

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2007-031

November 27, 2008

GRANDE YELLOWHEAD REGIONAL DIVISION No. 35

Case File Number 3728

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

Summary: The Complainants alleged that the Grande Yellowhead Regional Division No. 35 disclosed the Complainants' personal information to the Alberta Teachers' Association ("ATA"), in contravention of the *Freedom of Information and Protection of Privacy Act*.

The matter was set down for a written inquiry. During the inquiry process, the Grande Yellowhead Regional Division No. 35 and the ATA asserted that the Information and Privacy Commissioner or his delegate had lost jurisdiction to hear the inquiry, due to delay which those parties assert exceeds the timeline set out in section 69(6) of the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act").

The jurisdictional issue under section 69(6) was heard as a preliminary issue. The Commissioner held that section 69(6) was complied with in this case. In the alternative, the Commissioner held that even if the timeline in section 69(6) had not been met, he or his delegate had not lost jurisdiction over the matter, as the Legislature had intended section 69(6) to be interpreted as a directory and not a mandatory provision. In the further alternative, the Commissioner held that if section 69(6) were construed as an obligatory provision, the Legislature did not intend for jurisdiction to be lost by non-compliance in this case.

The Commissioner also found that he had properly delegated his authority to an Adjudicator who had taken some preliminary steps in this case.

Legislation Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 2, 61, 65(3), 67, 69(1), 69(6), 69(6)(a), 69(6)(b), 72, 74.3(2); *Personal Information Protection Act*, S.A. 2003, c.P-6.5, s. 50(5); *Teaching Profession Act*, R.S.A. 2000, c. T-2, ss. 23(1), 24(1)

Orders Cited: AB: Orders 99-011, M2004-001, F2006-031, P2007-010

Investigation Reports Cited: AB: 2000-IR-007

Cases Cited: *Bridgeland-Riverside Community Association v. City of Calgary* [1982] A.J. No. 9692 (ABCA); *Neufeld v. North-East Winnipeg Family and Child Extended Social Services* [1991 M.J. No. 593]; *Gage v. Ontario (Attorney General)* [1992] O.J. 696; *Dagg v. Canada (Minister of Finance)* [1997] 2 S.C.R. 403 (SCC); *McIntosh v. College of Physicians and Surgeons of Ontario* [1998] O.J. No. 5222; *Woolridge v. Halifax (Regional Municipality) Police Service* [1999] N.S.J. No 268 (NSSC); *Petherbridge v. City of Lethbridge* [2000] A.J. No. 1187 (ABCA); *Doucet v. British Columbia (Adult Forensic Psychiatric Services, Director)* [2000] B.C.J. No. 586 (BCCA); *Rahman v. Alberta College and Assn. of Respiratory Therapy* [2001] A.J. No. 343 (ABQB); *Society Promoting Environmental Conservation v. Canada (Attorney General)* (2003), 228 D.L.R. (4th) 693 (F.C.A.); *Kellogg Brown and Root Canada v. Alberta (Information and Privacy Commissioner)* [2007] A.J. No. 896 (ABQB)

I. BACKGROUND

[para 1] On June 8, 2006, the Complainants wrote to this office complaining that the Grande Yellowhead Regional Division No. 35 (the “Public Body”) disclosed to the Alberta Teachers’ Association (the “ATA” or the “Affected Party”) a number of records which the ATA subsequently used in a defamation lawsuit against the Complainants.

[para 2] On June 13, 2006, the Complainants once again wrote to this office regarding the alleged disclosure by the Public Body, and provided a more detailed description of the documents allegedly disclosed. The Complainants asserted that the Public Body did not have the authority under the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”) to disclose the Complainants’ personal information to the ATA.

[para 3] On June 21, 2006, this office wrote to the Complainants and to the Public Body notifying these parties that this office had received the complaint, and that a portfolio officer would investigate the alleged disclosure by the Public Body. The matter was not resolved.

[para 4] On September 25, 2006, the Complainants requested that the matter proceed to inquiry.

[para 5] On October 2, 2006, a mediator with this office wrote to the Public Body, informing the Public Body that an inquiry into the matter would proceed.

