

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2005-016

December 1, 2006

EDMONTON POLICE COMMISSION

Review Number 3195

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Summary: The Applicant requested access to a copy of the employment contract for the Chief of Police of the Edmonton Police Service (the “Contract”) pursuant to the *Freedom of Information and Protection of Privacy Act* (the “Act”). The Edmonton Police Commission (the “Public Body”) initially responded by releasing the salary amount but refused to disclose the entire Contract on the basis that disclosure would be an unreasonable invasion of a third party’s personal privacy, as provided by section 17(1) of the Act. The Public Body subsequently reconsidered this decision and notified the Chief of Police (the “Third Party”) of the Public Body’s intention to disclose the entire Contract to the Applicant under section 17(2)(e) of the Act, which provides that disclosure of the Third Party’s classification, salary range, discretionary benefits and employment responsibilities as an officer or employee of the Public Body would not be an unreasonable invasion of the Third Party’s personal privacy. Under section 65(2) of the Act, the Third Party requested a review of the Public Body’s decision to disclose the Contract.

The Commissioner agreed with the Public Body that some clauses of the Contract were the Third Party’s discretionary benefits and employment responsibilities and, as provided by section 17(2)(e) of the Act, disclosure would not be an unreasonable invasion of the Third Party’s personal privacy. The Commissioner also decided that certain clauses of the Contract did not contain personal information. Finally, the Commissioner decided that disclosure of the remaining personal information of the Third Party would not be an unreasonable invasion of the Third Party’s personal privacy, as provided by section 17(1)

of the Act. Consequently, the Commissioner upheld the Public Body's decision to disclose the entire Contract to the Applicant, and ordered the Contract to be disclosed.

Statutes cited: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(e), 1(n), 1(n)(i), 1(n)(vi), 1(n)(vii), 1(n)(ix), 6(2), 17, 17(1), 17(2), 17(2)(a), 17(2)(e), 17(2)(f), 17(2)(h), 17(4), 17(4)(a), 17(4)(d), 17(4)(g), 17(4)(g)(i), 17(5), 17(5)(a), 17(5)(e), 17(5)(f), 17(5)(h), 27(1)(a), 27(2), 65(2), 71(3)(a), 71(3)(b), 72, 72(2)(b); *Freedom of Information and Protection of Privacy Regulation*, Alta. Reg. 200/1995, ss. 6(3), 6(4); *Police Act*, R.S.A. 2000, c. P-17, ss. 31(1), 31(1)(c), 36(1)(a), 36(4)(b), 39(5), 39(8), 41(1), 41(3)(a), 41(3)(b); *Public Service Act*, R.S.A. 2000, c. P-42, ss. 10(1), 13(1).

Orders cited: **AB:** Orders 97-002, 98-001, 98-014, 98-018, 2000-005, 2000-029, 2001-020, F2003-002, F2003-004, F2003-018, F2004-014, F2004-022; **ON:** Orders M-18, M-23.

Authorities cited: *Solosky v. The Queen*, [1980] 1 S.C.R. 821; *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, [2001] 2 S.C.R. 983; *University of Alberta v. Pylpiuk* (2002), A.J. No. 445 (Alta. Q.B.).

I. BACKGROUND

[para 1] The Applicant applied under the *Freedom of Information and Protection of Privacy Act* (the "Act") to the Edmonton Police Service, requesting access to a copy of the contract of employment (the "Contract") for the Chief of Police (the "Third Party"). The Applicant indicated specific interest in details about the salary and benefits, contract length and probationary conditions contained in the Contract. The Edmonton Police Service transferred the access request to the Edmonton Police Commission (the "Public Body").

[para 2] Subsequently, the Applicant asked my Office to review his access request. However, the Public Body had not yet processed the Applicant's access request.

[para 3] The Public Body thereafter responded to the Applicant's access request by disclosing only the salary amount of the Contract. The Public Body refused to disclose the entire Contract under section 17(1) of the Act, claiming that disclosure of the Contract would be an unreasonable invasion of the Third Party's personal privacy.

[para 4] During my Office's review of the Applicant's access request, the Public Body decided to disclose the entire Contract to the Applicant under section 17(2)(e) of the Act, which provides that disclosure of a third party's classification, salary range, discretionary benefits and employment responsibilities as an employee of a public body is not an unreasonable invasion of the third party's personal privacy. The Public Body then gave the Third Party notice of its decision to disclose the Contract.

[para 5] Under section 65(2) of the Act, the Third Party requested that my Office review the Public Body's decision. The matter was set down for a written inquiry.

II. RECORD AT ISSUE

[para 6] The record at issue is the Contract, which is a 12-page agreement between the Public Body and the Third Party.

