

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2004-012

July 6, 2005

SOUTHERN ALBERTA INSTITUTE OF TECHNOLOGY

Review Number 2432

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

Summary: The Southern Alberta Institute of Technology Academic Faculty Association (the “Applicant”), submitted a request for information to the Southern Alberta Institute of Technology (the “Public Body”) under the *Freedom of Information and Protection of Privacy Act* (the “Act”). The request asked for access to specified minutes of the Board of Governors minutes of the Public Body and its various committees.

The Public Body provided the Applicant with the majority of the records but severed the remaining records arguing that similar information would no longer be supplied to the Public Body (section 16 of the Act); local body confidences would not be protected (section 23(1)(b) of the Act); advice from officials would be discouraged (section 24(1)); and economic interests could be harmed (section 25(1)(c) of the Act). The Applicant wanted access to all the remaining records. The Commissioner found that the Public Body properly applied sections 23(1)(b), 24(1) and section 25(1)(c)(ii) to withhold the records. Therefore, he did not have to consider whether section 16(1) also applied. He further found that section 32(1)(b) of the Act did not require the Public Body to disclose information in the public interest.

Statute Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 16, 23(1)(b), 24(1), 25(1)(c) and 32(1)(b); *Freedom of Information and Protection of Privacy Regulation*, Alta. Reg. 200/95, s.18(1).

Authorities Cited: AB: Orders 96-011, 96-021, 98-011, 98-019, 99-013, 99-040, 2000-028, 2001-010 and 2001-040.

I. BACKGROUND

[para 1] The Southern Alberta Institute of Technology Academic Faculty Association (the “Applicant”) in 2001 requested from the Southern Alberta Institute of Technology (the “Public Body”) records under the *Freedom of Information and Protection of Privacy Act* (the “Act”). The request asked for access to specific closed Board of Governors and Board of Governors Committee minutes of the Public Body.

[para 2] 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 records. Mediation was authorized, but was unsuccessful. The matter was initially set down for an oral inquiry and later, with the agreement of the Applicant and the Public Body, the inquiry was changed to a written inquiry.

[para 3] By the time of this inquiry the Public Body disclosed to the Applicant additional records and retained certain severed portions of the remaining records arguing that it did so in accordance with the Act. As certain information was subsequently made public both parties agreed that section 17 of the Act was no longer at issue and section 17 was replaced with section 32(1)(b) of the Act as an issue. Therefore, the sections of the Act remaining at issue were sections 16, 23(1)(b), 24(1), 25(1)(c) and 32(1)(b) of the Act.

[para 4] The Public Body and the Applicant both submitted initial briefs and rebuttals. The Public Body asked for an affidavit of a senior official to be accepted *in camera*. I accepted the affidavit *in camera* because it contained personal or sensitive information.

II. RECORDS AT ISSUE

[para 5] The remaining records at issue consist of 43 severed pages of minutes relating to meetings the Public Body’s Board of Governors and its Committees. The meetings took place in 2001. They are as follows:

Board of Governors meetings on: September 25, 2001, pages 000002 to 000006; October 30, 2001, pages 000008, 000009, 000011 and 000012; November 27, 2001, pages 000002 to 000007, 000009 and 000010;

Governance and Priorities Committee of the Board meetings on: September 18, 2001, pages 000014 and 000017; November 20, 2001, pages 000002 to 000007;

Audit and Financial Governance Committee of the Board meeting on September 18, 2001, pages 000018 to 000022;

Board's Expansion Project Work Team meetings on: October 2, 2001, pages 000024 to 000027; November 6, 2001, pages 000028 to 000031; November 20, 2001, pages 000032 to 000036.

III. ISSUES

[para 6] When the original oral inquiry was set, there were five issues:

Does section 16 of the Act (business interests) apply to the records/information?

Does section 17 of the Act (personal information) apply to the records/information?

Did the Public Body properly apply section 23(1)(b) of the Act (local public body confidences) to the records/information?

Did the Public Body properly apply sections 24(1)(a),(b),(c),(d),(g),(h) of the Act (advice from officials) to the records/information?

Did the Public Body properly apply section 25(1)(c) of the Act (economic interests of a public body) to the records/information?

[para 7] After the parties received approval to proceed with a written inquiry, as opposed to an oral inquiry, both parties agreed that section 17 of the Act was no longer an issue and that section 32(1)(b) of the Act should be added, as follows:

Does section 32(1)(b) of the Act require the Public Body to disclose information in the public interest?