[para 6] On February 7, 2007, the Director of Adjudication sent a letter to the Complainants indicating that the file had been received by the Adjudication Unit, and setting out some of the steps and timelines in the adjudication process. I note that the Affected Party includes some information about this letter in its submission which it obtained from a staff member in the Adjudication Unit, which suggests that there was a period of time in which this office, as a matter of practice, sent such letters only to complainants, and not to public bodies or affected parties. Because this has been raised as a fact, I will comment on it. The letter of February 7, 2007 was the result of a change in the procedure of this office under which such letters began to be sent routinely by the Adjudication Unit. Staff was directed from the outset to send such letters routinely to both applicants and complainants and to public bodies or respondent organizations, as well as to any affected parties that had already been identified. Through oversight, these letters were for a short period of time sent only to applicants and not to other parties. Consequently, such a letter was not sent to the Public Body in this case at that time. It would not in any event have been sent to the ATA because that party had not yet been identified as an Affected Party. The practice of sending the letter to applicants and complainants only was corrected in March, 2007. No such letter was ever sent to the Public Body because by the time the oversight was recognized, a Notice of Inquiry had already been sent (on February 27) to both the Public Body, as well as to the Affected Party the ATA.

[para 7] On February 27, 2007, this office sent a Notice of Inquiry to the parties. The ATA was identified as an Affected Party to the inquiry, and a Notice of Inquiry was accordingly sent to it. The Public Body, the Complainants and the ATA each submitted an initial and a rebuttal submission.

[para 8] On August 1, 2007, I sent a letter to the parties which informed the parties that the anticipated date for completion of the review was February 1, 2009.

[para 9] On February 12, 2008, I gave written delegated authority to an Adjudicator to conduct an inquiry and issue an order regarding this matter.

[para 10] On March 26, 2008, the Adjudicator requested that the Public Body and the ATA provide further information regarding the alleged disclosure from the Public Body to the ATA.

[para 11] On March 31, 2008, the Public Body and the ATA both alleged that the Information and Privacy Commissioner or his delegate had lost jurisdiction to hear this inquiry due to a delay which, these parties stated, exceeded the time limit set out in section 69(6) of the FOIP Act.

[para 12] On April 2, 2008, the Adjudicator who had been delegated by me to decide this case informed the parties that she would hear the jurisdictional issue as a preliminary issue. On October 16, 2008, as that Adjudicator was to go on leave before she would be able to conduct this inquiry, I rescinded her delegation to hear this matter. I assumed jurisdiction over this inquiry.

[para 13] The Public Body, the ATA and the Complainants each submitted an initial and a rebuttal submission that addressed the jurisdictional issue.

II. PRELIMINARY ISSUE – Did the Information and Privacy Commissioner properly delegate his authority to conduct a written inquiry and issue an order?

[para 14] The Public Body alleges that I did not properly delegate my authority to the Adjudicator to conduct a written inquiry and issue an order under the FOIP Act. The Public Body states that because the delegation was improper, the Adjudicator did not have jurisdiction over this matter. Although I am hearing this inquiry due to the circumstance mentioned in the preceding section, I will address this issue, because the delegated Adjudicator performed some preliminary steps in this matter before her delegation was rescinded.

[para 15] To support its argument, the Public Body refers to a February 7, 2007 letter from the Director of Adjudication to the Complainants. The Public Body states that this letter indicates that the Director of Adjudication, and not the Information and Privacy Commissioner, delegated the power to conduct the inquiry and issue the order.

[para 16] Section 61 of the FOIP Act addresses the Information and Privacy Commissioner's authority to delegate. Section 61 reads:

61(1) The Commissioner may delegate to any person any duty, power or function of the Commissioner under this Act except the power to delegate.

(2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the Commissioner considers appropriate.

[para 17] I find that I properly delegated my authority in this inquiry. I do not understand why the Public Body believes the February 7, 2007 letter referred to in para 15 above was the source of the Adjudicator's jurisdiction, as it makes no mention of any such delegation. In any event, on February 12, 2008, I gave the Adjudicator written delegated authority to conduct an inquiry and issue an order regarding this matter. Thus I find that the Adjudicator did not fail to have jurisdiction due to an improper delegation under section 61 of the FOIP Act.

[para 18] The Public Body also alleged that I did not properly delegate my authority to the Inquiries Clerk. I do not accept this argument. In this inquiry, the Inquiries Clerk merely acted on my behalf. In assigning duties to her, I did not divest myself of the

power to issue the Notices of Inquiry or divest myself of other duties performed by the Inquiries Clerk. The authority to issue the Notices of Inquiry and other duties performed by the Inquiries Clerk remained with me. Given the foregoing, I find that there was no loss of jurisdiction due to an improper delegation to the Inquiries Clerk.