[para 7] In the affidavit that the Third Party provided for the inquiry, the Third Party said that he did not object to disclosing the following information contained in the Contract:

- Clause 1.1 (appointment as Chief of Police)
- Clause 1.2 (carrying out duties and responsibilities)
- Clause 2.1: first line, and second line to the comma only (start and end date of appointment)
- Clause 10.1: first sentence only (number of vacation days)
- Clause 10.2: first and second lines, and third line to the comma only (allowance for unused vacation entitlement)
- Clause 12.1 (statutory holidays)
- Clause 12.2 (bereavement leave)
- Clause 19.1 (uniforms)

[para 8] Section 17(2)(a) of the Act, combined with section 6(3) and section 6(4) of the *Freedom of Information and Protection of Privacy Regulation* (the "Regulation"), says that disclosure of a third party's personal information is not an unreasonable invasion of the third party's personal privacy if the third party has consented, in writing, to the disclosure. The Third Party has consented in writing to disclosure of personal information contained in the foregoing clauses. Therefore, disclosure is not an unreasonable invasion of the Third Party's personal privacy. I intend to order that the foregoing clauses be disclosed to the Applicant.

III. ISSUES

[para 9] The Notice of Inquiry set out one issue:

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

[para 10] The Third Party's written submission for the inquiry also raised the application of several discretionary exceptions to disclosure contained in the Act. The Third Party said that those discretionary exceptions applied to prevent disclosure of various clauses in the Contract.

[para 11] Discretionary (“may”) exceptions under the Act allow a public body to exercise its discretion to withhold or disclose information, even if the exception applies. The Public Body did not apply any discretionary exceptions to the Contract. The Third Party’s submissions assume that the Public Body would have exercised its discretion to withhold information in the Contract, if the Public Body had applied discretionary exceptions.

[para 12] Following Order F2003-018, I do not have the authority to apply discretionary exceptions for the Public Body, who can choose to disclose information even if a discretionary exception applies. Therefore, I will not consider discretionary exceptions in this inquiry.

[para 13] Furthermore, in Order 98-001, the former Commissioner said, and I agree, that I could not review a public body’s decision to give access [my emphasis] if a discretionary exception is involved, because section 72(2)(b) of the Act confines my authority to issuing an order when a public body has made a discretionary decision to refuse access [my emphasis].

[para 14] The Third Party’s written submission also raised section 27(2) of the Act. The Third Party claimed that section 27(2) applied to Clauses 17.1, 17.2 and 20.1-20.10.

[para 15] Section 27(2) requires a public body to refuse to disclose information that is subject to any type of legal privilege that relates to a person other than a public body. As section 27(2) is a mandatory (“must”) provision that requires a public body to refuse to disclose information if the provision applies, I will consider it in this inquiry. Consequently, I have added the following issue:

Does section 27(2) of the Act (privileged information of a person other than a public body) apply to the records/information?

[para 16] I will confine this Order to the application of section 17 and section 27(2).

IV. DISCUSSION OF THE ISSUES

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

1. General

[para 17] Section 17 of the Act is a mandatory (“must”) exception that requires a Public Body to refuse to disclose “personal information” if disclosure would be an unreasonable invasion of a third party’s personal privacy. Section 17(1) 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.

[para 18] "Personal information" is defined in section 1(n) of the Act as "recorded information about an identifiable individual". Section 1(n) also provides a non-exhaustive list of information that is "personal information".

2. Does section 17(2)(e) of the Act apply?

[para 19] The Public Body was prepared to disclose the entire Contract under section 17(2)(e) of the Act, which provides that disclosure of a third party's classification, salary range, discretionary benefits and employment responsibilities as an employee of a public body is not an unreasonable invasion of the third party's personal privacy.

[para 20] Section 17(2)(e) reads:

17(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

...

(e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council.

[para 21] Section 17(2) contains those provisions for which the Legislature has seen fit to decide that disclosure of certain personal information is not an unreasonable invasion of a third party's personal privacy. In Order 2001-020, the former Commissioner said that one of the purposes of what is now section 17(2)(e) is to permit the disclosure of information about the employment benefits and responsibilities of public employees, allowing a degree of transparency in relation to the compensation and benefits provided to public employees.

[para 22] Therefore, the first consideration is whether section 17(2)(e) applies in this case. If it applies, disclosure of the Third Party's personal information is not an unreasonable invasion of the Third Party's personal privacy.

[para 23] In Order F2004-014, I found that section 17(2)(e) encompasses employment relationships of the type that have classifications, salary ranges and discretionary benefits. I found that "employees" in section 17(2)(e) are "contract of service" employees, in contrast to "independent contractors" who do not have classifications, salary ranges and discretionary benefits, and who are to be considered under section 17(2)(f) (disclosure of personal information reveals financial and other details of a contract to supply goods or services to a public body). In deciding whether section 17(2)(e) or section 17(2)(f) applied, I considered the central question that was set

out by the Supreme Court of Canada in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, [2001] 2 S.C.R. 983, namely, whether the person who has been engaged to perform the services is performing them as a person in business on his own account.

[para 24] Is the Third Party a “contract of service” employee for the purposes of section 17(2)(e)?

[para 25] Section 1(e) of the Act defines “employee” as follows:

I In this Act,

...

(e) “employee”, in relation to a public body, includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body.

