

**ALBERTA**  
**OFFICE OF THE INFORMATION AND**  
**PRIVACY COMMISSIONER**

**ORDER F2002-024**

January 14, 2003

**ALBERTA ENVIRONMENT**

Review Number 2267

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

**Summary:** The Applicant applied under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to Alberta Environment (the “Public Body”) for records related to an investigation on a specific property. The Public Body initially refused to disclose all of the records on the basis of the personal information and law enforcement exceptions under the Act. However, the Public Body ultimately provided more than 950 pages of records to the Applicant.

Adjudicator Bell upheld the Public Body’s decision that certain records were exempt from the application of the Act pursuant to sections 4(1)(l)(iii), (v) and (q). He also held that the Public Body had properly applied section 20(1)(a) [previously section 19(1)(a)] and section 17 [previously section 16] to the records. He ordered the Public Body not to disclose those records to the Applicant.

**Statutes Cited:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c.F-25, ss. 1(h), (n) and (r) [previously s. 1(1)(h), (n) and (r)], 4(1)(q),(l)(iii) and (v), section 17(1) [previously s.16(1)], s. 17(2)(g) [previously s. 16(2)(g)], s.17(4)(b) and (g) [previously s. 16(4)(b) and (g)], s. 20(1)(a) and (h) [previously s. 20(1)(a) and (e)], s. 32 (1)(a) and (b) [previously s. 31(1)(a) and (b)], s. 71(1) and (2) [previously s. 67(1) and (2)], s. 72 [previously section 68]; *Water Act*, R.S.A. 2000, c. W-3, *Water Resources Act*, R.S.A. 1980, c. W-5.

**Cases Cited:** *Ontario (Attorney General) v. Fineberg*, [1994] 19 O.R. (3d) 197 (On. Gen. Div. Ct.).

**Orders Cited:** **AB:** 96-003, 96-006, 96-019, 96-020, 97-009, 2000-003, 2000-022, 2000-023; **ON:** PO-1899.

## **I. BACKGROUND**

[para. 1.] By letter received on July 6, 2001, the Applicant made an access request to Alberta Environment (the “Public Body”) under the *Freedom of Information and Protection of Privacy Act* (the “Act”) for records relating to an investigation under the *Water Act* concerning a specific property in Alberta.

[para. 2.] The Public Body severed all responsive records under sections 16(1) [now section 17(1)] and 16(4)(b) [now section 17(4)(b)], 19(1)(a) and 19(1)(e) [now section 20(1)(a) and (h)] of the Act. By letter received on September 5, 2001, the Applicant asked the Commissioner’s Office to review of the Public Body’s decision.

[para. 3.] Mediation began. On January 21, 2002, the Public Body advised the Applicant that it had re-evaluated its severing and decided to release records to the Applicant. On February 12, 2002, more records were released to the Applicant. A letter from the Portfolio Officer responsible followed on February 13, 2002. No settlement was reached. On May 17, 2002, more records were released to the Applicant.

[para. 4.] On May 28, 2002, notice of a written inquiry was issued to the parties. A written inquiry was held in September 2002.

[para. 5.] During the inquiry, I directed my legal counsel to write a letter to the Public Body, to clearly identify the records it wanted to release to the Applicant, as it had indicated in paragraph 18 of its initial submission.

[para. 6.] The Public Body replied in writing with a list of those records on November 26, 2002, and indicated that it had released those records to the Applicant. It also identified some discrepancies in the numbering of the records listed in its submission, and provided a copy of the submission with the corrected lists of records.

[para. 7.] As there were no new arguments and no new records at issue, I accepted these clarifications and completed the inquiry.

[para. 8.] On January 1, 2002, the revised *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, came into force. Most of the section numbers of the Act changed, but not the substance of the sections. The Public Body began processing the request using the previous section numbers, then switched to the current section numbers after January 1, 2002. Therefore, I will use the previous and the current section numbers in my Order as appropriate. The previous section numbers appear in square brackets after the new section numbers in this Order.

## **II. PRELIMINARY ISSUES**

**Should the issues for inquiry be changed?**

[para. 9.] The Notice of Inquiry tracks the issues and section numbers found in the Portfolio Officer's February 13, 2002 letter and the Public Body's letter to the Applicant dated January 21, 2002:

Does section 4(1)(p) of the Act apply to the records?

