name, and name of your organization (if applicable) so **we** [Public Body's emphasis] may reply to your nomination.*

[92.] The Public Body says that a general principle under the Act is that personal information is only to be used for the purposes for which it was collected. In this case, the Public Body gave evidence that the reason for requiring nominators' names is to:

- (i) ensure that the person making the nomination is an Albertan,
- (ii) confirm and clarify information relating to the land itself; and
- (iii) follow up with the nominator on the status of the nomination.

[93.] Since the personal information was collected primarily for the purpose of replying to the nominator of a Special Place, the Public Body argues that the personal information should not be given to the Applicant or others.

[94.] I do not think the wording on the nomination form or the Public Body's stated purpose for collecting the personal information is sufficient to permit me to draw an inference that third parties were promised confidentiality for their personal information. Consequently, on these bases alone, it cannot be said that the personal information has been supplied in confidence.

[95.] Nevertheless, the Public Body's evidence is that, when contacted, a number of third parties did not want their names disclosed because they were "out of the loop" in the Special Places 2000 process, and were concerned with maintaining their confidentiality. The fact that those third parties refused to consent to the disclosure of their personal information is evidence from which I can infer that the personal information has been supplied in confidence.

[96.] Therefore, I find that section 16(3)(f) is a relevant circumstance to consider when determining whether disclosure of the third parties' personal information would be an unreasonable invasion of the third parties' personal privacy under section 16(1) and section 16(2).

g. Unfair damage to reputation (section 16(3)(h))

[97.] 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.

[98.] If considered to be a relevant circumstance, section 16(3)(h) weighs in favour of not disclosing personal information.

[99.] The amicus counsel argues that section 16(3)(h) is a relevant circumstance for the same reasons discussed under section 16(3)(e), relating to the stigmatizing of a person that may occur more readily in a small community, thus damaging a person's reputation. I agree with the amicus counsel's argument. The damage to reputation is unfair when, as here, the third party has refused to consent to the disclosure of his or her personal information.

[100.] Therefore, I find that section 16(3)(h) is a relevant circumstance to consider when determining whether disclosure of the third parties' personal information would be an unreasonable invasion of the third parties' personal privacy under section 16(1) and section 16(2).

h. Refusal to consent to the disclosure of personal information

[101.] In Order 97-011 and subsequently, I have said that a third party's refusal to consent to release that third party's personal information is, in itself, also a relevant circumstance to consider under section 16(3).

[102.] The Public Body relies on Order 97-011. The Public Body's evidence is that upon receiving the Applicant's access request, the Public Body contacted all the third parties who were individual nominators and contacts of the sites for which the Applicant requested names. The Public Body disclosed the personal information, including the names, of those third parties who consented to disclosure. However, the Public Body did not disclose the names or any other personal information of those third parties who refused to consent to the disclosure of their personal information.

[103.] Therefore, I find that third parties' refusal to consent to the disclosure of their personal information is, of itself, a relevant circumstance to consider when determining whether disclosure of the third parties' personal information would be an unreasonable invasion of the third parties' personal privacy under section 16(1) and section 16(2).

i. Conclusion under section 16(3)

[104.] The Public Body considered all the relevant circumstances, and determined that the relevant circumstances weighed in favour of not disclosing personal information. If, after considering all the relevant circumstances, including those listed under section 16(3), a public body determines that disclosure of the personal information would be an unreasonable invasion of a third party's personal privacy, that public body must refuse to disclose that personal information, as provided by section 16(1).

[105.] My role under section 16(3) is to determine whether a public body used the right process. In this case, I find that the Public Body used the right process.

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

[106.] Under section 67(2) of the Act, the burden of proof is on the Applicant to prove that disclosure of a third party's personal information would not be an unreasonable invasion of a third party's personal privacy.

[107.] In addition to the arguments the Applicant made under section 16(3)(a) (public scrutiny) and section 16(3)(c) (fair determination of applicant's rights), the Applicant says that knowing the names of nominators is necessary to determine whether there is broad support for the nomination and whether a neighbour is nominating out of vindictiveness.

[108.] Although the Applicant thinks it is important to know whether many persons or just one group is doing the nominating, I do not see how this is relevant to the issue of whether disclosure of the third parties' personal information would not be an unreasonable invasion of the third parties' personal privacy. I note, in passing, that the broadness of support for a nomination is tested by local committees, and that the decision to designate must be made on the basis of the stated purpose of Special Places 2000.

[109.] The Applicant also wants to know whether anyone is nominating the leased land in order to cause the Applicant grief. However, I have not seen anything in the evidence to indicate this is the case. In any event, motive is irrelevant.

[110.] The Applicant further believes that the names of nominators should be public information and that nominations should be defended in a public manner. I have already discussed the Special Places review process, and do not find it necessary to repeat that discussion here.

[111.] The Applicant notes that there is nothing in the Special Places 2000 initiative that said the names of nominators would be held in confidence. The Public Body agrees that the policy commitment is silent on that issue, but points out that the Special Places 2000 initiative preceded the *Freedom of Information and Protection of Privacy Act*, and that nothing in the program said the names of nominators would be released. Moreover, the Public Body says that the terms of reference for the Provincial Coordinating Committee (the "Committee") contains a reference that the Committee cannot divulge third party proprietary information provided to Committee members to assist them in their deliberations. The Public Body notes that the Act is retroactive as to records in the custody or control of a public body.

[112.] Having reviewed the Applicant's arguments, I find that the Applicant has not met the burden of proving that disclosure of the third parties' personal

information would not be an unreasonable invasion of the third parties' personal privacy.

6. Conclusion under section 16

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

2, 5, 8, 9, 11, 25, 27, 29, 31, 33, 37, 39, 41, 43, 45, 48,
49, 50, 54, 56

[114.] I have also found that section 16(1) and section 16(2)(g) apply to the unnumbered page for site 223.

VI. OTHER MATTERS

[115.] The amicus counsel raised the issue of section 31 (disclosure of information in the public interest), and submitted that section 31 did not apply in this case. I agree with the amicus counsel that section 31 does not apply. As neither the Applicant nor the Public Body raised the issue, I do not find it necessary to consider section 31 any further.

VII. ORDER

[116.] I uphold the Public Body's decision to refuse to disclose the personal information contained in the following pages the Records:

2, 5, 8, 9, 11, 25, 27, 29, 31, 33, 37, 39, 41, 43, 45, 48,
49, 50, 54, 56

[117.] Under section 68(2)(c) of the Act, the Public Body must not disclose to the Applicant the personal information contained in the foregoing pages of the Records.

[118.] I have also found that section 16(1) and section 16(2)(g) apply to the unnumbered pages for site 223. The Public Body must not disclose to the Applicant the personal information contained on that page of the Records. However, the Public Body may disclose to the Applicant the rest of the information on that site profile.

[119.] Since the third party has consented to the disclosure of personal information on site profile 267, the Public Body must disclose that personal

information to the Applicant, even though the nomination for site 267 has been withdrawn.

[120.] 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