[para 26] Section 31(1) of the *Police Act* makes the Public Body responsible for overseeing the Edmonton Police Service. The Public Body’s authority to appoint a chief of police is set out in section 36(1)(a) of the *Police Act*. The Chief of Police is accountable to the Public Body for the operation of the Edmonton Police Service, as provided by section 41(3)(a) of the *Police Act*. Therefore, for the purposes of section 1(e) of the Act, the service that the Third Party performs for the Public Body under the Contract is the operation of the Edmonton Police Service.

[para 27] Section 41(1) of the *Police Act* outlines the responsibilities of a chief of police. As provided by section 41(3)(b) of the *Police Act*, the Chief of Police is accountable to the Public Body for the manner in which he carries out the responsibilities set out in section 41(1). Section 31(1)(c) of the *Police Act* gives the Public Body the authority to issue instructions to the Chief of Police respecting policies providing for efficient and effective policing. Appendix A of the Contract sets out other employment responsibilities.

[para 28] Having reviewed the Contract, the *Police Act* and the relationship the Public Body has with the Chief of Police under the *Police Act*, I conclude that the Contract reflects a “contract of service” employee relationship as encompassed by section 17(2)(e). The degree of control over the Chief of Police, the reporting relationship to the Public Body pursuant to the *Police Act*, and the nature of responsibilities and benefits involved with the position of Chief of Police, are evidence of a “contract of service” employee as opposed to an independent contractor. Clause 4.1 and 4.2 of the Contract are also significant in my decision. Therefore, section 17(2)(f) (disclosure of personal information reveals financial and other details of a contract to supply goods or services to a public body), which is applicable to independent contractors, does not apply.

[para 29] Implicit in section 17(2)(e) is that a third party’s classification, salary range, discretionary benefits and employment responsibilities are the third party’s personal information. However, section 17(2)(e) specifically provides that disclosure of that personal information is not an unreasonable invasion of the third party’s personal

privacy. What remains to be considered under section 17(2)(e) is whether the Contract contains the classification, salary range, discretionary benefits and employment responsibilities of the Chief of Police, who is the “Third Party” for the purposes of section 17.

a. Classification

[para 30] “Classification” exists under section 10(1) of the *Public Service Act*, which allows classification plans to be established in the public service, as a basis for uniform treatment of employees performing the same kind and level of work. Section 13(1) of the *Public Service Act* provides for a salary range for each class in the classification plan.

[para 31] Although Clause 4.2 of the Contract contains a reference to a classification that exists under the *Public Service Act*, the *Public Service Act* does not apply to the Third Party. The Third Party is governed by the *Police Act*.

[para 32] The *Police Act* does not contain any reference to the word “classification”, as such.

[para 33] The Canadian Oxford Dictionary defines “classify” as meaning to “assign (a thing) to a class or category”. Section 36(4)(b) of the *Police Act* refers to police officers being appointed to or promoted to positions or higher ranks within the police service, but it doesn’t necessarily follow from this provision that an appointment or promotion to a position or higher rank would be a “classification” as contemplated by section 17(2)(e).

[para 34] Appointments under the *Police Act* include the appointment of a chief of police for a police service, as provided by section 36(1)(a) of the *Police Act*. The duties of a chief of police under section 41(1) of the *Police Act* make it clear that a chief of police has the administrative responsibility for police officers in the police service, thereby outranking those police officers. Again, it doesn’t necessarily follow from these provisions that “chief of police” is a classification within the police service. Therefore, I will consider whether “chief of police” falls within “employment responsibilities” under section 17(2)(e).

b. Salary range

[para 35] The Canadian Oxford Dictionary defines “range” to mean, among other things, “a series representing variety or choice; a selection”.

[para 36] Clause 8.1 contains the Third Party’s actual annual salary. In Order F2004-014, I was not convinced that section 17(2)(e) spoke to actual salaries, given the Canadian Oxford Dictionary definition of salary as “a fixed regular payment made by an employer to an employee”.

[para 37] In Order F2004-014, I said that implicit in section 17(2)(e) is a policy that there should be transparency for expenditures of public funds for employment or the purchase of services. Ontario Order M-18 supports this view. That case involved a “contract of service” employee relationship in which there was a salary but no salary range. The Ontario Commissioner directed that a salary range be established and disclosed so that the policy goal of transparency in the section of the legislation parallel to section 17(2)(e) could not be defeated by not having a range.

[para 38] In Order F2004-014, I also said that in Alberta, for situations in which there are salary ranges, section 17(2)(e) achieves the desired transparency. For situations in which there are contracts to pay a fee for the performance of a particular service, section 17(2)(f) does so.

[para 39] However, there does not appear to be a mechanism for achieving transparency by reference to section 17(2)(e) where there is a contract of service employee relationship, an exact salary, but no salary range.