Does section 17 apply to the records?

Did the Public Body properly apply section 20(1)(a) to the records?

Did the Public Body properly apply section 20(1)(h) to the records?

[para. 10.] In its inquiry submission, the Public Body argued for the first time that the issues for the inquiry should be changed:

22. The reference to s. 4(1)(p) in Issue 1 is a mistranslation of s. 4(1)(l) under the former Act. The correct section to refer to is s. 4(1)(q) of the Act.

23. In addition...the following exceptions to disclosure have been applied to the records and information responsive to this request:

s. 4(1)(l)(iii)

s. 4(1)(l)(v)

s. 24(1)(a) and (b)

24. It is respectfully requested that the inquiry deal with the following issues:

Does section 4(1)(p) [sic (q)], (l)(iii) and (l)(v) apply to the records?

Does section 17 apply to the records?

Did the Public Body properly apply section 20(1)(a) to the records?

Did the Public Body properly apply section 20(1)(h) to the records?

Did the Public Body properly apply section 24(1)(a) and (b) to the records?

### **The new section 4(1)(l)(iii) and (v), (q) claims**

[para. 11.] Section 4(1) is a provision that limits my jurisdiction. The Public Body correctly stated that if a record falls within one of the provisions of section 4(1), then the Act does not apply and the Public Body has no obligation to provide access to the record: Order 2000-003. Consequently, I have to consider these claims, although they were raised very late.

### **The new section 17(4)(g) claims [previously section 16(4)(g)]**

[para. 12.] Section 17(1) [previously section 16(1)] is a mandatory ("must") provision that requires public bodies not to disclose the personal information of third parties, if it would be an unreasonable invasion of third party privacy. Because section 17(1) is a mandatory provision, I must consider the Public Body's section 17(4)(g) [previously section 16(4)(g)] claims, even though they were raised very late.

### **The new section 24(1)(a) and (b) claims [previously section 23(1)(a) and (b)]**

[para. 13.] The Commissioner has declined to allow parties to raise new issues at inquiry, where the effect would be to create delay, or prejudice a party, or allow a broad after-the-fact justification for an earlier exercise of discretion: see, for example, Orders 97-009 and 2000-023.

[para. 14.] Section 24(1)(a) and (b) [previously section 23(1)(a) and (b)] are discretionary (“may”) exceptions. Even if these exceptions apply, a public body can decide to disclose the information at issue. In this case, the Public Body had ample time to review its application of the Act. It did not object to the Notice of Inquiry, which listed the issues. Yet it surprised the Applicant and me by purporting to apply a new discretionary exception to disclosure, without prior notice, at inquiry. If I allowed the section 24(1)(a) and (b) claims, I would have to provide the Applicant with an opportunity to respond, creating more delay. In the circumstances, I will not consider the Public Body’s claims under section 24(1)(a) and (b).

### **III. RECORDS AT ISSUE**

[para. 15.] The records the Public Body identified as being at issue are set out in Appendix A to this Order. The Public Body’s corrected listing of records generally corresponded to the records. Slight discrepancies persisted. Record B74 was listed under section 17(4)(b) [previously section 16(4)(b)], although the record had been released to the Applicant. Record E 72 was listed as severed under section 17(4)(b) [previously section 16(4)(b)], although the submission correctly indicated elsewhere that the record was non-responsive to the Applicant’s request. As well, the records and Ms. Jaycock’s letter to the Applicant, dated November 26, 2002, show that B56 was severed under section 17(4)(g) [previously section 16(4)(g)], although this record does not appear in the Public Body’s submissions. Appendix B lists the section 20(1)(a) and (h) records [previously section 19(1)(a) and (e)] that remained after I considered the section 4(1) claims.

### **IV. ISSUES**

[para. 16.] There are four issues in this inquiry. I will consider them in this order:

- A. Do sections 4(1)(l)(iii), 4(1)(l)(v) and 4(1)(q) of the Act apply to the records?
- B. Did the Public Body properly apply section 20(1)(a) [previously section 19(1)(a)] to the records?
- C. Did the Public Body properly apply section 20(1)(h) [previously section 19(1)(e)] to the records?
- D. Does section 17 [previously section 16] apply to the records?