III. ISSUE

[para 19] The primary issue in the inquiry is as follows: Did the Information and Privacy Commissioner or his delegate lose jurisdiction on the basis of alleged non-compliance with section 69(6) of the FOIP Act?

[para 20] Before proceeding with the substance of this matter I note that the ATA, an Affected Party in this inquiry who was, as such, given a copy of the request for review in this case, has made the largest number of submissions on the ‘loss of jurisdiction’ issue in this inquiry in terms of volume. I am aware that the ATA was allegedly the recipient of the documents, the disclosure of which forms the substance of the present complaint. I presume the ATA was named as an Affected Party so that it could speak to the issue of the Public Body’s authority to disclose personal information to it. I also note that an Affected Party is given the ability, under the FOIP Act, to make representations to me during the inquiry. Section 69(6) requires that I give any person who has been given a copy of the request for review “an opportunity to make representations ... during the inquiry”.

[para 21] However, I also have control over the procedures in this inquiry. In my view, the FOIP Act does not require that I give every person who has been given a copy of the request for review an opportunity to make submission relating to every issue in the inquiry. Rather, the requirements of fairness are met if I give each such person an opportunity relating to the particular matters in the inquiry concerning which they have been given status. There is a question, therefore, whether I was obliged to provide the ATA with an opportunity to make representations on the jurisdictional question. This question involves whether the FOIP Act should be applied in this case in relation to the Public Body. The ATA is not a public body, and the FOIP Act does not apply to it. I cannot issue an order against the ATA under the FOIP Act. It is therefore affected by the outcome of the jurisdictional question only indirectly.

[para 22] I have decided to review and respond to the ATA’s submissions in this case because they have already been accepted by this office. However, I note that this is a discretionary decision on my part. This decision should not be treated as a concession that the ATA would have standing to bring an application for judicial review of my decision on this jurisdictional issue, should it decide it wishes to do so.

[para 23] I also note that the ATA prefaces its submissions by a statement that it is making its submissions “in order to give the Commissioner the opportunity to confirm that he has lost jurisdiction”, and that they “expect the Commissioner to confine himself to providing early written confirmation to the parties as a courtesy to them (a) that there will be no further steps taken whatsoever in [this case] and (b) that the file is now

closed”. I am somewhat surprised by these comments in view of my jurisdiction to decide whether I have jurisdiction, and to interpret the FOIP Act.

[para 24] The interpretation of the legislation in this order that is set out below is consistent with that in a number of other orders that are being issued at approximately the same time as this one, all of which deal with challenges to my jurisdiction based on an alleged failure to comply with section 69(6). In each case, I or the Adjudicator respond to the same or very similar arguments that challenge jurisdiction. Where that is so in this case, I will, for convenience, incorporate by reference some of the reasoning in Order F2006-031, which is the first of these orders issued by my office.

[para 25] There are two sub-issues in this part of the inquiry:

- A. Was section 69(6) of the FOIP Act complied with in this case?
- B. If section 69(6) of the FOIP Act was not complied with, did the Information and Privacy Commissioner or his delegate lose jurisdiction?

IV. DISCUSSION: Did the Information and Privacy Commissioner or his delegate lose jurisdiction on the basis of alleged non-compliance with section 69(6) of the FOIP Act?

A. Was section 69(6) of the FOIP Act complied with in this case?

[para 26] Section 69(6) reads:

69(6) An inquiry under this section must be completed within 90 days after receiving the request for review unless the Commissioner

(a) notifies the person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review that the Commissioner is extending that period, and

(b) provides an anticipated date for the completion of the review.

[para 27] The Public Body and the ATA state that I lost jurisdiction to hear this inquiry because I did not comply with section 69(6) of the FOIP Act. These parties assert that I did not complete the review within 90 days, neither did I send out an extension letter and anticipated date for completion within that time period.

[para 28] I agree with the Public Body and the ATA that this inquiry was not completed within 90 days after I received the request for review. In this inquiry, the Complainants first made a complaint to this office (which is a request for review under section 65(3)) on June 8, 2006. The 90-day time period therefore began on June 9, 2006 and expired on September 6, 2006. The office did not notify the ATA about this matter until after it was identified as an Affected Party, which happened after the matter was

transferred to the Adjudication Unit. This office did not receive all of the initial and rebuttal submissions until May 2, 2007. In addition, on March 26, 2008, after receiving delegated authority from me, the then-delegated Adjudicator requested additional submissions from the parties. Both the receipt of the initial and rebuttal submissions and the request for further information occurred outside the 90 day time period.