[para 40] Nevertheless, it does not follow that actual salary cannot be disclosed. I will consider the Third Party’s actual salary under section 17(4) and section 17(5), in deciding whether disclosure of personal information would be an unreasonable invasion of the Third Party’s personal privacy under section 17(1).

c. Discretionary benefits

[para 41] Section 17(2)(e) of the Act applies to discretionary benefits granted by a public body in an employment context, and therefore applies in this case: see Order F2003-002. As the Third Party is not performing the services as a person on his own account, section 17(2)(h) (disclosure of personal information reveals details of a discretionary benefit of a financial nature granted to the third party by a public body) does not apply.

[para 42] In deciding what constitutes “discretionary benefits”, previous Orders of this Office have defined “benefit” to mean, among other things, a favourable or helpful factor or circumstance, or an advantage: see Orders 98-014, 2001-020 and F2003-002. “Discretionary” means that a decision-maker must have a choice as to whether, or how, to grant the benefit: see Orders 98-018, 2001-020 and F2003-002.

[para 43] In Order 2001-020, the former Commissioner said that the general reference to “benefits”, rather than to specific identified benefits in what is now section 17(2)(e), indicates that the legislative intention was to capture a range of discretionary benefits that flow from the employment relationship. Furthermore, the precise sums and details of the particular discretionary benefit in that case (a severance package) could be disclosed under what is now section 17(2)(e). The fact that the public body exercised its discretion to negotiate mutually acceptable compensation with the third party in that case created the necessary element of a degree of discretion.

[para 44] I have highlighted particular discretionary benefits below, before listing all the clauses that I have found to be discretionary benefits.

[para 45] Clauses 18.4 and 18.7 fall under section 39(8) of the *Police Act*, but section 39(8) is itself a discretionary (“may”) provision, rather than a mandatory (“must”) provision. Therefore, Clauses 18.4 and 18.7 are discretionary benefits. Furthermore, Clauses 18.1 and 18.2 are discretionary benefits because the *Police Act* does not require them.

[para 46] In summary, I find that the following clauses in the Contract are “discretionary benefits” for the purposes of section 17(2)(e), because the Public Body had the choice as to whether, or how, to grant those “benefits”, or otherwise exercised its discretion to negotiate mutually acceptable compensation:

Clauses 7.2, 10.1 (except the first sentence, which I am otherwise ordering to be disclosed because the Third Party does not object to disclosure), 14.1, 14.2, 15.1-15.4, 16.1, 16.2, 18.1, 18.2, 18.4 and 18.7

[para 47] Section 17(2)(e) says that disclosure of the Third Party’s discretionary benefits is not an unreasonable invasion of the Third Party’s personal privacy. Therefore, I intend to order disclosure of the foregoing clauses to the Applicant.

[para 48] The Third Party makes numerous arguments about why disclosure of the discretionary benefits would be an unreasonable invasion of the Third Party’s personal privacy. The Third Party argues that disclosure of those benefits will reveal certain information about him, or will result in harm to him. The Third Party’s arguments speak to the presumptions contained in section 17(4) and the relevant circumstances contained in section 17(5) of the Act, respectively, which must be considered when deciding whether disclosure of a third party’s personal information would be an unreasonable invasion of a third party’s personal privacy under section 17(1).

[para 49] However, if personal information falls within a provision of section 17(2), the presumptions contained in section 17(4) and the relevant considerations contained in section 17(5) are not applicable to a decision under section 17: see also Order F2004-014. This is because section 17(2) refers to certain personal information for which the Legislature has seen fit to decide that disclosure is not an unreasonable invasion of a third party’s personal privacy, as previously discussed. Consequently, I will consider the Third Party’s arguments under section 17(4) and section 17(5) only where section 17(2)(e) does not apply.

[para 50] I find that the following clauses in the Contract contain “benefits”, but the “benefits” are not “discretionary” because the Public Body does not have the choice as to whether, or how, to grant those “benefits”, and the Public Body is not otherwise able to exercise its discretion to negotiate mutually acceptable compensation:

Clauses 9.1, 9.2, 11.1, 11.2 and 18.3

[para 51] Clauses 9.1 and 9.2 contain those benefits given to senior police officers such as the Third Party, by virtue of the employment relationship. There is no discretion exercised in granting those benefits.

[para 52] Clause 18.3 contains a benefit that is required under section 39(5) of the *Police Act*. In my view, benefits required by the *Police Act* are not “discretionary” benefits for the purposes of section 17(2)(e) of the Act because there is no choice as to whether, or how, to grant those benefits.

[para 53] Clauses 11.1 and 11.2 contain benefits that are otherwise required by law. As none of those benefits are discretionary, section 17(2)(e) does not apply to allow disclosure of those benefits.

[para 54] Therefore, I will consider the foregoing clauses under section 17(4) and section 17(5), in deciding whether disclosure of personal information would be an unreasonable invasion of the Third Party’s personal privacy under section 17(1).

d. Employment responsibilities

[para 55] “Employment responsibilities” encompasses those duties that an individual is charged with performing as an officer, employee or member of a public body.