[para 8] I accepted the modifications to the issues and I intend to discuss the issues in a sequence other than that set out above.

IV. DISCUSSION OF THE ISSUES

ISSUE A: Did the Public Body properly apply section 23(1)(b) of the Act (local public body confidences) to the records/information?

[para 9] The Public Body argued that section 23(1)(b) of the Act applies to the information in the following specified segments of the records:

Minutes of the Board of Governors meetings dated: October 30, 2001- page 000009 (last severance) and November 27, 2001-pages 000004 (second severance), 000005 (last severance) and 000007 (last severance); Minutes of the Expansion Projects Work Team meeting dated November 20, 2001-pages 000033, 000034 and 000036; Minutes of the Governance and Priorities Committee of the Board of Governors September 18, 2001-page 000014 and November 20, 2001- page 000004 (last three severances);

[para 10] Section 23(1)(b) of the Act reads:

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

....

(b) the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act authorizes the holding of that meeting in the absence of the public.

[para 11] Section 1(j) of the Act defines a “local public body” as”

(j) "local public body" means

(i) an educational body,....

[para 12] The Applicant acknowledged that the Public Body is a local public body under the Act and there is nothing before me to lead me to believe it is otherwise. The defining of the Public Body as a local public body, for the purpose of section 23(1)(b) of the Act is not at issue.

[para 13] The Public Body and Applicant agree that section 23(1)(b) of the Act is discretionary, under which the Public Body may refuse to disclose information to the Applicant if the disclosure could reasonably be expected to reveal the substance of deliberations of a meeting of the Board or a Board committee of the Public Body. They also agree that to withhold information is contingent on the Board being authorized by statute or by regulation made under the Act to hold meetings in the absence of the public. In addition, both parties accepted the fact that some of the meetings were held at the committee level of the governing body. There is nothing before me to lead me to believe that the Committees are anything other than committees of the governing body, and therefore this component of section 23(1)(b) of the Act is also not at issue.

[para 14] In support of the arguments for the application of section 23(1)(b) of the Act, the Public Body noted that section 7 of the *Technical Institutes Act* grants the Board of the Public Body broad by-law making powers. The Public Body argued that section 8.4.1 of the Board of Governors’ General By-laws (the “by-laws”) authorizes the holding of meetings in the absence of the public and therefore meets the requirement of section

23(1)(b) that an Act authorizes the holding of the meetings in question in the absence of the public.

[para 15] Section 7 of the *Technical Institutes Act* reads:

7. A board

(a) has, subject to this Act, the power to manage and control a technical institute and its property, revenue, business and affairs,

(b) shall determine the general policies with respect to the organization, administration and operation of the technical institute and the courses or programs of instruction or training provided by the board,

(c) may make bylaws respecting the calling of its meetings and regulating the conduct of business at those meetings and generally, regulating the conduct of its business and affairs, and....

[para 16] The Public Body argued that although section 7 of the *Technical Institutes Act* does not explicitly authorize closed meetings, as required by section 23(1)(b) of the Act, the Act does not state that the authorization must be explicit.

[para 17] The Applicant contended that the failure of the *Technical Institutes Act* to explicitly authorize closed door meetings excludes the application of section 23(1)(b) of the Act and therefore there is no basis for the Public Body to refuse to disclose information other than those areas listed in section 18(1) (a) through (f) of the regulation under the Act.

[para 18] The Applicant argued that the information requested dates back to 2001. As a result, section 18(1) of the regulation under the Act likely does not apply to the dated information and therefore the Public Body should release the information as it most likely no longer concerns current matters specified in section 18(1).

[para 19] Section 23(1)(b) of the Act requires that an Act authorize the holding of the meetings in the absence of the public. I find that section 7 of the *Technical Institutes Act* only authorizes the making of by-laws respecting the meetings, and is silent on *in camera* meetings. Therefore it does not meet the requirements of section 23(1)(b) of the Act. Even if By-law 8.4.1 authorizes the holding of meetings in the absence of the public, a by-law is not an Act for the purposes of section 23(1)(b) of the Act: see Order 2001-040. Therefore, I must consider whether a regulation under “this Act” (the *Freedom of Information and Protection of Privacy Act*) authorizes the holding of that meeting in the absence of the public.