[para 29] The question that therefore arises is whether I properly extended the 90-day period under section 69(6). In Order F2006-031, I addressed a similar question. In that order I considered the following matters:

1. What does it mean to “extend” the 90 days and to provide an “anticipated date” for completion of the review?
2. What is required to “notify” parties about an extension and anticipated date?
3. When are the parties to be notified?
4. Once extended, does the 90 days have to be further extended?

1. What does it mean to “extend” the 90 days and to provide an “anticipated date” for completion of the review?

[para 30] In Order F2006-031, I held that the word “extend” in section 69(6)(a) means “to provide for a longer period of time to complete the review, if the inquiry is not completed within 90 days after receiving the request for review”. In that order, I defined the phrase “anticipated date” within section 69(6)(b) to mean that the Commissioner must provide an estimated time as to when the review process may conclude, but not a definite time for completion of the review.

[para 31] I adopt the definitions of the word “extend” and “anticipated date” as set out in Order F2006-031.

2. What is required to “notify” parties about an extension and anticipated date?

[para 32] In Order F2006-031, I held that section 69(6) did not require me to use particular words to extend the time, nor did it require me to issue a notification that was specifically dedicated to extending time and providing an anticipated date for the completion of the review. I found that it was sufficient to extend time if a notification makes it clear to the parties that the process will continue beyond the 90 days. For example, I held that if I provide a notice to parties that sets out the date of the inquiry, I will satisfy the notification requirement under section 69(6). (In this regard, I adopt my reasoning from Order F2006-031 wherein I interpret “complete an inquiry” to mean the point at which I have heard all the evidence and arguments of the parties, and I am in a position to dispose of the questions of fact and law by making an order that will be final.)

[para 33] In this inquiry, I find that I notified the parties of the fact the matter was being extended beyond 90 days on at least two occasions. The first such notification consisted of the Notice of Inquiry which was issued on February 27, 2007. This notification was sent from this office to the parties and identified the due date for initial submissions to this office. It also indicated that rebuttals would be permitted after initial submissions were exchanged, and that parties would be notified as to when rebuttal submissions were due. This document extended the time for completion of the inquiry, but did not provide an anticipated date. The second notification consisted of a letter to the parties dated August 1, 2007. This letter both extended the time and provided an anticipated date for completion, of February 1, 2009. I find that the latter notification, though sent to the parties after the 90 day time period expired on September 6, 2006, was sufficient to meet the requirements of section 69(6), for the reasons outlined below.

3. *When are the parties to be notified?*

[para 34] One of the key issues in this inquiry is whether notice extending the date to complete the inquiry may be given to the parties after the 90 day time period has expired.

[para 35] In Order F2006-031, I considered this question in detail. For the reasons I set out at paras 53 to 70 of that case, I hold that section 69(6) allows me to extend the 90-day period and provide an anticipated date for completion of the review, and notify the parties accordingly, after the 90 days have expired. I distinguish the cases cited by the ATA at para 27 and 29 of its rebuttal submission as standing for the opposite conclusion on the same basis as I distinguished some of these cases in Order F2006-031 – that they involve disciplinary or other proceedings attended by a risk to the livelihood of the respondents to the proceedings, and that they relate to time limits for instigating proceedings rather than to time limits for completing proceedings that are already underway. (The case of *Neufeld v. North-East Winnipeg Family and Child Extended Social Services* [1991 M.J. No. 593 may be an exception to the latter of these points, as it was not clear whether the time limit in question referred to the holding of the hearing or the issuance of the decision. However, I note that this case does not in any event support the proposition for which it was cited. It did not involve the question of whether a power to extend exists after the initial period has expired, as there was no such power in that case. I also note that in that case the remedy was to send the decision (to uphold revocation of a license for a foster home) back to the Committee that had originally made it so that it might issue a fresh decision.)