[para 56] I find that Appendix A to the Contract is the Third Party’s “employment responsibilities” for the purposes of section 17(2)(e). Consequently, disclosure of the Third Party’s employment responsibilities contained in Appendix A is not an unreasonable invasion of the Third Party’s personal privacy. I intend to order the Public Body to disclose Appendix A to the Applicant.

[para 57] In Order 98-001, the former Commissioner held that personal information consisting of an applicant’s job title is about the applicant’s employment responsibilities as an employee of a public body. The Contract refers in Clause 1.1 to “Chief of Police” and “Chief”. “Chief of Police” also appears in Clause 5.3, and “Chief” appears in numerous other clauses of the Contract. I find that “Chief of Police” and “Chief” comprise the Third Party’s job titles and are therefore about the Third Party’s job responsibilities for the purposes of section 17(2)(e).

[para 58] The Third Party’s previous job title also appears in Clause 10.1. I find that the previous job title was about the Third Party’s job responsibilities for the purposes of section 17(2)(e).

[para 59] The Third Party does not object to disclosure of “Chief of Police” in Clause 1.1 of the Contract, but does not mention whether he objects to disclosure of “Chief of Police” or “Chief” in other clauses.

[para 60] Disclosure of only “Chief of Police” or “Chief”, and nothing further in a clause, would provide the Applicant with meaningless information. As provided by section 6(2) of the Act, I would not normally order that information to be disclosed if the rest of the information had to be severed and withheld from the Applicant. Consequently, I will first consider the balance of the personal information in the Contract, before deciding whether to order the job title “Chief of Police” and “Chief” to be disclosed wherever it appears in the Contract. I will consider the Third Party’s previous job title in the same manner as “Chief of Police” and “Chief”.

e. Conclusion under section 17(2)(e)

[para 61] As provided by section 17(2)(e) of the Act, I find that disclosure of the following personal information would not be an unreasonable invasion of the Third Party’s personal privacy:

Clauses 7.2, 10.1 (except the first sentence, which I am otherwise ordering to be disclosed because the Third Party does not object to disclosure), 14.1, 14.2, 15.1-15.4, 16.1, 16.2, 18.1, 18.2, 18.4 and 18.7; Appendix A

[para 62] I intend to order the Public Body to disclose the foregoing personal information to the Applicant.

[para 63] As provided by section 17(2)(e) of the Act, I also find that disclosure of the job titles “Chief of Police”, “Chief” and the Third Party’s previous job title would not be an unreasonable invasion of the Third Party’s personal privacy. However, as provided by section 6(2) of the Act, I will first consider the remaining personal information in the Contract, before deciding whether to order those job titles to be disclosed, wherever they appear in the Contract.

[para 64] Section 17(2)(e) does not apply to the remaining personal information contained in the Contract. Consequently, that personal information remains to be considered under section 17(4) and section 17(5), in deciding whether disclosure of that personal information would be an unreasonable invasion of the Third Party’s personal privacy under section 17(1).

3. Is disclosure of the remaining personal information an unreasonable invasion of the Third Party’s privacy, as provided by section 17(1) of the Act?

[para 65] Only the following clauses of the Contract remain to be considered:

Clauses 1.3, 2.1 (second line after the comma, to the end of the clause), 2.2, 3.1, 3.2, 4.1, 4.2, 5.1-5.3, 6.1, 6.2, 7.1, 7.3, 7.4, 8.1-8.3, 9.1, 9.2, 10.2 (third line after the comma, to the end of the clause), 11.1, 11.2, 13.1-13.4, 17.1, 17.2, 18.3, 18.5, 18.6, 18.8, 20.1-20.10

[para 66] The heading and introduction to the Contract also remain to be considered.

a. What “personal information” remains to be considered?

[para 67] “Personal information” is defined in section 1(n) of the Act, as follows:

I 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,

(ii) the individual’s race, national or ethnic origin, colour or religious or political beliefs or associations,

(iii) the individual’s age, sex, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual’s fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,

(vi) information about the individual’s health and health care history, including information about a physical or mental disability,

(vii) information about the individual’s educational, financial, employment or criminal history, including criminal records where a pardon has been given,

(viii) anyone else’s opinion about the individual, and

(ix) the individual’s personal views or opinions, except if they are about someone else;...

[para 68] The Third Party takes the approach that the entire Contract is personal information, from the beginning of the Contract to the signature line.

[para 69] However, the definition of “personal information” in section 1(n) of the Act leads me to a different conclusion. Based on that definition, I find that the following information is the Third Party’s “personal information”:

- the Third Party’s name appearing in the heading and introduction to the Contract, and in nearly every clause of the Contract (section 1(n)(i))

- the Third Party’s business address and telephone number appearing in Clause 20.5 (section 1(n)(i))
- the Third Party’s signature at the end of the Contract. The signature is recorded information about an identifiable individual (section 1(n)).
- the Third Party’s salary appearing in Clause 8.1. The salary is recorded information about an identifiable individual (section 1(n)).
- the Third Party’s personal views or opinions appearing in Clauses 1.3 and 20.10 (section 1(n)(ix))

[para 70] The Third Party submits that numerous clauses of the Contract contain the Third Party’s employment history.