[para 20] Section 18(1) of the regulation under the Act reads:

18(1) A meeting of a local public body's elected officials, governing body or committee of its governing body may be held in the absence of the public only if the subject-matter being

considered in the absence of the public concerns

- (a) the security of the property of the local public body,
 - (b) personal information of an individual, including an employee of a public body,
 - (c) a proposed or pending acquisition or disposition of property by or for a public body,
 - (d) labour relations or employee negotiations,
 - (e) a law enforcement matter, litigation or potential litigation, including matters before administrative tribunals affecting the local public body, or
 - (f) the consideration of a request for access for information under the Freedom of Information and Protection of Privacy Act if the governing body or committee of the governing body is itself designated as the head of the local public body for the purposes of the Freedom of Information and Protection of Privacy Act,
- And no other subject-matter is considered in the absence of the public....

[para 21] The Public Body argued that it severed the minutes of the meetings because they described deliberations on a pending acquisition of property, potential sources of funds, revenues, labour relations, the feasibility of various options as well as personal information. As such the Public Body argued that the information therefore clearly fell within the requirements of section 18(1) of the regulation under the Act.

[para 22] Upon examining, *in camera*, severed contents of the minutes of the meetings, all of which were held in the absence of the public, and assessing the overall nature of the meetings in their entirety, I find that they do contain matters specified in sections 18(1)(b), (c) and (d) of the regulation under the Act, in that they address the acquisition of property, personal information and possible impact on employee negotiations. I further find that the only subject matters being considered in the absence of the public were those set out in sections 18(1)(b),(c) and (d) of the regulation under the Act. I conclude that the regulation under the Act authorizes the holding of the meetings in the absence of the public: see Order 2001-040. The next matter to consider is whether disclosure of the information could reasonably be expected to reveal the substance of deliberations of those meetings, as provided by section 23(1)(b) of the Act.

[para 23] The Public Body argued that section 23(1)(b) of the Act does not contemplate disclosure of the substance of deliberations after a decision has been made. The Public Body's view is that the purpose of this provision is to facilitate free and open discussion on an ongoing basis. The Public Body argued that where information pertaining to the substance of deliberations is properly withheld under the section, it may be held indefinitely.

[para 24] The Applicant argued that section 23(1)(b) of the Act contemplates the protection of information generated during the decision-making process. The Applicant addressed the meaning of "the substance of deliberations" in section 23(1)(b) of Act and referenced Order 99-040, arguing that deliberating is the act of weighing and examining

the reasons for and against a contemplated action or course of conduct or choice of acts or means.

[para 25] The Applicant argued that section 23(1)(b) of the Act is intended to shield the substance of deliberations occurring during the decision-making process from disclosure. As such, the Minutes of the Board of Governors and Committees should not be protected as they likely consist of the final decisions or actions to be taken, and what the Public Body seeks to protect is not the substance of the deliberations.

[para 26] The Applicant further argued that the Public Body must ensure that the disclosure could reasonably be expected to reveal information described in this section. If the information has been previously disclosed into the public domain, then section 23(1)(b) of the Act is inapplicable.

[para 27] I have reviewed the severed sections and the supporting affidavit and find that, in all of the meetings specified, disclosure of the information could not reasonably be expected to reveal the substance of deliberations of that meeting. Therefore, I find that the Public Body did not properly apply section 23(1)(b) of the Act to: pages 000033, 000034 and 000036 of the Minutes of the November 20, 2001 Expansion Projects Work Team; page 000014 of the September 18, 2001 and page 000009 (last severance) of the Board of Governors October 30, 2001 Minutes. As the Public Body also applied section 24 of the Act to the Minutes of the November 20, 2001 Board of Expansion Project Work Team pages, I will consider those pages under section 24. With respect to page 000009 (last severance) of the Public Body's Board of Governors October 30, 2001 Minutes, the Public Body also applied section 25(1)(c)(ii) of the Act to it, and I will therefore consider that page under section 25(1)(c)(ii).

[para 28] As to the remaining records at issue, I find that disclosure of the following information could reasonably be expected to reveal the substance of deliberations of those meetings as provided by section 23(1)(b) of the Act: the November 20, 2001 Minutes of the Governance and Priorities Committee, page 000004 (the last three severances) and the November 27, 2001 Minutes of the Board of Governors, pages 000004 (second severance), 000005 (last severance) and 000007 (last severance).