[para 36] The present case illustrates a problem with the idea that extensions of time must be made within 90 days. As with most cases in this office, this one involved a mediation, which did not include the Affected Party, the ATA. The Commissioner is obliged by section 67 to notify affected parties (persons affected by the request for review) as soon as is practicable. Often, this point is not reached until the mediation phase is concluded. This is because in a given case it may not be practicable to notify potentially affected parties before it is known whether the matter can be resolved through mediation in such a manner that they will not in fact be affected. If parties who are only

potentially affected were notified at the inception stage of the mediation phase as a matter of course, this could lead to unnecessary concern and expenditure of resources on the part of persons who will not ultimately be affected at all. It would be untenable if the fact that an affected party that was not notified until after the mediation effort had been completed, which is commonly beyond 90 days from request for review, could cause the entire proceeding, to which the primary parties are the complainant and the public body, to be aborted.

4. *Once extended, does the 90 days have to be further extended?*

[para 37] In Order F2006-031, I held that section 69(6) requires me to issue only one notification extending the time to complete an inquiry. Section 69(6) does not refer to multiple notifications. I also held that if I provide a notification extending the 90 day time period, but I do not meet the anticipated date stipulated in the notice, I will still have complied with that provision, and no further notification is required. I adopt this interpretation of section 69(6) for this case.

5. *Conclusion*

[para 38] Applying the principles just stated to the facts in this case, I find that I complied with section 69(6) on the facts.

B. *If section 69(6) of the FOIP Act was not complied with, did the Information and Privacy Commissioner or his delegate lose jurisdiction?*

[para 39] Although I have found that section 69(6) was met in this inquiry, I will nevertheless address whether I would have lost jurisdiction if it had not been met.

[para 40] The Public Body and the ATA submitted that since I did not comply with section 69(6) of the FOIP Act, and since section 69(6) is a mandatory provision, I have lost the jurisdiction to hear the inquiry. To support this submission, the parties referred to the Alberta Court of Queen's Bench decision of *Kellogg Brown and Root Canada v. Alberta (Information and Privacy Commissioner)* [2007] A.J. No. 896, which addressed section 50(5) of the *Personal Information and Protection Act* (PIPA). The Court in *Kellogg* considered five factors in order to determine whether section 50(5) of PIPA should be construed as a mandatory or a directory provision. The five factors considered in the context of this inquiry are as follows:

1. The wording and context of the legislation
2. Would a finding that section 69(6) is mandatory have a negative operational impact on the FOIP Act?
3. Impact on the Complainants, the Public Body and the ATA

4. Are there alternative remedies available to the Complainants, the Public Body and the ATA?
5. Would a finding that section 69(6) is mandatory be contrary to the public interest?

[para 41] As described in Order F2006-031, the mandatory/ directory analysis has evolved. The result of that evolution is that all the relevant circumstances are taken into account when deciding whether jurisdiction is lost when an obligatory statutory provision is not followed. As I noted in the earlier order, the Federal Court of Appeal in *Society Promoting Environmental Conservation v. Canada (Attorney General)* (2003), 228 D.L.R. (4th) 693 (F.C.A.) held that the first question to be addressed under this new approach is whether compliance with a statutory provision is obligatory or permissive. The Court then set out a non-exhaustive list of circumstances to be considered in determining whether non-compliance with an obligatory provision invalidates an administrative action.

[para 42] I note that the ‘evolved’ analysis finds strong support in a decision of the Alberta Court of Appeal, *Bridgeland-Riverside Community Association v. City of Calgary* [1982] A.J. No. 9692, and subsequent decisions following that decision. In *Bridgeland*, the Court said, at paras 27 and 28:

In my view, no concept is more sterile than that which says that a proceeding is a nullity for failure of compliance with a procedural rule and without regard to the effect of the failure.

...

I would put aside the debate over void or voidable, irregularity or nullity, mandatory or directory, preliminary or collateral. These are only ways to express the question shall or shall not a procedural defect (whether mandated by statute or common law) vitiate a proceeding. In my view, absent an express statutory statement of effect, no defect should vitiate a proceeding unless, as a result of it, some real possibility of prejudice to the attacking party is shown, or unless the procedure was so dramatically devoid of the appearance of fairness that the administration of justice is brought into disrepute.

In *Petherbridge v. City of Lethbridge* [2000] A.J. No. 1187, the Alberta Court of Appeal described its own earlier judgment in the *Bridgeland* case at para 24 as follows:

This case [*Bridgeland*] provides, at 368, that a procedural defect, whether contrary to statute or common law, does not vitiate a proceeding unless:

- (a) a statute prescribes such an effect;
- (b) a real possibility of prejudice to the attacking party is shown; or
- (c) the procedure was so dramatically devoid of the appearance of fairness that the administration of justice is brought into disrepute.