[para 71] Section 1(n)(vii) of the Act includes “employment history” as “personal information”. However, I find that the Contract does not contain the Third Party’s “employment history”. In particular, the following clauses are not the Third Party’s “employment history”:

Clauses 2.1 (that portion that the Third Party does not object to disclosure), 2.2, 3.1, 3.2, 5.1-5.3, 6.1, 6.2, 7.1, 7.3, 7.4, 11.1, 11.2, 20.10

[para 72] The foregoing clauses address such matters as how the Public Body will deal with the Third Party in the employment relationship and how the Public Body will administer the Contract. Those clauses concern prospective matters in the employment relationship, rather than matters concerning employment history.

[para 73] Furthermore, I have already found that Clause 20.10 is the Third Party’s opinion and therefore the Third Party’s personal information under section 1(n)(ix).

[para 74] The Third Party also submits that Clauses 1.3, 9.1, 9.2 and 13.1-13.4 reveal the Third Party’s medical information. Section 1(n)(vi) includes “health and health care history” as “personal information”.

[para 75] As previously discussed, Clauses 9.1 and 9.2 concern benefits that the Public Body must provide to the Third Party as a result of the employment relationship. Clauses 13.1-13.4 deal generally with fitness to perform the duties of Chief of Police. I find that the foregoing clauses do not reveal medical information about the Third Party.

[para 76] Furthermore, I have already found that Clause 1.3 is the Third Party’s opinion and therefore the Third Party’s personal information under section 1(n)(ix). That opinion does not reveal medical information of the Third Party.

[para 77] Clauses 20.1-20.9 are standard contractual terms. In Ontario Order M-23, similar information in an employment contract was deemed to not be personal information, but information about an agreement.

[para 78] Clauses 20.1-20.4 and 20.6 do not contain recorded information “about” the Third Party and therefore do not contain the Third Party’s personal information. Section 17 does not apply to those clauses.

[para 79] Clauses 20.7-20.9 contain only the Third Party’s name. Clause 20.5 contains the Third Party’s name and business address and telephone number, as previously discussed. I will deal with that and other personal information of the Third Party below.

[para 80] Other than the personal information of the Third Party that I have listed above, I find that there is no other personal information of the Third Party that appears in the heading or introduction to the Contract, or in the remaining clauses under consideration, because none of that information is recorded information “about” an identifiable individual. I will now consider under section 17(4) and section 17(5) of the Act whether disclosure of that personal information would be an unreasonable invasion of the Third Party’s personal privacy.

[para 81] Other third parties’ personal information, consisting of signatures, appears in the Contract. I will also decide whether disclosure of that personal information would be an unreasonable invasion of the personal privacy of those third parties.

b. Is disclosure of the Third Party’s personal information presumed to be an unreasonable invasion of the Third Party’s personal privacy, as provided by section 17(4) of the Act?

[para 82] I will consider the relevant provisions that the Third Party argued under section 17(4)(a), section 17(4)(d) and section 17(4)(g). Those provisions read:

17(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment of evaluation,

...

(d) the personal information relates to employment or education history,

...

(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 83] The Third Party asserts that section 17(4)(a) applies to several of the clauses as they concern medical history. The Third Party also asserts that some of the clauses also contain personal information relating to employment or educational history

as described in section 17(4)(d). For the reasons given above, I find the Contract does not contain the Third Party's medical information or employment history. I also find that the Contract does not contain the Third Party's educational history. Therefore, section 17(4)(a) and section 17(4)(d) do not raise the presumption that disclosure of the Third Party's personal information is presumed to be an unreasonable invasion of the Third Party's personal privacy.

[para 84] As previously discussed, I have found that only the following personal information of the Third Party remains to be considered under section 17(4) and section 17(5): the Third Party's name, business address and telephone number, signature, salary and opinions. Consequently, as provided by section 17(4)(g)(i) of the Act, disclosure of the Third Party's personal information is presumed to be an unreasonable invasion of the Third Party's personal privacy because the Third Party's name appears with other personal information about the Third Party.

[para 85] The signatures of the other third parties appear without any other personal information of those third parties. Therefore, none of the presumptions under section 17(4) apply to that personal information.

c. What relevant circumstances are to be considered under section 17(5), when deciding under section 17(1) and section 17(4) whether disclosure of personal information would be an unreasonable invasion of the Third Party's and other third parties' personal privacy?

[para 86] I will consider the relevant provisions that the parties argued under section 17(5)(a), section 17(5)(e), section 17(5)(f) and section 17(5)(h), as well as other relevant circumstances. The relevant provisions of section 17(5) read:

17(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,

...

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

...

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant,...

i. Unfair exposure to financial or other harm (section 17(5)(e))

[para 87] If section 17(5)(e) applies, it is a relevant circumstance that weighs in favour of withholding personal information.