[para. 17.] Under section 71(1) of the Act [previously section 67(1)] the Public Body has the burden of proof for issues A, B, and C. The allocation of the burden is more complicated for issue D. Under section 71(2) [previously section 67(2)], if the Public Body establishes that the records severed under section 17 [previously section 16] contain third party personal information, and that there is a rebuttable presumption that disclosing the information would unreasonably invade the privacy of a third party, then the Applicant bears the burden of proving that disclosure of that information would not be an unreasonable invasion of the third party's personal privacy.

## V. DISCUSSION OF THE ISSUES

### Issue A. Do sections 4(1)(l)(iii),(v) and (q) of the Act apply to the records?

[para. 18.] The various provisions of section 4(1) relied upon by the Public Body read:

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 made from information

...

(iii) in the office of the Registrar of Corporations

....

(v) in a Land Titles Office,

....

(q) 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;

### Section 4(1)(l)(iii) claims

[para. 19.] The Public Body argues in essence that section 4(1)(l)(iii) applies to the records, which are created from information in the Office of the Registrar of Corporations and relates to the statutory functions of the Registrar.

[para. 20.] In Order 2000-022, the Commissioner found that records created during the course of normal operations of a Land Titles Office, using information in that registry, were exempted from the application of the Act. I agree that this general analysis applies to analogous records in the Office of the Registrar of Corporations. I find that the records are made from information in the Corporate Registry. I am satisfied that these records fall within section 4(1)(l)(iii) and are exempted from the application of the Act. I have no jurisdiction over these records. The Applicant cannot get access to them under the Act.

### **Section 4(1)(l) (v) claims**

[para. 21.] The Public Body relies on Order 2000-022 and argues that the records are clear on their face that they are made from information in the Land Titles Office, and relate to a statutory function (title searches) performed by that Office.

[para. 22.] I am satisfied that the records are made from information in the Land Titles Office and come within section 4(1)(l)(v). These records are exempted from the application of the Act. I have no jurisdiction over these records. The Applicant cannot get access to them under the Act.

### **Section 4(1)(q) claim**

[para. 23.] The Public Body says that the types of records contemplated by section 4(1)(q) include correspondence created and sent by someone else acting on behalf of one of the persons listed in the provision. The Public Body argues that the record is correspondence created on letterhead of the Office of a member of the Executive Council and is directed to another member of the Executive Council. Therefore, the record is clear on its face that it falls within section 4(1)(q).

[para. 24.] The Applicant argues that “the inquiry lies with Alberta Environment and not with a specific MLA/Office nor the Speaker. If one assumed this argument, one could use this for any matter or investigation brought against any branch of the government.”

[para. 25.] The purpose of section 4(1)(q) is to afford certain persons in government the opportunity to communicate internally about matters, without fear that this discussion will be disclosed publicly. This provision is applied narrowly, on a record by record basis.

[para. 26.] After reviewing the record, I find that it was created by or for a member of the Executive Council and was directed to another member of the Executive Council. Therefore, the record falls within section 4(1)(q)(i) and is exempt from the application of the Act: Order 96-020. I have no jurisdiction over this record. The Applicant cannot get access to this record under the Act.

### **Issue B. Did the Public Body properly apply section 20(1)(a) [previously section 19(1)(a)] to the records?**

[para. 27.] The Public Body applied section 20(1)(a) to records that I have determined are not subject to the Act, pursuant to section 4(1)(iii) and 4(1)(v). I will consider whether section 20(1)(a) applies to the remaining records that I have set out in Appendix B to this Order.

### **The Law**

[para. 28.] Section 20(1)(a) [previously section 19(1)(a)] is a discretionary exemption that permits a public body to decide not to disclose records, if the disclosure could harm a law

enforcement matter. The relevant provisions of section 20(1) for Issues B and C are these:

20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm a law enforcement matter

...

(h) deprive a person of the right to a fair trial or impartial adjudication

[para. 29.] The relevant part of the definition of “law enforcement” in the Act reads:

1 In this Act,

(h) ‘law enforcement’ means

...

(ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred...