[para 29] Under section 23(1)(b) of the Act (a discretionary provision), the Public Body may choose to disclose information to an applicant even if the information meets the criteria of the section. For the most part, the Public Body has exercised its discretion in favour of disclosing information to the Applicant. The Public Body provided evidence that in exercising its discretion, as with applying other discretionary provisions of the Act, it considered the objects and purposes of the Act and did not exercise its discretion for an improper or irrelevant purpose: see Orders 96-021, 99-013 and 2000-28. I find that the Public Body properly exercised its discretion and therefore properly applied section 23(1)(b) of the Act to the following records/information: the November 20, 2001 Minutes of the Governance and Priorities Committee, page 000004 (the last three severances) and the November 27, 2001 Minutes of the Board of Governors, pages 000004 (second severance), 000005 (last severance) and 000007 (last severance).

[para 30] The Applicant also argued, outside of the issues specified, that pursuant to sections 53(1) and 72(3) of the Act, I ought to issue an order prohibiting the Public Body from continuing to conduct *in camera* sessions. The Public Body argued that I do not have jurisdiction to require the Public Body to cease holding *in camera* proceedings under the Act. I agree with the Public Body. I do not have jurisdiction to require a public body to cease holding *in camera* hearings. I do not have the type of order-making power that the Applicant believes I have: see Order 2001-040.

ISSUE B: Did the Public Body properly apply section 24(1)(a),(b),(c),(d),(g),(h) (advice from officials) to the records/information?

[para 31] The Public Body argued that section 24(1) of the Act applies to the information in the following specified segments of the records:

Minutes of the Public Body's September 25, 2001 Board of Governors meeting: pages 000002 to 000006 (second and last severance of page 000004)- section 24(1)(b)(i) of the Act; Page 000004 (last severance)- section 24(1)(h) of the Act; pages 000005 and 000006- section 24(1)(b)(i) of the Act.

Minutes of the Public Body's October 30, 2001 Board of Governors meeting: pages 000008 and 000009 (first severance)- section 24(1)(b)(i) of the Act; page 000011(first severance)-section 24(1)(b)(i) of the Act and (second severance) section 24(1)(g) of the Act and page 000012- section 24(1)(g) of the Act.

Minutes of the September 18, 2001 Governance and Priorities Committee of the Board meeting: Pages 000014 and 000017 (first and second severances)- section 24(1)(a) of the Act and (second severance)- section 24(1)(b)(i) of the Act.

Minutes of the September 18, 2001 Audit and Financial Governance Committee of the Board meeting: Pages 000018 to 000022- section 24(1)(g) of the Act; page 000022- section 24(1)(a) of the Act.

Minutes of the October 2, 2001 Board's Expansion Project Work Team meeting: page 000024 (top half of page)- section 24(1)(a) of the Act and (bottom half of page) section 24(1)(g) of the Act; pages 000025, 000026 and 000027-section 24(1)(g) of the Act.

Minutes of the November 06, 2001 Board's Expansion Project Work Team meeting: pages 000028, 000029, 000030, 000031-section 24(1)(a) of the Act.

Minutes of the November 20, 2001 Board's Expansion Project Work Team Meeting: pages 000032 to 000036- sections 24(1)(a),(b), (c) and (g) of the Act; apply to various severances.

Minutes of the November 20, 2001 Governance and Priorities Committee of the Board meeting: pages 000002, 000003, 000004 (first two severances) and 000005-section 24(1)(b) of the Act; pages 000006 (second severance) and 000007-section 24(1)(d) of the Act.

Minutes of the November 27, 2001 Board of Governors meeting: Pages 000002 to page 000007 (except the second severance on page 000004 and the last severances on pages 000005 and 000007)-section 24(1)(b) of the Act; page 000009 (top half of page)-section 24(1)(a) of the Act and (bottom half of the page) –section 24(1)(g) of the Act; page 000010-section 24(1)(g) of the Act.

[para 32] Sections 24(1)(a),(b),(c),(d),(g) and (h) 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,
- (c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Alberta or a public body, or considerations that relate to those negotiations,
- (d) plans relating to the management of personnel or the administration of a public body that have not yet been implemented,
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- (g) information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision, or
- (h) the contents of a formal research or audit report that in the opinion of the head of the public body is incomplete unless no progress has been made on the report for at least 3 years.