[para 88] The Third Party asserts that the release of the Contract may prejudice future settlement or legal actions and cause damage to the personal financial affairs of the Third Party. The Third Party's arguments focus on disclosure of the Contract, and not on disclosure of the personal information.

[para 89] Furthermore, in Order 2000-029, the former Commissioner said, and I agree, that the focus of what is now section 17(5)(e) is unfair exposure to harm. The Third Party has argued harm, but has not argued how disclosure of the personal information would unfairly expose the Third Party to harm. Therefore, section 17(5)(e) does not apply and is not a relevant circumstance in deciding whether disclosure of the Third Party's personal information would be an unreasonable invasion of the Third Party's personal privacy.

ii. Personal information supplied in confidence (section 17(5)(f))

[para 90] If section 17(5)(f) applies, it is a relevant circumstance that weighs in favour of withholding personal information.

[para 91] The Third Party asserts that the Contract was meant to be confidential and therefore section 17(5)(f) is a relevant consideration. However, the Third Party has not provided evidence of that confidentiality, which would apply only to personal information that was supplied in confidence. Furthermore, the Public Body is subject to the Act and could not cloak a contract with confidentiality.

[para 92] I have examined the clause that contains the confidentiality provision. That provision prevents the Third Party from disclosing information acquired in the course of employment as Chief of Police, other than where disclosure is required by law or to perform the duties of Chief of Police. It has nothing to do with personal information of the Third Party, supplied in confidence.

[para 93] Therefore, section 17(5)(f) does not apply and is not a relevant circumstance in deciding whether disclosure of the Third Party's personal information would be an unreasonable invasion of the Third Party's personal privacy.

iii. Unfair damage to reputation (section 17(5)(h))

[para 94] If section 17(5)(h) applies, it is a relevant circumstance that weighs in favour of withholding personal information.

[para 95] The Third Party raised the consideration of section 17(5)(h) regarding the disclosure of the personal information that may unfairly damage the reputation of any

person referred to in the record requested by the Applicant. Once again, the focus is on unfair damage to reputation, and the Third Party has not shown how disclosure of the personal information would unfairly damage his or anyone else's reputation.

[para 96] Therefore, section 17(5)(h) does not apply and is not a relevant circumstance in deciding whether disclosure of the Third Party's personal information would be an unreasonable invasion of the Third Party's personal privacy.

iv. Public scrutiny (section 17(5)(a))

[para 97] If section 17(5)(a) applies, it is a relevant circumstance that weighs in favour of disclosing personal information.

[para 98] The Applicant makes numerous submissions under this provision. Since the Third Party has established a prima facie case under section 17(4)(g)(i) that disclosure of his personal information is presumed to be an unreasonable invasion of his personal privacy, the Applicant has the burden to prove that disclosure of the Third Party's personal information is not an unreasonable invasion of the Third Party's personal privacy as provided by section 71(3)(a) of the Act, which reads:

71(3) If the inquiry relates to a decision to give an applicant access to all or part of a record containing information about a third party,

(a) in the case of personal information, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of a third party's personal privacy,...

[para 99] The Applicant says that the Public Body is comprised of part-time civilian volunteers who are responsible for policing dollars in Edmonton. The Applicant believes that the Public Body is understaffed, and requires that the public maintain financial oversight of police services. To maintain that oversight, the Applicant argues that the public requires current comparative data.

[para 100] The Applicant has obtained evidence that the salary of a former chief of police in Edmonton and the salary of a chief of police of another capital city in Canada are lower than the Third Party's salary.

[para 101] The Applicant says that a police chief occupies a unique and sensitive public office, requiring public trust. The fact that a chief of police is being paid with public money demands a higher level of public accountability. The Applicant argues that the fact that salary levels of police chiefs in Edmonton have increased dramatically in the last three years, without justification, demands a greater degree of public scrutiny than a part-time volunteer body can provide.

[para 102] The Applicant concludes that the transparency of tax dollars used to compensate public officials and the conditions under which they are employed are inherent and necessary factors in maintaining public accountability.

[para 103] In Order 97-002, the former Commissioner stated that for what is now section 17(5)(a) to apply, there must be evidence that the activities of the Government of Alberta or a public body have been called into question, which necessitates the disclosure of personal information. The former Commissioner also said that:

- (i) It is not sufficient for one person to decide that public scrutiny is necessary;
- (ii) The applicant's concerns must be about the actions of more than one person within the public body; and
- (iii) If the public body had previously disclosed a substantial amount of information, the release of further personal information would not likely be desirable. This is particularly so if the public body had already investigated the matter.

[para 104] In *University of Alberta v. Pylypiuk* (2002), A.J. No. 445 (Alta. Q.B.), Justice Gallant stated that the reference to public scrutiny of government or public body activities under what is now section 17(5)(a) requires some public component, such as public accountability, public interest and public fairness.

[para 105] Following on the *University of Alberta v. Pylypiuk* case, I agree with the Applicant that public accountability is at the heart of the terms under which the Public Body hires and expends public funds for a chief of police, who occupies a significant position of public trust.