[para. 30.] The Applicant argues that a violation of a provincial law has occurred and both citizens and the environment have been “harmed by an unresolved investigation that has been conducted over an unreasonable length of time.” Further, “citizens have a right to expect their government to bring some sort of closure within a reasonable length of time.” The Applicant found it difficult to comment on the application of the provision, as he was “unaware if an ongoing enforcement investigation even exists.” He argued that he and other local residents have never been asked to provide a statement or deposition to any officers.

[para. 31.] For the purposes of the Act, “law enforcement” activities include the activities of a public body that are directed towards investigation, and enforcing compliance with standards and duties imposed by a statute or regulation: Order 96-006. An “investigation” has been defined as: “to follow up step by step by patient inquiry or observation; to trace or track; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry”: Order 96-019. Finally, for the purposes of the Act, an activity is “law enforcement” if it could lead to a penalty or sanction for the person in breach of the applicable law.

[para. 32.] The Public Body is the successor to Alberta Environmental Protection. The Public Body, like its predecessor, is mandated to protect the environment under the *Water Act* and the earlier *Water Resources Act*. Both of these Acts prohibit any activities from occurring on or near a body of water unless they are authorized under these Acts. Both Acts provide specific powers of inspection and investigation for compliance. Sanctions and penalties for non-compliance are found in both Acts.

[para. 33.] The Public Body argues persuasively that the Act’s reference to “administrative investigations” in its definition of “law enforcement” includes inspections under the *Water Resources Act* and the *Water Act*, as these inspections are investigative activities that “search into, take evidence, examine, inquire and observe” and could lead to a penalty or sanction being imposed on a person.

[para. 34.] I accept the arguments of the Public Body. I find that the records relate to a law enforcement matter, as per section 20(1)(a) [previously section 19(1)(a)] of the Act.

**Could the law enforcement matter reasonably be harmed by disclosure of the information in the records?**

[para. 35.] The test for a reasonable expectation of harm under section 20(1)(a) [previously section 19(1)(a)] is sourced in Order 96-003:

To discharge the burden, explicit and sufficient evidence must be presented to show a ‘reasonable expectation of probable harm.’ The evidence must demonstrate a probability of harm from disclosure and not just a well-intentioned but unjustifiably cautious approach to the avoidance of any risk whatsoever because of the sensitivity of the matters at issue...

[para. 36.] The following test for a reasonable expectation of harm must be applied on a record by record basis:

- ◆ the Public Body must show a clear cause and effect relationship between the disclosure and the harm alleged;
- ◆ the harm that would be caused by the disclosure constitutes “damage” or “detriment” to the matter and not simply hindrance or minimal interference; and
- ◆ the likelihood of harm must be genuine and conceivable.

[para. 37.] The Public Body argues that it evaluated the harm that would flow from disclosure of the records on several occasions. It says that it has released more than 950 pages of records to the Applicant. The Public Body provided more arguments *in camera* about the harm that would flow from disclosure of the information it severed.

[para. 38.] I am satisfied that the Public Body has met the test for establishing that a reasonable expectation of harm exists if the records are disclosed. It has showed a causal relationship between the disclosure and the harm alleged; the harm would constitute damage to the investigation; and the likelihood of harm is genuine and quite conceivable. While evaluating the Public Body’s argument about harm, I considered Ontario Order PO-1899. This Order concerned an access request for Ontario Provincial Police (“OPP”) records relating to a fatal motor vehicle accident. The public body severed information under provisions analogous to section 20(1)(a). My Ontario colleague, Adjudicator Goodis, upheld the severing and accepted the following argument, which I think applies here, in general terms:



. . . [T]he release of the records at issue would seriously interfere with an ongoing matter... Public dissemination of the information in the records, at this point in time, could lead to the suppression or destruction of evidence and could alert the suspect or others about the extent and nature of the evidence compiled by the OPP and hinder the prosecution of the suspect. (at paragraph 21)

[para. 39.] Although the matter is several years old, I am satisfied that there is a reasonable expectation of probable harm to the law enforcement matter (the ongoing investigation) if the information in the records were disclosed. Having made that determination, I must still consider whether the Public Body properly exercised its discretion in refusing to disclose the records to which section 20(1)(a) [previously section 19(1)(a)] applies.