The court went on to consider the following: that the statute did not prescribe any vitiating effects of procedural fairness; that had the statute in that case been complied with, the plaintiff’s position would have been no different; and that “none of the alleged

procedural errors caused the overall procedure to be so dramatically devoid of the appearance of fairness that the administration of justice was brought into disrepute”.

[para 43] In Order F2006-031, I first undertook the traditional mandatory/directory analysis to determine whether section 69(6) should be construed as a mandatory or a directory provision. I found that section 69(6) should be interpreted as directory. I then applied the alternative, evolved approach taken in *Society Promoting Environmental Conservation v. Canada (Attorney General)*, which begins with the idea that section 69(6) is an obligatory provision. As part of this analysis, I addressed the case-specific circumstances discussed in *Kellogg* in order to decide whether the Legislature intended that jurisdiction should be lost by non-compliance in that case. I will follow the same course in this case.

1. The traditional mandatory/directory analysis

[para 44] After a review of all of the arguments of the parties I find, as I did in Order F2006-031, that section 69(6) should be construed as a directory and not a mandatory provision.

[para 45] In coming to this conclusion, I have applied the reasoning I set out in Order F2006-031 at paras 106 to 133. Most notably, I find that the FOIP Act creates a mechanism for the advancement and protection of highly significant rights of citizens. The Supreme Court has set forth this point of view in *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403. The FOIP Act imposes a duty on the Commissioner to further this purpose by conducting reviews, and this purpose would be frustrated by a reading of section 69(6) such that jurisdiction would be lost in situations in which the strict requirements of the Act had not been met.

[para 46] I took into account as well the argument of the ATA in this case to the effect that PIPA and the FOIP Act are to a large extent similar, in that in each case the Commissioner has a duty to conduct expeditious requests for review, a proposition with which I agree. However, as in Order F2006-031, I reject the idea that what follows from this similarity is that section 69(6) of the FOIP Act is to be interpreted as mandatory rather than directory. Rather, because the Court in *Kellogg* interpreted the purpose of PIPA, and analyzed the scheme in PIPA, on the basis that the statute involved an equal balancing of rights as between individuals and organizations, with which I do not agree, I cannot, as I further explained in Order F2006-031 at paras 83 to 104, be guided by the Court’s interpretation of section 50(5) in *Kellogg* when interpreting section 69(6) of the FOIP Act.

[para 47] In the part of Order F2006-031 that deals with how the FOIP Act should be interpreted on the basis of the purpose and context of the legislation, I relied in part on an existing interpretation of section 69(6) to the effect that this provision is directory. This conclusion was set out in an earlier decision of this office, Order 99-011. In its submissions in this case, the ATA points out certain features of Order 99-011 to argue that it was wrongly decided. One is that the order was exclusively based on the perceived

prejudice to the Applicant if jurisdiction were lost, whereas the *Kellogg* decision took into account five factors. I do not agree with this assessment of the order of the former Commissioner, as he also considered the wording and purpose of the legislation, and applied the leading precedents on the issue of when provisions are to be read as mandatory or directory.

[para 48] As well, the ATA points out that an order from the office of the British Columbia Commissioner on which the former Alberta Commissioner relied in Order 99-011 actually ruled *against* the Applicant in that case. I have reviewed the case and do not see the significance of that observation, since that conclusion related to the conduct of the particular applicant, and also because this point has no bearing on the conclusion of the former B.C. Commissioner in that case that the timeline provision in the British Columbia legislation is directory rather than mandatory, which is the point of principle on which the former Alberta Commissioner relied. Finally, the ATA notes that the British Columbia act has no extension provision. Without more, I do not understand how that renders less meaningful the point adopted by both former Commissioners that “[t]he ninety-day period is intended to benefit the independent review process by requiring that inquiries proceed in a timely way, but without creating a structure of strict compliance which would be, in itself, counterproductive to the delivery of a fair yet flexible review process to those who are affected by decisions under the Act”.

[para 49] In making its argument under the heading “The Wording and Content of the Legislation”, the ATA discusses cases which hold that the FOIP Act requires a balancing between the access and privacy provisions of the Act. This is clearly so. However, the fact that when an individual requests access to information, the decision whether to grant access when the information at issue involves the personal privacy of third parties involves the balancing between granting access to records and preserving privacy of third parties has nothing to do with the type of balancing that is to be done when deciding whether non-compliance with a statutory provision should give rise to a loss of jurisdiction.

