

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDERS F2002-015 and H2002-006

November 3, 2003

#### CALGARY HEALTH REGION

Review Number 2275 and H0324

**Office URL:** <http://www.oipc.ab.ca>

**Summary:** The Applicant made a request under the *Freedom of Information and Protection of Privacy Act* to the Calgary Health Region for access to all records relating to an investigation respecting a physician. The access request included all electronic memos, interoffice memos and documents relating to the investigation. The Applicant also requested access to any written complaints by his patients and all correspondence between the Calgary Health Region and the College of Physicians and Surgeons.

In response to the access request, the Calgary Health Region provided access to 73 of 280 pages of records, but withheld, partially or entirely, 207 pages of records. At the inquiry, the Calgary Health Region refused to provide access to some of the records on the basis that some of the records were non-responsive to the request. In addition, the Calgary Health Region cited the *Health Information Act*, as well as sections 4(1)(c) [previously section 4(1)(b.1)], 17 [previously section 16], 18 [previously section 17], 24(1)(a) [previously section 23(1)(a)], 27(1)(a) [previously section 26(1)(a)] and 27(1)(b) [previously section 26(1)(b)] of the *Freedom of Information and Protection of Privacy Act* as its authority to withhold the records.

The Commissioner upheld the Calgary Health Region's decision to withhold the records. The Commissioner held that some of the records were non-responsive to the request. In addition, the Commissioner held that section 11(2)(a) of the *Health Information Act* and section 4(1)(u) [previously section 4(1)(p)] of the *Freedom of Information and Protection of Privacy Act* applied to the records. The Commissioner also held that section 32 [previously section 31] did not apply in this inquiry.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 4(1)(c) [previously section 4(1)(b.1)], 4(1)(u) [previously section 4(1)(p)], 15.1 [previously section 14.1], 17 [previously section 16], 18 [previously section 17], 24(1)(a) [previously section 23(1)(a)], 27(1)(a) [previously section 26(1)(a)], 27(1)(b) [previously section 26(1)(b)], 32 [previously section 31], 72 [previously section 68]; *Health Information Act* R.S.A. 2000, c.H-5, ss.1(1), 5, 7(1), 11(2)(a), 11(2)(b), 80

**Authorities Cited: AB:** Orders 97-020, H2002-002

## **I. BACKGROUND**

[para 1] In 1999, the Head of the Regional Clinical Department of Psychiatry at the Calgary Health Region (the “CHR”) established an adhoc subcommittee to review a physician’s ability to conduct his hospital duties and responsibilities. The records show that the purpose of the review was to assess the standard of care provided by the physician and investigate complaints regarding the physician. As part of its review, the subcommittee reviewed some of the physician’s clinical charts and interviewed a number of complainants and staff.

[para 2] In 2000, the subcommittee completed its final report.

[para 3] During the course of the review, but not as a result of the review, the physician was charged with several criminal offences. As a result, the CHR immediately suspended the physician’s medical privileges.

[para 4] I note that the CHR did not address these criminal charges as part of the subcommittee’s review. The records show that the CHR decided to await the outcome of the criminal proceedings and a separate investigation by the College of Physicians and Surgeons before undertaking its own investigation in regard to these charges.

[para 5] On June 18, 2001, the Applicant made an access request to the CHR under the *Freedom of Information and Protection of Privacy Act* (the “*FOIP Act*”). The Applicant asked for all documents relating to an investigation respecting the physician including all electronic memos, interoffice memos and documents. The Applicant also requested access to all written complaints about the physician written by his patients and all correspondence between the CHR and the College of Physicians and Surgeons.

[para 6] On August 31, 2001, the CHR responded to the Applicant’s access request providing the Applicant with access to 73 of 280 pages of records. The CHR withheld, partially or entirely, 207 pages of records.

[para 7] On September 5, 2001, the Applicant requested a review, under the *FOIP Act*, of the CHR’s decision to withhold the records. Mediation was authorized but was unsuccessful in resolving the issues. The matter was set down for a written inquiry.

[para 8] The CHR and the Applicant each sent this Office an initial submission and a rebuttal. The physician sent this Office an initial submission but did not submit a rebuttal. This Office also subsequently requested that the CHR provide additional information and clarification in relation to several issues. In addition, both the CHR and the Applicant raised concerns and were granted the opportunity to provide a supplemental submission.