[para 33] The Applicant argued that these records likely reported the decision and not the decision-making process. The Applicant argued that section 24(1) of the Act protects the decision-making process but not the decision itself, and prevents the

disclosure of the bases for an action or decision. Orders 98-011 and 2001-010 are authority for the Applicant's submissions.

[para 34] The Applicant further argued that the Public Body must ensure that the disclosure could reasonably be expected to reveal information described in section 24(1) of the Act. If the information has been previously disclosed into the public domain, then section 24(1) of the Act is inapplicable.

[para 35] The Public Body argued that it declined to release the records, as disclosure would reveal various aspects of the Public Body's decision-making process. The decision-making process involved reviews of succession planning, fund raising options and other governance-related recommendations, advice and analyses. The Public Body provided detailed arguments and affidavit evidence addressing the specific excised portions of the records and how the excised portions of the records match the criteria set out in section 24(1) of the Act.

[para 36] I have reviewed the submissions and the *in camera* affidavit, and I find that the information meets the criteria of section 24(1) of the Act, as follows:

Minutes of the Public Body's September 25, 2001 Board of Governors meeting: pages 000002 to 000006 (second and last severance of page 000004) - section 24(1)(b)(i) of the Act applies as all of this information relates to officers of the Public Body involved in both deliberation and consultation on budgetary and administrative issues; Page 000004 (first severance)- section 24(1)(h) of the Act applies as the information deals with an incomplete audit report.

Minutes of the Public Body's October 30, 2001 Board of Governors meeting: pages 000008 and 000009 (first severance)- section 24(1)(b)(i) of the Act applies; page 000011(first severance)-section 24(1)(b)(i) of the Act applies as this information addresses deliberations on process as well as administrative practices and procedure matters; page 000011 (second severance) and page 000012-section 24(1)(g) of the Act applies as this information contains proposed plans, policies and projects of the Public Body which could reasonably be expected to result in disclosure of a pending policy or budgetary decisions;

Minutes of the September 18, 2001 Governance and Priorities Committee of the Board meeting: Page 000014, (first and last severances)- section 24(1)(a) of the Act applies as the information on page 000014 represents a policy option developed by the Public Body and page 000017 (second severance)- section 24(1)(b)(i) of the Act applies to this information as it represents deliberations involving officers of the Public Body;

Minutes of the September 18, 2001 Audit and Financial Governance Committee of the Board meeting: pages 000018, 000019, 000020 and 000021- section 24(1)(g) of the Act applies as the information includes proposed plans and policies the disclosure of which could reasonably be expected to result in the

disclosure of policy and budgetary decisions; page 000022-section 24(1)(a) of the Act applies as it includes advice and proposals and analysis developed by the Public Body;

Minutes of the October 2, 2001 Board's Expansion Project Work Team meeting: page 000024 (top half of page)- section 24(1)(a) of the Act as the information involves advice and consultation concerning the Public Body; pages 000024 (the bottom half of page), 000025, 000026 and 000027 section 24(1)(g) of the Act applies as the information includes proposed plans, policies and projects of the Public Body, the disclosure of which could reasonably be expected to result in disclosure of pending policy and budgetary decisions;

Minutes of the November 06, 2001 Board's Expansion Project Work Team meeting: pages 000028, 000029, 000030, 000031-section 24(1)(a) of the Act applies as the information consists of advice, proposals and policy options developed for the Public Body;

Minutes of the November 20, 2001 Board's Expansion Project Work Team meeting: pages 000032 to 000036- section 24(1)(a) of the Act applies to all the severances as the information consists of proposals, advice and policy options developed for and by the Public Body;

Minutes of the November 20, 2001 Governance and Priorities Committee of the Board meeting: pages 000002, 000003, 000004 (first two severances) and 000005-section 24(1)(b) of the Act applies as the information consists of deliberations and consultation of administrative issues by the Public Body; page 000006 (the first severance) section 24(1)(g) of the Act applies as the information involves projects of the Public Body, the disclosure of which could reasonably be expected to result in disclosure of a pending budgetary decision; pages 000006 (the second severance) and 000007-section 24(1)(d) of the Act applies as the information relates to a management proposal that has yet to be implemented;

Minutes of the November 27, 2001 Board of Governors meeting: Pages 000002 to page 000007 (except the second severance on page 000004 and the last severances on pages 000005 and 000007); page 000009 (top half of page)-section 24(1)(a) of the Act and (bottom half of the page)-section 24(1)(b) of the Act applies as these are clearly deliberations among officers of the Public Body considering an administrative action; the top half of page 000009 deals with advice and proposals impacting the Public Body and therefore section 24(1)(a) of the Act applies. Section 24(1)(g) of the Act applies to the bottom half of the page 000009 and to page 000010 as they contain budgetary information and policies, the disclosure of which can reasonably be expected to result in the disclosure of pending budgetary decisions.