[para 50] I note as well that the ATA points out that many provisions in the FOIP Act contain “built-in” deadlines, which are designed to ensure that information requests are dealt with in an expeditious manner. It says that as these are mandatory, section 69(6) should equally be treated as mandatory. The ATA also cites Order M2004-001, an earlier order of this office which held that section 74.3(2) of the FOIP Act is mandatory and that the Adjudicator had no ability to conduct an inquiry where it had not been met. As I noted in Order F2006-031, different considerations apply when whether a timeline is met or not is in control of the party who is to meet it. In the case of inquiries, the need to take more time for completion may be outside the control of the Commissioner. In this regard, I note that some of the provisions cited by the ATA in its submissions permit extensions for such periods as are necessary to complete tasks. With regard to Order M2004-001, I distinguish this case on the basis that the meeting of the time limit was in the control of the Applicant, as well as for the other reasons I gave in Order F2006-031 at para 132. The ATA also takes issue in this same part of its submission with the conclusion of Adjudicator Gauk in Order P2007-010 that “completion of the inquiry” refers to

completion of the process and not also to issuance of the order. While I agree with Adjudicator Gauk's conclusion for the reasons she gives in her order, I do not see the significance of resolution of this issue to the question of whether section 69(6) is mandatory or directory.

[para 51] The ATA also makes the point in its initial submission (paras 35, 39, 40, 43) that interpreting section 69(6) as directory rather than mandatory would render the provision meaningless, or "nugatory and superfluous". It argues that if the Legislature had intended that section 69(6) be directory, the Legislature would not have included a provision which allows the Commissioner to extend the time limit. The ATA states that a directory interpretation of section 69(6) would give me an unlimited time to complete the inquiry. As such, it would not be necessary to include a provision which allows me to extend the time limit.

[para 52] In this regard, I restate my reasoning from paras 123 to 124 of Order F2006-031, where I say that the meaning I assign and have historically assigned to section 69(6) is that it permits the Commissioner to take control of the process and move the matter forward. Section 69(6) sets up an initial short time frame within which, should the matter be concluded, there is no need for the process to be managed in terms of its timing. If the 90 days is likely to expire before completion, or has expired and the matter has not been completed, it is then up to me to take steps to ensure that the process moves forward by setting dates for further required steps. My ability to extend the time limit by providing notification to the parties provides parties with information as to the anticipated date of a decision and the progress being made toward the conclusion of an inquiry. This is of assistance to the parties whether I send an extension notification within the 90 day period or outside that period. The purpose and terms of the provision are fulfilled so long as I apprise the parties of developments and the steps they are to take in an ongoing way. It is not necessary, in order to fulfill these purposes, to treat the provision as creating a 'drop-dead' deadline beyond which an inquiry cannot proceed unless formal extensions have been issued by fixed dates. I therefore find that interpreting section 69(6) such that it gives me the ability to extend the timeline by providing notifications after 90 days has passed does not make the provision nugatory or superfluous.

[para 53] As I noted in Order F2006-031, this interpretation also recognizes that timelines may be exceeded by no fault of the parties or the decision maker: the process may take longer than anticipated because of the efforts of the parties to mediate; the request for review may require clarification as to the issues; the parties may choose to be represented by counsel, who may then require instruction or time to prepare; parties may change addresses; affected parties may be identified and require notice and the opportunity to make representations; administrative errors may be made; parties may raise additional issues; and the inquiry may involve complex issues or be procedurally complex.

[para 54] With regard to the cases cited by the ATA, at paras 44 to 47 of its initial submission, to support its point that section 69(6) should be interpreted to be mandatory as otherwise the extension provisions would be meaningless, (*Woolridge v. Halifax*

(Regional Municipality) Police Service Service [1999] N.S.J. No 268 (NSSC), and *Doucet v. British Columbia (Adult Forensic Psychiatric Services, Director)*, [2000] B.C.J. No. 586), I find these cases are distinguishable. In *Woolridge*, an internal investigation of a police officer had been suspended (pending a criminal investigation), and the issue was whether it could be recommenced after the time limit for completion of an investigation had expired. The court decided it could not. A primary point of distinction is that, as the court commented, the potential outcome was a punishment of serious professional and personal significance to the person whose conduct was at issue, which is not the case in the present context. As well, the case is distinguishable because the finding the provision was mandatory was based in part on the fact that reasonable grounds had to be shown before the extension could be granted. Similarly, in the *Doucet* case the provision at issue contained a condition (of “exceptional circumstances”) that had to be met before an extension could be granted. If an extension is to be granted only in restricted circumstances, the failure to meet it takes on much more significance, and there is a stronger reason to find it is mandatory. I note as well that the portion of the judgment cited by the ATA in the *Doucet* case was one with which the majority did not agree having regard to the legislation in the particular case.