## **II. RECORDS AT ISSUE**

[para 9] The records consist of 280 pages of documents. Of the 280 pages, 73 pages have been fully released to the Applicant or are duplicates of those released to the Applicant. The remaining 207 pages are at issue in this inquiry.

[para 10] In calculating the total number of pages at issue, I took into account that although there were 279 numbered pages, one record had two page numbers, 257 and 258, assigned to it. I also took into account that the CHR had failed to number the second page of record 33 and 64. As such, I will refer to these records as simply the “record 33B” and “record 64 B”. I will address records 33B and 64B under the same sections as records 33 and 64.

[para 11] In calculating the number of pages already released, I took into account that the CHR incorrectly identified pages 181, 182 and 247 as duplicates of another record which had already been released. As such, I will also address records 181, 182 and 247 as part of this Order. In addition, the CHR has also confirmed that record 99 was released to the Applicant. Record 99 is, therefore, no longer at issue in this inquiry.

## **III. ISSUES**

[para 12] There are nine issues in this inquiry:

- A. Is the information/records responsive to the Applicant’s access request?
- B. Does section 15.1 [previously section 14.1] of the *FOIP Act* apply to the access request?
- C. Are the records excluded from the application of the *FOIP Act* by section 4(1)(c) [previously section 4(1)(b.1)]?
- D. Does section 17 [previously section 16] of the *FOIP Act* (personal information) apply to the records/information?
- E. Did the CHR properly apply section 18 [previously section 17] of the *FOIP Act* (individual health or safety, or public safety) to the records/information?
- F. Did the CHR properly apply section 24(1)(a) [previously section 23(1)(a)] of the *FOIP Act* (advice) to the records/information?

- G. Did the CHR properly apply section 27(1)(a) [previously section 26(1)(a)] of the *FOIP Act* (privileged information) to the records/information?
- H. Did the CHR properly apply section 27(1)(b) [previously section 26(1)(b)] of the *FOIP Act* (privileged information) to the records/information?
- I. Does section 32 [previously section 31] of the *FOIP Act* require the CHR to disclose information in the public interest?

[para 13] The *Revised Statutes of Alberta (R.S.A. 2000)* came into force on January 1, 2002. Although this did not result in substantive changes, various sections of the *FOIP Act* and other pieces of legislation have been renumbered. Consequently, if a section number in a piece of legislation was changed pursuant to *R.S.A. 2000*, this Order will refer to both the new section number as well as the previous number.

#### **IV. DISCUSSION**

##### **A. Is the information/records responsive to the Applicant's access request?**

[para 14] In the CHR's written submission, the CHR states that records 21, 22, 23, 24, 95, 97, 98, 170, 171, 192, 236, 242 and 243 are not responsive to the access request. In the CHR's record list, the CHR also identifies record 172 as non-responsive.

[para 15] In Order 97-020, the Commissioner stated that information or records will be responsive to an access request if they are reasonably related to the request.

[para 16] The Applicant requested access to all documents relating to an investigation regarding the physician including all electronic memos, interoffice memos and documents. The Applicant also requested access to all written complaints by the physician's patients and all correspondence between the CHR and the College of Physicians and Surgeons.

[para 17] After a review of the records identified by the CHR as not responsive, I find that records 21, 22, 23, 24, 95, 97, 98, 192, 236, 242 and 243 are not responsive to the access request. These records are not reasonably related to the access request. The CHR properly withheld these records from the Applicant.

[para 18] However, I find that records 170, 171 and 172 are reasonably related to the access request. Records 170 and 171 consist of a reappointment review application. Record 172 relates to a review of the physician's hospital charts. I find that all of these records are responsive to the access request. I will consider these records in this Order.