[para 37] Section 24(1)(a) of the Act is discretionary (“may”). The Public Body contended that the records withheld fall well within the narrow and specific exceptions of the Act and that it made partial disclosures to the Applicant in a manner consistent with the important access purpose and object of the Act. The Public Body argued that certain information was withheld in an effort to continue to promote open discussion and deliberations between members of the Board, its committees and advisors.

[para 38] I find that the Public Body considered the objects and purposes of the Act and did not exercise its discretion for an improper or irrelevant purpose: see Order 2000-028, and therefore properly exercised its discretion in withholding some records/information. Through affidavit evidence the Public Body demonstrated its awareness of the Act as well as an appreciation for the principles of the public’s right of access to the records held by public bodies. The Public Body also demonstrated awareness that the exceptions to disclosure need to be applied narrowly and specifically.

[para 39] Consequently, I find that the Public Body properly applied section 24(1) of the Act to the records/information listed above.

ISSUE C: Did the Public Body properly apply section 25(1)(c) (economic interests of a public body) to the records/information?

[para 40] The Public Body argued that section 25(1)(c) of the Act applies to the information in the following specified segments of the records:

- Minutes of the Public Body’s October 30, 2001 Board of Governors meeting: page 000009 (last severance).
- Minutes of the October 2, 2001 Board’s Expansion Project Work Team meeting: pages 000026 and 000027.
- Minutes of the November 06, 2001 Board’s Expansion Project Work Team meeting: pages 000028-000030.
- Minutes of the November 20, 2001 Board’s Expansion Project Work Team meeting: pages 000032 to 000035.

[para 41] Section 25(1)(c) reads:

25(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the economic interest of a public body or the Government of Alberta or the ability of the Government to manage the economy, including the following information:

.....

(c) information the disclosure of which could reasonably be expected to

- (i) result in financial loss to,
- (ii) prejudice the competitive position of, or

(iii)interfere with contractual or other negotiations of,
the Government of Alberta or a public body;...

[para 42] The records that were severed under section 25(1)(c)(ii) of the Act were also severed under section 24(1) of the Act. I have already found that section 24(1) of the Act applies to all of these records, with the exception of page 000009 (the last severance) of the Minutes of the Public Body's October 30, 2001 Board of Governors meeting. I am left to decide whether the Public Body properly applied section 25(1)(c)(ii) of the Act to page 000009 (last severance) of the Minutes of the Public Body's October 30, 2001 Board of Governors meeting.

[para 43] The Public Body argued that section 25(1)(c) of the Act allows it the discretion to refuse to disclose information, as releasing the information could result in financial loss associated with sensitive contract negotiations and prejudice the competitive position of the Public Body in relation to existing and proposed revenue-generating projects developed by the Public Body: see Order 98-019.

[page 44] The Applicant argued that this discretionary section contemplates that there must be a direct link between the disclosure of specific information and the harm resulting from that the disclosure. There must be something in the information itself that is capable of causing the harm alleged.

[para 45] The Applicant argued that there could be no apparent financial loss due to the release of information on fund-raising efforts. The concept of financial loss, according to the Applicant, contemplates setbacks in on-going business and that disclosure here would not affect the contribution of funds at some time in the future. Further, the Applicant argued that there has to be a prejudice to the Public Body's competitive position. Understandably the Applicant could not identify the market or who the competitors are.

[para 46] The Public Body argued that disclosure would primarily affect its economic interests in all cases and that there is a definite possibility that disclosure could result in financial loss. The Public Body argued that revenue-generating projects require private sector participation and that disclosure would harm its competitive position and its relations with the private sector.

[para 47] The Public Body provided *in camera* affidavit evidence and supporting arguments on how disclosure could reasonably be expected to harm the economic interest of the Public Body and prejudice its competitive position.