**Did the Public Body properly exercise its discretion not to disclose the records?**

[para. 40.] The evidence shows that after its initial refusal to disclose any records, the Public Body took seriously its obligation to provide the Applicant with access to records under the Act. It revisited its decisions over time in light of the Act's purposes, and showed some flexibility in its position, releasing more than 950 pages of records by its count. I am persuaded that the Public Body properly exercised its discretion not to disclose the remaining records under this provision. As Adams J. stated in *Ontario (Attorney General) v. Fineberg*, [1994] 19 O.R. (3d) 197 (On. Gen. Div. Ct.), commenting on the application of the *Ontario Freedom of Information and Protection of Privacy Act*: “exemptions [to disclosure] are to be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context...” . Therefore, I uphold the decision of the Public Body not to disclose these records.

[para. 41.] If it were any comfort to the Applicant, I would consider carefully whether to allow a public body to apply this exemption to the records of an investigation that was long dead. The evidence shows that this investigation is ongoing. Perhaps ironically, disclosure of the remaining records would likely undermine the protective efforts of both the Public Body and the Applicant.

**Issue C. Did the Public Body properly apply section 20(1)(h) [previously section 19(1)(e)] to the records?**

[para. 42.] Given my decision under Issue B, I do not need to consider this issue.

**Issue D. Does section 17 [previously section 16] apply to the records?**

**Discussion**

[para. 43.] Given my decision under Issues A and B, there are no records left to consider under section 17(4)(b) [previously section 16(4)(b)]. I need only consider the claims under section 17(4)(g) [previously section 16(4)(g)].

[para. 44.] Section 17(1) [previously section 16(1)] is a mandatory section of the Act. It reads:

17(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.

### **Do the records contain personal information?**

[para. 45.] "Personal information" is defined in section 1(n) of the Act [previously section 1(1)(n)] non-exhaustively as follows:

1 In this Act,

(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,

.....

(viii) anyone else's opinions about the individual

[para. 46.] Section 1(r) of the Act [previously section 1(1)(r)] defines a "third party" as: "a person, a group of persons or an organization other than an applicant or a public body."

[para. 47.] After reviewing the records, I find that there is personal information of third parties scattered throughout the records, as indicated by the Public Body.

### **Does section 17(2)(g) [previously section 16(2)(g)] apply to the records?**

[para. 48.] Section 17(2)(g) of the Act [previously section 16(2)(g)] reads:

(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

....

(g) the information is about a licence, permit or other similar discretionary benefit relating to

(i) a commercial or professional activity, that has been granted to the third party by a public body, or

(ii) real property, including a development permit or building permit, that has been granted to the third party by a public body,

and the disclosure is limited to the name of the third party and the nature of the licence, permit or other similar discretionary benefit

[para. 49.] The Applicant argued that section 17(2)(g) [previously section 16(2)(g)] applied to justify the disclosure of third party personal information:

This investigation and my notification to the Alberta Government concerned a violation of the laws of Alberta. .... I fail to see an issue here with ‘unreasonable invasion of personal privacy’. I would argue that the citizens of Alberta and the environment have been harmed by an unresolved investigation that has been conducted over an unreasonable period of time.

....

Under section 17(2)(g) of the FOIP Act...disclosure is not an unreasonable invasion if the information is about a license or permit granted to the third party by a public body, or if it concerns real property. I would submit both of these are true in this case. An application for permit was received and granted by AEP after the intrusion into the watercourse...and in spite of numerous concerns raised to AEP by members of the public.

[para. 50.] The Public Body argued that it had already released all the records containing a third party personal information collected primarily for the purpose of processing that party’s application for permits.

[para. 51.] The Applicant’s argument fails to consider the last part of 17(2)(g) [previously section 16(2)(g)], which says that the disclosure is permissible if it “is limited to the name of the third party and the nature of the license, permit or other similar discretionary benefit.” I accept the argument of the Public Body that it has already released the third party personal information that it could under section 17(2)(g) [previously section 16(2)(g)]. I find that section 17(2)(g) [previously section 16(2)(g)] does not apply to any of the severed third party personal information in the records.

**Does section 17(4)(g) [previously section 16(4)(g)] apply to the records?**

[para. 52.] The relevant provision of section 17(4) [previously section 16(4)], which relates to the presumption that a disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy, reads:

(4) 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,

[para. 53.] The Public Body argued that section 17(4)(g) [previously section 16(4)(g)] applies to the records, since the third party personal information at issue consists of names, initials, phone numbers, addresses, associations of a third party, descriptions of the location of a third party’s residence and that party’s relationship to other third parties, and to the Applicant.