**B. Does section 15.1 [previously section 14.1] of the *FOIP Act* apply to the access request?**

[para 19] In the CHR's submission, the CHR states that the following records fall within the jurisdiction of the *Health Information Act* (the "*HIA*"):

25, 26, 27, 32, 33, 33B, 34, 35, 36, 39, 40, 41, 42, 43, 44, 45, 46, 48(severed portion), 49, 59, 60, 61, 62, 63, 64, 64B, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 89, 90, 91, 92, 94(severed portion), 96, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 112, 113, 114, 115, 116, 117, 118, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 143, 144, 145, 146, 149, 153, 155, 168, 169, 174, 175, 176, 177, 183, 184, 185, 186, 187, 188, 190, 191, 193, 194, 195, 196, 197, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 219, 220, 221, 224, 225, 226, 227, 228, 229, 232, 233, 234, 235, 237, 238, 239, 240, 241, 244, 250, 251, 252, 253, 254, 255, 256, 257/258, 259, 261, 262, 265, 274, 275, 276, 277, 278, 279

[para 20] In the CHR's record list, the CHR also identified the severed portion of record 5 as falling within the jurisdiction of the *HIA*. As such, I will also address whether this record falls within the *HIA*.

[para 21] There are also a number of records at issue that are duplicates of the records listed above. Records 162 and 264 are duplicates of record 153 while records 152, 161 and 263 are duplicates of record 143. Records 15 and 55 are duplicates of record 25, record 56 is a duplicate of record 26, while record 57 is a duplicate of record 27. Records 28, 142 and 260 are duplicates of record 5. Records 217 and 218 are duplicates of records 45 and 46. Record 222 is a duplicate of record 221. I will address all of these duplicate records under the *HIA*. In addition, as a portion of record 5 has already been disclosed to the Applicant, I will treat records 28, 142 and 260 as if they were also disclosed in severed form.

[para 22] In addition, records 170, 171 and 172 consist of a medical staff reappointment review form, records 181, 182 and 247 address the physician's suspension, while records 54, 87, 88, 154, 156, 157, 158, 159, 164, 180 and 223 relate to the subcommittee's review of the physician. Due to the nature of these records, I will also address whether these records fall under the *HIA*.

[para 23] However, I will not address whether record 106 falls under the *HIA* as the CHR's record list states that record 106 was disclosed to the Applicant.

[para 24] In summary, the records at issue under section 15.1 [previously section 14.1] are as follows:

5(severed portion), 15, 25, 26, 27, 28 (severed portion), 32, 33, 33B, 34, 35, 36, 39, 40, 41, 42, 43, 44, 45, 46, 48 (severed portion), 49, 54, 55, 56,

57, 59, 60, 61, 62, 63, 64, 64B, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94 (severed), 96, 100, 101, 102, 103, 104, 105, 107, 108, 109, 111, 112, 113, 114, 115, 116, 117, 118, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142 (severed portion), 143, 144, 145, 146, 149, 152, 153, 154, 155, 156, 157, 158, 159, 161, 162, 164, 168, 169, 170, 171, 172, 174, 175, 176, 177, 180, 181, 182, 183, 184, 185, 186, 187, 188, 190, 191, 193, 194, 195, 196, 197, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 232, 233, 234, 235, 237, 238, 239, 240, 241, 244, 247, 250, 251, 252, 253, 254, 255, 256, 257/258, 259, 260 (severed portion), 261, 262, 263, 264, 265, 274, 275, 276, 277, 278, 279

[para 25] Section 15.1 [previously section 14.1] of the *FOIP Act* reads:

15.1(1) *If a request is made under section 7(1) for access to a record that contains information to which the Health Information Act applies, the part of the request that relates to that information is deemed to be a request under section 8(1) of the Health Information Act and that Act applies as if the request had been made under section 8(1) of that Act.*

(2) *Subsection (1) does not apply if the public body that receives the request is not a custodian as defined in the Health Information Act.*

[para 26] Section 15.1 [previously section 14.1] states that an access request will be deemed to be a request under the *HIA* if two criteria are met:

- (1) The public body is a custodian under the *HIA*; and
- (2) The information falls under the jurisdiction of the *HIA*.

[para 27] If these two criteria are met, the custodian must then decide whether the Applicant is entitled to access the health information under the provisions of the *HIA*.

1. Is the CHR a custodian under the *HIA*?

[para 28] The CHR is a custodian under section 1(1)(f)(iv) of the *HIA*. As such, the first criterion is met.

2. Does the information fall under the jurisdiction of the *HIA*?

[para 29] Section 5 of the *HIA* states that information will fall under the *HIA* if it is considered “health information”. Section 5 reads:

*5(1) This Act, except Part 3, applies in respect of health information collected before or after the coming into force of this Act.*

*(2) Part 3 of this Act applies only in respect of health information collected after the coming into force of this Act.*

[para 30] Part 3 is not relevant in this inquiry.