[para 48] I am satisfied that the harm, as explained to me by the Public Body, is not merely an inconvenience or interference. The business of the Public Body involves connections with external organizations and I appreciate that it enters into a number of agreements. It is therefore reasonable to conclude, in these circumstances, that disclosure of the information could reasonably be expected to prejudice the Public Body's competitive position in the present and in the future. The Public Body has also clearly

established a direct link between disclosure of the particular records and a genuine economic harm.

[para 49] I have considered all of the evidence and arguments before me and I find that page 000009 (the last severance) of the Minutes of the Public Body's October 30, 2001 Board of Governors meeting meets the criteria for section 25(1)(c)(ii). I also find that the Public Body exercised its discretion properly in not disclosing this portion of the information under section 25(1)(c)(ii).

[para 50] I find that the Public Body properly applied section 25(1)(c)(ii) of the Act to the foregoing records/information.

ISSUE D: Does section 16 of the Act (business interests) apply to the records/information?

[para 51] At issue under section 16 of the Act is page 000009 (last severance) of the October 30, 2001 Minutes of the Board of Governors.

[para 52] As I have found that section 25(1)(c)(ii) applies to that record, there is no need for me consider whether section 16(1) of the Act also applies.

ISSUE E: Does section 32(1)(b) of the Act require the Public Body to disclose information in the public interest?

[para 53] Section 32(1)(b) of the Act reads:

32(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people, to any person or to an applicant...
(b) information the disclosure of which is, for any other reason, clearly in the public interest.

[para 54] In its reviewing the application of section 32(1)(b) of the Act, the Applicant, acknowledged that the Applicant has the burden of proof under section 32(1)(b) of the Act. The Applicant argued that the Public Body was acting outside of its mandate and not in the public interest by holding closed-door meetings. In support the Applicant also argued that education is a primary concern of all Albertans and that the public has and needs transparent governance, not closed meetings, of an educational institution such as the Public Body.

[para 55] The Public Body argued and provided supporting documentation, that it adopted the practice of holding more closed meetings in pursuit of its redefined role in relation to strategic direction and related issues. The Public Body was not doing so to avoid a public responsibility, but did so by promoting open discussion and debate to govern more efficiently and effectively.

[para 56] The Public Body noted that for section 32(1)(b) of the Act to apply, the public interest would have to override privacy rights and that the type of information contemplated under section 32(1)(b) of the Act is narrowly defined. The Public Body further argued that the Applicant did not provide any information or arguments that would allow it to conclude that circumstances existed that would clearly warrant a public interest disclosure of the information at issue.

[para 57] The Public Body argued that in section 32(1)(b) of the Act, the words “without delay” contemplate the existence of emergency-like circumstances and not the deliberations of a public body.

[para 58] The Public Body, referencing Order 96-011, noted that the supervisory jurisdiction of the Commissioner in reviewing the decision of a head of a public body denying disclosure under section 32(1)(b) of the Act, must be exercised carefully and involve a decision that is rationally defensible.

[para 59] There is nothing in the evidence before me to allow me to conclude that there is an emergency-like circumstance. Further, the Applicant has not proven that there is a risk of significant harm to the environment, or a significant risk of harm to the health and safety of the public, etc., or that there exists a clear and compelling public interest that warrants disclosure under section 32(1)(b) of the Act: see Order 96-011.

[para 60] I have not been presented with any evidence that would require disclosure of information. Therefore, I find that section 32(1)(b) of the Act does not require the Public Body to disclose the information in the public interest.

V. ORDER

[para 61] I make this Order under section 72 of the Act.

[para 62] I find that the Public Body properly applied section 23(1) of the Act to the records specified in this Order. I uphold the Public Body’s decision to refuse to disclose those records.

[para 63] I find that the Public Body properly applied section 24(1) of the Act to the records specified in this Order. I uphold the Public Body’s decision to refuse to disclose those records.

[para 64] I find that the Public Body properly applied section 25(1)(c)(ii) of the Act to the records specified in this Order. I uphold the Public Body’s decision to refuse to disclose these records.

[para 65] As the Public Body properly applied the forgoing provisions of the Act to withhold the records, I do not need to consider whether section 16(1) of the Act also applies to the records.

[para 66] I find that section 32(1)(b) of the Act does not require the Public Body to disclose the information in the public interest.

Frank Work, Q.C.
Information and Privacy Commissioner