[para. 54.] After reviewing the records, I find that section 17(4)(g) (i) and (ii) [previously section 16(4)(g)(i) and (ii)] applies to the records, as the severed information consists of a third party’s name, which appears with other personal information about the third party,

or the disclosure of the name of the third party would reveal personal information about the third party.

**What relevant circumstances did the Public Body consider under section 17(5) [previously section 16(5)]?**

[para. 55.] Before making a final determination about severing third party personal information, the head of a public body must consider all of the relevant circumstances under section 17(5) [previous section 16(5)], including these:

- (5) In determining under subsections (1) and (4) 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,
  - (b) the disclosure is likely to promote public health and safety or the protection of the environment...

[para. 56.] In its submission, the Public Body correctly pointed out that even if neither section 17(4)(b) or (g) [previously section 16(4)(b) or (g)] apply, the third party personal information could still be severed under section 17(1) [previously section 16(1)], if the relevant circumstances weigh in favour of non-disclosure.

[para. 57.] The Public Body relied heavily on the relevant circumstance that it had released various complaint letters about the subject matter of the investigation to promote transparent and accountable government under section 17(5)(a) of the Act [previously section 16(5)(a)]. The Applicant argued that section 17(5)(b) [previously section 16(5)(b)], which refers to disclosure being likely to promote the protection of the environment, weighed in favour of disclosure.

[para. 58.] Since the Public Body established that the presumption that disclosure of third party personal information would be an unreasonable invasion of third party privacy under these two provisions, the Applicant has the burden to prove the contrary, as set out in paragraph 17 of this Order. The Applicant has not been able to do so. In particular, I do not agree with the Applicant that disclosure of third party personal information to him in the circumstances would promote the protection of the environment; in fact, it could have the opposite effect. The relevant circumstances weigh in favour of not disclosing the third party personal information, particularly given the prior disclosure of records, and the fact that much of the personal information at issue relates to third parties whose information has been drawn into the ongoing investigation.

[para. 59.] Accordingly, I uphold the Public Body's decision to sever third party personal information under section 17(1), (4) (g)(i) and (ii) [previously section 16(1), (4)(g) (i) and (ii)]. I intend to order the Public Body not to disclose that third party personal information to the Applicant.

## **Closing comments**

[para. 60.] In passing, the Applicant claimed that all of the records should be released under the public interest override provision of the Act (section 32(1)(a) and (b), [previously section 31(1)(a) and (b)]). As there is an ongoing investigation, no evidence of the emergency-like circumstances required under the Act to justify disclosure in the public interest under section 32(1)(a), and the Applicant and his neighbours have knowledge of the situation, I find there is no basis for applying section 32 (1)(a) or (b) to the records.

## **VI. ORDER**

[para. 61.] I make the following Order under section 72 of the Act [previously section 68].

### **Issue A. Do sections 4(1)(l)(iii), 4(1)(l)(v) and 4(1)(q) of the Act apply to the records?**

[para. 62.] On Issue A, I find that:

- ◆ Section 4(1)(iii) applies to records E339, E341-343, E344-352. They are exempt from the application of the Act. I have no jurisdiction over these records. The Applicant cannot get access to these records under the Act.
- ◆ Section 4(1)(v) applies to records E9-10, E148-149, E166-167, E202-203, E336-338, B205-206, B241-242 (entire records). They are exempt from the application of the Act. I have no jurisdiction over these records. The Applicant cannot get access to these records under the Act.
- ◆ Section 4(1)(q) applies to record F233. The record is exempt from the application of the Act, and I have no jurisdiction over it. The Applicant cannot get access to the record under the Act.