[para 31] Health information is defined in section 1(1)(k) of the *HIA* as meaning diagnostic, treatment and care information, health services provider information and registration information. Diagnostic, treatment and care information is defined in section 1(1)(i), health services provider information is defined in section 1(1)(o) and registration information is defined in section 1(1)(u) of the *HIA*:

Diagnostic, Treatment and Care Information

*1(1) In this Act,*

...

*(i) “diagnostic, treatment and care information” means information about any of the following:*

*(i) the physical and mental health of an individual;*

*(ii) a health service provided to an individual;*

*(iii) the donation by an individual of a body part or bodily substance, including information derived from the testing or examination of a body part or bodily substance;*

*(iv) a drug defined in the Pharmaceutical Profession Act provided to an individual;*

*(v) a health care aid, device, product, equipment or other item provided to an individual pursuant to a prescription or other authorization;*

*(vi) the amount of any benefit paid or payable under the Alberta Health Care Insurance Act or any other amount paid or payable in respect of a health service provided to an individual,*

*and includes any other information about an individual that is collected when a health service is provided to the individual, but does not include information that is not written, photographed, recorded or stored in some manner in a record;*

## Health Services Provider Information

*1(1) In this Act,*

...

*(o) “health services provider information” means the following information relating to a health services provider:*

- (i) name;*
- (ii) business and home mailing addresses and electronic addresses;*
- (iii) business and home telephone numbers and facsimile numbers;*
- (iv) gender;*
- (v) date of birth;*
- (vi) unique identification number that*
  - (A) is assigned to the health services provider by a custodian for the purpose of the operations of the custodian, and*
  - (B) uniquely identifies the health services provider in relation to that custodian;*
- (vii) type of health services provider and licence number, if a licence has been issued to the health services provider;*
- (viii) date on which the health services provider became authorized to provide health services and the date, if any, on which the health services provider ceased to be authorized to provide health services;*
- (ix) education completed, including entry level competencies attained in a basic education program and post-secondary educational degrees, diplomas or certificates completed;*
- (x) continuing competencies, skills and accreditations, including any speciality or advanced training acquired after completion of the education referred to in sub clause (ix), and the dates they were acquired;*
- (xi) restrictions that apply to the health services provider’s right to provide health services in Alberta;*
- (xii) decisions of a health professional body, or any other body at an appeal of a decision of a health professional body, pursuant to which the health services provider’s right to provide health services in Alberta is suspended or cancelled or made subject to conditions, or a reprimand or fine is issued;*
- (xiii) business arrangements relating to the payment of the health services provider’s accounts;*
- (xiv) profession;*
- (xv) job classification;*
- (xvi) employment status;*
- (xvii) number of years the health services provider has practised the profession;*



- (xviii) employer;*
- (xix) municipality in which the health services provider's practice is located,*

*but does not include information that is not written, photographed, recorded or stored in some manner in a record;*

### Registration Information

*1(1) In this Act,*

*...*

*(u) "registration information" means information relating to an individual that falls within the following general categories and is more specifically described in the regulations:*

*(i) demographic information, including the individual's personal health number;*

*(ii) location information;*

*(iii) telecommunications information;*

*(iv) residency information;*

*(v) health service eligibility information;*

*(vi) billing information,*

*but does not include information that is not written, photographed, recorded or stored in some manner in a record;*

[para 32] After a review of the records and all the arguments of all the parties, I find that all of the records at issue under section 15.1 [previously section 14.1] consist of health information.

[para 33] I find that this information falls within sections 1(1)(i), 1(1)(o) and 1(1)(u) of the *HIA*. This information consists of diagnostic, treatment and care information of both the physician and his patients as well as some registration information of the physician's patients. In addition, this information consists of health services provider information which includes: the physician's name (s. 1(1)(o)(i)), business and home mailing addresses and electronic addresses (s. 1(1)(o)(ii)); business and home telephone numbers and facsimile number (s. 1(1)(o)(iii)); date of birth (s. 1(1)(o)(v)); type of health services provider and licence number (s. 1(1)(o)(vii)); date the physician ceased to be authorized to provide health services (s.1(1)(o)(viii)); continued competencies

(s.1(1)(o)(x)); restrictions that apply on the physician's right to provide health services in Alberta (s.1(1)(o)(xi)); profession (s. 1(1)(o)(xiv)); job classification (s. 1(1)(o)(xv)); employment status (s. 1(1)(o)(xvi)); employer (s. 1(1)(o)(xviii)) and the municipality in which the physician's practice is located (s. 1(1)(o)(xix)).