[para 106] Although the Applicant has not pointed specifically to who else has decided that public scrutiny is necessary, I am aware of other requests for review that are presently in my Office and in abeyance, in which the issue is disclosure of the Third Party's Contract.

[para 107] The Applicant's concerns are about whether part-time volunteer members of the Public Body as a whole have negotiated fair contractual terms and salary with the Third Party. The Applicant points to the evidence of lower salaries for other chiefs of police, including a former chief of police of the Edmonton Police Service. The only information the Public Body has disclosed to date is the Third Party's salary.

[para 108] I find that section 17(5)(a) applies and is a relevant circumstance that weighs heavily in favour of disclosing the Third Party's personal information. The Applicant has met the burden of proof to show that disclosure of the Third Party's personal information, consisting of the Third Party's name, business address and telephone number, signature, salary and opinions, would not be an unreasonable invasion of the Third Party's personal privacy.

v. Other relevant circumstances

[para 109] Finally, I come to the signatures of the other third parties. In the former Commissioner's Order 2000-005 and subsequent Orders F2003-004 and F2004-022, a relevant circumstance under section 17(5) that weighed in favour of disclosing personal information consisting of names and/or signatures was whether individuals were acting in representative capacities. In those cases, disclosure of the names and/or signatures was found to not be an unreasonable invasion of those third parties' personal privacy under section 17(1).

[para 110] Following Order 2000-005 and subsequent Orders, I find that the other third parties in this case were acting in representative capacities. That relevant circumstance weighs in favour of disclosing their personal information, consisting of their signatures.

d. Conclusion under section 17

[para 111] I find that disclosure of the Third Party's personal information contained in the Contract is not an unreasonable invasion of the Third Party's personal privacy, as provided by section 17(1) of the Act.

[para 112] With the exception of the personal information contained in Clauses 17.1, 17.2, 20.5 and 20.7-20.9, I intend to order the Public Body to disclose all of what I have found to be the Third Party's personal information contained in the Contract, including the Third Party's job titles wherever they appear in the Contract.

[para 113] Clauses 17.1, 17.2 and 20.1-20.10 remain to be considered under section 27(2) of the Act.

[para 114] I find that disclosure of the third parties' signatures is not an unreasonable invasion of the third parties' personal privacy. I intend to order the Public Body to disclose those signatures to the Applicant.

ISSUE B: Does section 27(2) of the Act (privileged information of a person other than a public body) apply to the records/information?

[para 115] Section 27(2) is a mandatory section that requires the head of a public body to refuse to disclose information described in section 27(1)(a) if it relates to a person other than a public body. Section 27(1)(a) addresses information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege.

[para 116] Section 27(1)(a) and section 27(2) are relevant to this discussion, and read as follows:

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,...

(2) The head of a public body must refuse to disclose information described in subsection (1) that relates to a person other than a public body.

[para 117] Section 71(3)(b) of the Act sets out the burden of proof, as follows:

71(3) If the inquiry relates to a decision to give an applicant access to all or part of a record containing information about a third party,

...

(b) in any other case, it is up to the third party to prove that the applicant has no right of access to the record or part of the record.

[para 118] Therefore, the Third Party bears the burden of proof under section 27(2). The burden of proof may be met by showing that the information meets the criteria for solicitor-client privilege of the Third Party, as set out in *Solosky v. The Queen*, [1980] 1 S.C.R. 821, as follows:

- (i) it is a communication between a solicitor and client,
- (ii) which entails the giving or seeking of legal advice, and
- (iii) which is intended to be confidential by the parties.

[para 119] I find that Clauses 17.1, 17.2 and 20.1-20.10 do not meet the criteria for solicitor-client privilege, either on their face or on the evidence and arguments presented. Consequently, section 27(2) of the Act does not apply to those clauses, and I intend to order the Public Body to disclose them to the Applicant.

V. ORDER

[para 120] I make the following Order under section 72 of the Act.

[para 121] I find that disclosure of the Third Party's personal information contained in the Contract is not an unreasonable invasion of the Third Party's personal privacy, as provided by section 17(1). I uphold the Public Body's decision to disclose the Third Party's personal information to the Applicant, and order the Public Body to disclose the Third Party's personal information.

[para 122] I find that disclosure of the third parties' signatures is not an unreasonable invasion of the third parties' personal privacy. I uphold the Public Body's decision to disclose the third parties' signatures to the Applicant, and order the Public Body to disclose those signatures to the Applicant.

[para 123] I have considered Clauses 17.1, 17.2 and 20.1-20.10 separately under section 27(2) of the Act. I find that section 27(2) of the Act does not apply to Clauses 17.1, 17.2 and 20.1-20.10.

[para 124] The result is that I uphold the Public Body's decision to disclose the entire Contract to the Applicant, and order the Public Body to disclose the Contract.

[para 125] I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that the Public Body has complied with this Order.

Frank Work, Q.C.
Information and Privacy Commissioner