### **Issue B. Did the Public Body properly apply section 20(1)(a) [previously section 19(1)(a)] to the records?**

[para. 63.] On Issue B, I find that section 20(1)(a) [previously section 19(1)(a)] applies to these records: A2, B1-2, B3, B4, B6-7, B8-14(iii), B15-16, B17-19, B20-21, B22-23, B24-25, B26, B27-28, B30-32, B33, B36-37, B48, B49, B59-61, B64-66, B69-73, B75, B76-85, B86-88, B89-90, B91, B92-93, B96-97, B107-108, B109-110, B111-117, B118, B119, B120, B121-122, B123-124, B126-130, B131-134, B135, B138, B139-143, B144-147, B148, B149-151, B152-153, B154-157, B158, B159-166, B167, B168-175, B176-207 (except B205-206), B208-209, B210, B211, B212-243 (except B225-226, B241-242), B244, B245, B246, B247, B248-249, B250, B251-259, B260-263, B264-265, B266-272, B321, B322, B323, B324, B325-332, B333, B334, B335, B336, B337, B338-339, B340-341, B342-343, B344, B347-349, B350-351, B352-360, B361-366, B367, B368-371, B372-375, E7, E8, E11, E16-20, E21, E22-23, E26, E27, E28-29, E39-40,

E47-49, E50-51, E52-54, E55, E57-61, E77-79, E80-81, E84-86, E87-90, E91, E92-93, E94-95, E96-97, E100-105, E106-109, E110-116, E117-150 (except E 133-134, 148-149), E151-168 (except E161, 166-67), E169-172, E173-204 (except E186 and 187, 202-203), E205-323 (except E245-247, 255-263, 266-276, 277-285, 302-305, 312-315, 317, 319-323), E324-329, E330-331, E332-335, E336-352 (except E 336-338, 339, 341-343, 344-346, 347-349, 350-352), E353, E354-355, E356-357, E358-365, E366-369, E370-373, E374-386, E387-388, E389, E390, videotape.

[para. 64.] I uphold the decision of the Public Body not to disclose these records.

**Issue C. Did the Public Body properly apply section 20(1)(h) [previously section 19(1)(e)] to the records?**

[para. 65.] Given my decision on Issue B, I do not need to make an Order on Issue C.

**Issue D. Does section 17 [previously section 16] apply to the records?**

[para. 66.] On Issue D, I find that section 17(1) and 4(g)(i) and (ii) [previously section 16(1) and (4)(g)(i) and (ii)] applies to these records: F65, F144, F270, F323, F215-218 (except F217), F435, F459, F460, C15, C17, C24-26, B15-16, B51, B56, E55, E77-78, E80, E292, E306-308, E358, E293, E316, E323, E370, E374, E264-265, B6-7. Given my decision under Issues A and B, I do not need to make an Order respecting the Public Body's application of section 17(4)(b) [previously section 16(4)(b)].

[para. 67.] I uphold the decision of the Public Body not to release these records to the Applicant. I Order the Public Body not to release these records to the Applicant.

Dave Bell  
Adjudicator

## APPENDIX "A"

Section 4(1)(q): F233 (entire record)

Section 4(1)(1)(iii): E339, E341-343, E344-346, E347-349, E350-352 (entire records).

Section 4(1)(1)(v): E9-10, E148-149, E166-167, E202-203, E336-338, B205-206, B241-242 (entire records).

Section 20(1)(a) and (h): A2, B1-2, B3, B4, B6-7, B8-14(iii), B15-16, B17-19, B20-21, B22-23, B24-25, B26, B27-28, B30-32, B33, B36-37, B48, B49, B59-61, B64-66, B69-73, B75, B76-85, B86-88, B89-90, B91, B92-93, B96-97, B107-108, B109-110, B111-117, B118, B119, B120, B121-122, B123-124, B126-130, B131-134, B135, B138, B139-143, B144-147, B148, B149-151, B152-153, B154-157, B158, B159-166, B167, B168-175, B176-207, B208-209, B210, B211, B212-243 (except B225-226), B244, B245, B246, B247, B248-249, B250, B251-259, B260-263, B264-265, B266-272, B321, B322, B323, B324, B325-332, B333, B334, B335, B336, B337, B338-339, B340-341, B342-343, B344, B347-349, B350-351, B352-360, B361-366, B367, B368-371, B372-375, E7, E8, E9-11, E16-20, E21, E22-23, E26, E27, E28-29, E39-40, E47-49, E50-51, E52-54, E55, E57-61, E77-79, E80-81, E84-86, E87-90, E91, E92-93, E94-95, E96-97, E100-105, E106-109, E110-116, E117-150 (except E 133-134), E151-168 (except E161), E169-172, E173-204 (except E186 and 187), E205-323 (except E245-247, 255-263, 266-276, 277-285, 302-305, 312-315, 317, 319-323), E324-329, E330-331, E332-335, E336-352, E353, E354-355, E356-357, E358-365, E366-369, E370-373, E374-386, E387-388, E389, E390, videotape (entire records)