[para 34] Since this information falls under the *HIA* it is excluded from the *FOIP Act* by operation of law, see paragraphs 40 and following.

### 3. Is the Applicant entitled to access the Health Information?

[para 35] Section 7(1) of the *HIA* states that an individual has a right of access to any record containing the health information about the individual. Section 7(1) does not, however, give the individual the ability to access the health information about another individual. This is further supported by section 11(2)(a) of the *HIA* which states that a custodian must refuse to disclose health information to an applicant if the health information is about another individual. Section 11(2)(a) reads as follows:

*11(2) A custodian must refuse to disclose health information to an applicant*

*(a) if the health information is about an individual other than the applicant, unless the health information was originally provided by the applicant in the context of a health service being provided to the applicant,*

[para 36] After a review of the records and all the arguments of all the parties, I find that section 11(2)(a) applies to all of the records at issue under section 15.1 [previously section 14.1].

[para 37] These records consist of health information of an individual other than the Applicant. In addition, this health information was not originally provided by the Applicant to the CHR. As such, I uphold the CHR's decision to withhold these records from the Applicant. The Applicant cannot get access to these records under the *HIA*.

[para 38] In the alternative, I find that the information regarding the subcommittee's review of the physician falls within section 11(2)(b) as being a practice review. Section 11(2)(b) reads:

*11(2) A custodian must refuse to disclose health information to an applicant*

...

*(b) if the health information sets out the procedures or contains the results of an investigation, a discipline proceeding, a practice review or an inspection relating to a health services provider*

[para 39] In Order H2002-002, I held that a practice review in the context of the Act includes activities involved in the review of the quality of health services provided by a health services provider. After a review of the records, I find many of the records would set out the procedures or contain the results of a practice review under section 11(2)(b). As such, I find that section 11(2)(b) would apply to these practice review records. Consequently, the Applicant cannot get access to these records under the *HIA*.

4. Are the records excluded from the application of the *FOIP Act* by section 4(1)(u) [previously section 4(1)(p)]?

[para 40] Section 4(1)(u) [previously section 4(1)(p)] of the *FOIP Act* states

*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:*

...  
*(u) health information as defined in the Health Information Act that is in the custody or under the control of a public body that is a custodian as defined in the Health Information Act.*

[para 41] This section states that the *FOIP Act* will not apply to health information, as defined in the *HIA*, that is in the custody or under the control of a custodian as defined in the *HIA*. I have already decided that the records at issue under section 15.1 [previously section 14.1] consist of health information. I also find that all of these records are in the custody or under the control of a custodian. As such, these records are excluded from the application of the *FOIP Act*. The Applicant cannot get access to these records under the *FOIP Act*.

**C. Are the records excluded from the application of the *FOIP Act* by section 4(1)(c) [previously section 4(1)(b.1)]?**

[para 42] Given my decisions above, there are no records remaining to be considered under section 4(1)(c) [previously section 4(1)(b.1)].

**D. Does section 17 [previously section 16] of the *FOIP Act* (personal information) apply to the records/information?**

[para 43] Given my decisions above, there are no records remaining to be considered under section 17 [previously section 16].

**E. Did the CHR properly apply section 18 [previously section 17] of the *FOIP Act* (individual health or safety or public safety) to the records/information?**

[para 44] Given my decisions above, there are no records remaining to be considered under section 18 [previously section 17].

**F. Did the CHR properly apply section 24(1)(a) [previously section 23(1)(a)] of the FOIP Act (advice) to the records/information?**

[para 45] Given my decisions above, there are no records remaining to be considered under section 24(1)(a) [previously section 23(1)(a)].

**G. Did the CHR properly apply section 27(1)(a) [previously section 26(1)(a)] of the FOIP Act (privileged information) to the records/information?**

[para 46] Given my decisions above, there are no records remaining to be considered under section 27(1)(a) [previously section 26(1)(a)].

**H. Did the CHR properly apply section 27(1)(b) [previously section 26(1)(b)] of the FOIP Act (privileged information) to the records/information?**

[para 47] Given my decisions above, there are no records remaining to be considered under section 27(1)(b) [previously section 26(1)(b)].

