

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2004-001

February 24, 2004

UNIVERSITY OF CALGARY

Review Number 2700

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

Summary: The Applicant, a Ph.D. candidate at the University of Calgary (the “Public Body”), submitted a Request for Information to the Public Body under the *Freedom of Information and Protection of Privacy Act* (the “Act”). The request asked for access to all file information from the Public Body including 245 documents contained in the Applicant’s Faculty of Graduate Studies student file.

The Public Body provided the Applicant with almost all the records but severed a few of the records arguing that sections 24(1)(a), 24(1)(b) and 27(1)(a) of the Act applied to the records. The Applicant wanted all the remaining records. The Adjudicator found that the Public Body properly applied sections 24(1)(a), 24(1)(b) and 27(1)(a) of the Act to the records at issue.

Statute Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 24(1)(a), 24(1)(b), 27(1)(a) and 72.

Authorities Cited: AB: Order 96-017.

I. BACKGROUND

[para 1] The Applicant was a Ph.D. candidate at the University of Calgary (the “Public Body”). In 2003 the Applicant requested information from the Public Body under the *Freedom of Information and Protection of Privacy Act* (the “Act”). The request asked for access to all file information from the Public Body including 245 documents contained in the Applicant’s Faculty of Graduate Studies student file.

[para 2] The Public Body provided the Applicant with almost all the records, but severed seven pages of the records arguing that it did so in accordance with the Act. The Public Body argued that sections 24(1)(a), 24(1)(b) and 27(1)(a) of the Act applied to the records in support of its decision to sever and partially disclose seven of the 245 pages on the Applicant’s file.

[para 3] The Applicant requested that the Office of the Information and Privacy Commissioner review the decision of the Public Body to sever information found in the seven remaining records. Mediation was authorized, but was unsuccessful. The matter was set down for written inquiry.

[para 4] The Public Body and the Applicant both submitted initial briefs. The Public Body asked for a supplemental brief to be accepted *in camera*. I accepted it because it contained personal or sensitive information. I also accepted the records *in camera*.

II. RECORDS AT ISSUE

[para 5] The records consist of seven pages relating to the Applicant.

III. ISSUES

[para 6] There are two issues in this inquiry:

A. Did the Public Body properly apply section 27(1) of the Act (privileged information) to the records/information?

B. Did the Public Body properly apply section 24 of the Act (“advice”) to the records/information?

IV. DISCUSSION OF THE ISSUES

ISSUE A: Did the Public Body properly apply section 27(1) of the Act (privileged information) to the records/information?

[para 7] Section 27(1) of the Act reads:

27(1) The head of a public body may refuse to disclose to an applicant

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

[para 8] The Applicant did not argue for or against the application of any specific section of the Act and did not offer a rebuttal to the submission of the Public Body. The submission of the Applicant is limited to copies of materials addressing his academic status and his background qualifications.

[para 9] The Public Body, referencing Order 96-017, argued that pages 2, 7 and 13 of the records were subject to legal privilege. They include correspondence between the Public Body and its legal counsel, correspondence between other members of the Public Body quoting legal advice received from counsel, and information relating to an existing or contemplated lawsuit. Specifically, the Public Body argued that solicitor-client privilege protects communications between a lawyer and his or her client, especially communications intended to be confidential.

[para 10] The Public Body argued that it properly exercised its discretion in accordance with section 27(1)(a) of the Act when it severed pages 2, 7 and 13. In support of the argument, the Public Body demonstrated and concluded that the records consisted of legal advice regarding an existing lawsuit and that the records were written, in confidence, by the legal counsel for the Public Body to the Public Body.

[para 11] The Public Body clearly demonstrated, by providing supportive evidence and arguments, that the three records meet the criteria for solicitor-client privilege and also that the Public Body properly exercised its discretion in refusing the Applicant access to those records. I find that the Public Body properly applied section 27(1)(a) of the Act to pages 2, 7 and 13.

ISSUE B: Did the Public Body properly apply section 24 of the Act (“advice”) to the records/information?

[para 12]] Sections 24(1)(a) and 24(1)(b) of the Act read:

24(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

reveal

- (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council,
- (b) consultations or deliberations involving
 - (i) officers or employees of a public body,
 - (ii) a member of the Executive Council, or
 - (iii) the staff of a member of the Executive Council,....

[para 13] In its review of section 24(1)(b) of the Act, the Public Body noted that the word “deliberation” means a discussion or consideration of the reasons for and against an action. The Public Body argued that “consultation” is when the views of one or more officers or employees are sought regarding the appropriateness of particular proposals or suggested actions. Therefore the severance, it was argued, was in accordance with the Act.

[para 14] The Public Body argued that pages 18, 33, 37 and 204 of the records were severed in accordance with section 24(1)(b)(i) of the Act. The Public Body argued that officials with decision-making authority sought advice and recommendations from other individuals in authority on what administrative steps would be appropriate. The Public Body argued that the records clearly represent discussion or consideration of the reasons for and against an action, and thus are within the meaning of “consultations or deliberations” found in section 24(1)(b)(i) of the Act. I agree.

[para 15] In exercising its discretion, the Public Body said it took into consideration the understanding of the confidentiality of the records and relevant factors such as the value of confidential evaluations in this type of employment situation. Therefore, I conclude that the Public Body properly exercised its discretion when it refused the Applicant access to the records.

[para 16] I find that the Public Body properly applied section 24(1)(b)(i) of the Act to pages 18, 33, 37 and 204.

[para 17] The Public Body also argued that portions of page 204 were severed in accordance with sections 24(1)(a) of the Act. As I have found that section 24(1)(b)(i) of the Act applies to page 204, I do not need to review the application of section 24(1)(a) of the Act to page 204.

[para 18] The Public Body also argued that section 24(1)(a) of the Act applied to page 13. As I have found that the Public Body properly applied section 27(1)(a) of the Act to page 13, there is now no need to consider the application of section 24(1)(a) of the Act to page 13.

V. ORDER

[para 19] I make this Order under section 72 of the Act.

[para 20] I find that the Public Body properly applied section 27(1) of the Act to pages 2, 7 and 13 of the records.

[para 21] I find that the Public Body properly applied section 24(1)(b)(i) of the Act to pages 18, 33, 37 and 204 of the records.

Dave Bell
Adjudicator