Section 17(4)(b): B1-2, B3, B4, B6-7, B8-14(iii), B15-16, B17-19, B20-21, B22-23, B24-25, B26, B27-28, B31-32, B33, B36-37, B48, B49, B64-66, B69-73, B75, B76-85, B86-88, B89-90, B91, B92-93, B96-97, B107-108, B109-110, B111-117, B118, B119, B120, B121-122, B123-124, B126-130, B131-134, B135, B138, B139-143, B144-147, B148, B149-151, B152-153, B154-157, B158, B159-166, B167, B168-175, B176-207, B208-209, B210, B211, B212-243 [except B225-226], B244, B245, B246, B247, B248-249, B250, B251-259, B260-263, B264-265, B266-272, B321, B322, B323, B324, B325-332, B333, B334, B335, B336, B337, B338-339, B340-341, B342-343, B344, B347-349, B350-351, B352-360, B361-366, B367, B368-371, B372-375, E7, E8, E9-11, E16-20, E21, E22-23, E26, E27, E39-40, E47-49, E50-51, E52-54, E55, E72, E77-79, E80-81, E84-86, E87-90, E91, E92-93, E94-95, E96-97, E100-105, E106-109, E110-116, E117-150 (except E133 and 134), E151-168 (except E161), E169-172, E173-204 (except E186 and 187), E205-323 (except 245-247, 256-260, 255, 261, 260, 263, 266-276, 277-278, 279, 280, 281, 282-285, 302-305, 312-315, 317, 319, 320, 321-322, 323), E324-329, E330-331, E332-335, E336-352, E353, E354-355, E356-357, E358-365, E366-369, E370-373, E374-386, E387-388, E389, E390. (entire records)

Section 17(4)(g): F65, F144, F270, F323, F215-218 (except F217), F435, F459, F460, C15, C17, C24-26, B15-16, B51, E55, E77-78, E80, E292, E306-308, E358, E293, E316, E323, E370, E374, E264-265, B6-7.

## APPENDIX "B"

Section 20(1)(a) and (h) (after section 4(1)(l)(iii) and (v) records eliminated): A2, B1-2, B3, B4, B6-7, B8-14(iii), B15-16, B17-19, B20-21, B22-23, B24-25, B26, B27-28, B30-32, B33, B36-37, B48, B49, B59-61, B64-66, B69-73, B75, B76-85, B86-88, B89-90, B91, B92-93, B96-97, B107-108, B109-110, B111-117, B118, B119, B120, B121-122, B123-124, B126-130, B131-134, B135, B138, B139-143, B144-147, B148, B149-151, B152-153, B154-157, B158, B159-166, B167, B168-175, B176-207 (except B205-206) B208-209, B210, B211, B212-243 (except B225-226, B241-242), B244, B245, B246, B247, B248-249, B250, B251-259, B260-263, B264-265, B266-272, B321, B322, B323, B324, B325-332, B333, B334, B335, B336, B337, B338-339, B340-341, B342-343, B344, B347-349, B350-351, B352-360, B361-366, B367, B368-371, B372-375, E7, E8, E11, E16-20, E21, E22-23, E26, E27, E28-29, E39-40, E47-49, E50-51, E52-54, E55, E57-61, E77-79, E80-81, E84-86, E87-90, E91, E92-93, E94-95, E96-97, E100-105, E106-109, E110-116, E117-150 (except E 133-134, 148-149), E151-168 (except E161, 166-67), E169-172, E173-204 (except E186 and 187, 202-203), E205-323 (except E245-247, 255-263, 266-276, 277-285, 302-305, 312-315, 317, 319-323), E324-329, E330-331, E332-335, E336-352 (except E 336-338, 339, 341-343, 344-346, 347-349, 350-352) E353, E354-355, E356-357, E358-365, E366-369, E370-373, E374-386, E387-388, E389, E390, videotape (entire records)