**I. Does section 32 [previously section 31] of the FOIP Act require the CHR to disclose information in the public interest?**

[para 48] Section 32(1) is an override provision within the FOIP Act. As there are no records that remain subject to the application of the FOIP Act, section 32(1) does not apply to the records at issue in this inquiry.

**V. ORDER**

[para 49] I make the following Order under section 80 of the HIA and section 72 [previously section 68] of the FOIP Act:

**A. Is the information/records responsive to the Applicant's access request?**

[para 50] I find that records 21, 22, 23, 24, 95, 97, 98, 192, 236, 242 and 243 are not responsive to the access request. The CHR properly withheld these records from the Applicant. I find that records 170, 171 and 172 are responsive to the access request. I have considered these records in this Order.

**B. Does section 15.1 [previously section 14.1] of the FOIP Act apply to the access request?**

[para 51] I find that section 15.1 [previously section 14.1] of the FOIP Act applies to the following records:

5(severed portion), 15, 25, 26, 27, 28 (severed portion), 32, 33, 33B, 34, 35, 36, 39, 40, 41, 42, 43, 44, 45, 46, 48 (severed portion), 49, 54, 55, 56, 57, 59, 60, 61, 62, 63, 64, 64B, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76,

78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94 (severed), 96, 100, 101, 102, 103, 104, 105, 107, 108, 109, 111, 112, 113, 114, 115, 116, 117, 118, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142 (severed portion), 143, 144, 145, 146, 149, 152, 153, 154, 155, 156, 157, 158, 159, 161, 162, 164, 168, 169, 170, 171, 172, 174, 175, 176, 177, 180, 181, 182, 183, 184, 185, 186, 187, 188, 190, 191, 193, 194, 195, 196, 197, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 232, 233, 234, 235, 237, 238, 239, 240, 241, 244, 247, 250, 251, 252, 253, 254, 255, 256, 257/258, 259, 260 (severed portion), 261, 262, 263, 264, 265, 274, 275, 276, 277, 278, 279

[para 52] I find that the above records fall under the jurisdiction of the *HIA* and that, pursuant to section 11(2)(a) of the *HIA*, the CHR must not disclose these records to the Applicant. As such, I order the CHR not to disclose these records to the Applicant under the *HIA*. In addition, I find that section 4(1)(u) [previously section 4(1)(p)] of the *FOIP Act* also applies to these records. As such, these records are excluded from the application of the *FOIP Act*. The Applicant cannot get access to these records under the *FOIP Act*.

**C. Are the records excluded from the application of the *FOIP Act* by section 4(1)(c) [previously section 4(1)(b.1)]?**

[para 53] Given my decision above, there are no records remaining to be considered under section 4(1)(c) [previously section 4(1)(b.1)].

**D. Does section 17 [previously section 16] of the *FOIP Act* (personal information) apply to the records/information?**

[para 54] Given my decision above, there are no records remaining to be considered under section 17 [previously section 16].

**E. Did the CHR properly apply section 18 [previously section 17] of the *FOIP Act* (individual health or safety or public safety) to the records/information?**

[para 55] Given my decision above, there are no records remaining to be considered under section 18 [previously section 17].

**F. Did the CHR properly apply section 24(1)(a) [previously section 23(1)(a)] of the *FOIP Act* (advice) to the records/information?**

[para 56] Given my decision above, there are no records remaining to be considered under section 24(1)(a) [previously section 23(1)(a)].

**G. Did the CHR properly apply section 27(1)(a) [previously section 26(1)(a)] of the *FOIP Act* (privileged information) to the records/information?**

[para 57] Given my decision above, there are no records remaining to be considered under section 27(1)(a) [previously section 26(1)(a)].

**H. Did the CHR properly apply section 27(1)(b) [previously section 26(1)(b)] of the *FOIP Act* (privileged information) to the records/information?**

[para 58] Given my decision above, there are no records remaining to be considered under section 27(1)(b) [previously section 26(1)(b)].

**I. Does section 32 [previously section 31] of the *FOIP Act* require the CHR to disclose information in the public interest?**

[para 59] As there are no records that remain subject to the application of the FOIP Act, section 32(1) does not apply to the records at issue in this inquiry.

Frank Work, Q.C.  
Information and Privacy Commissioner