[para 55] I turn to an argument made by counsel for the ATA based on a decision in *Gage v. Ontario (Attorney General)* [1992] O.J. 696. That case involved a police disciplinary matter, in which the Public Complaints Commissioner had a duty to forthwith give notice to a constable that a hearing would be held as to a complaint against him. Because there was at the time the possibility that the jurisdiction of the hearing panel was subject to challenge, the Commissioner did not give the requisite notice to the constable until 10 months after his decision to proceed was made, during which time the jurisdictional issue was cured by a legislative amendment. The reviewing court characterized this delay as a “deliberate decision not to comply with its own statute” in order to avoid a legal challenge to its jurisdiction, and concluded that the decision was a violation of natural justice.

[para 56] Counsel for the ATA draws a parallel between the action of the Public Complaints Commissioner in the *Gage* case and a letter sent to the Complainants in this case notifying them that the matter had been received at inquiry, that inquiries were currently being scheduled approximately six months after the date of the letter, and that orders are normally issued six to twelve months from the date of the inquiry. She points out that at the time the letter was issued, the Commissioner knew he was facing a jurisdictional challenge for failing to adhere to the 90-day timeline [under the *Personal Information Protection Act*], yet “chose to continue a policy and practice contrary to his statutory duty”, with notice to the complainants but not to the ATA. Counsel also characterized this action on my part as a “flagrant violation of the intention of the legislation” to resolve complaints in a timely manner. She cites in support of this last comment the case of *McIntosh v. College of Physicians and Surgeons of Ontario* [1998] O.J. No. 5222, in which the court used these words to characterize a disciplinary matter involving a physician that had permitted the complainant to stop and restart a process over a period of four and a half years.

[para 57] I have already explained that the reason the letter from this office to which counsel refers was not sent to the public body was due to administrative error rather than on the basis of any policy. It would in any event not have been sent to her client because the ATA had not yet been identified as an affected party when the letter was sent. Quite apart from that, I see no parallel at all between the cases cited by counsel and the facts in this inquiry. Letters are routinely sent from this office indicating how much time proceedings take on average, so as to give parties some sense of how long their own proceeding might take. Completing a review that goes to inquiry within the 90-day time period is virtually impossible in almost every case. The legislation permits time extensions, and the letter at issue was sent in order to try to meet the legislative requirements. The fact that a jurisdictional challenge had been brought in a single case, which ultimately was decided on the basis of its particular facts, was not a reason for me not to continue my process in all the other cases before this office. In my view, counsel's attempt to draw a parallel with the facts in the two cited cases, though there is none, and her application of the language the courts used to describe those facts to the actions of this office, is not justified.

[para 58] I turn to the contention of the ATA, under the heading that addresses the operational impact on this office, that compliance with section 69(6) is easily achieved, because the extension is within the Commissioner's control and is unilateral without the need for consent from the parties. This point was addressed in Order F2006-031 at para 123, where I explained that estimating an accurate and hence meaningful date for completion of an inquiry is impossible in many cases (for the types of reasons just outlined at para 53 above). In view of this, as I said in the earlier order, I believe that my failure to do either that which is impossible (to accurately anticipate a date for completion) or that which is meaningless (to give a "best guess" that may be completely inaccurate and therefore not useful) should not cause the whole process to fail.

[para 59] The ATA also argues that the use of the word "must" in section 69(6) is significant. It says that where the Legislature intended for there to be some discretion or flexibility in a section of the FOIP Act, it either used the word "may" or other words such as "where practicable and as soon as practicable". In my view, section 69(6) in fact achieves this flexibility by permitting time extensions. Therefore, in my view, the existence of the noted flexibility in other parts of this Act does not by contrast lead to a conclusion that 69(6) requires adherence so rigidly that failure to comply leads to loss of jurisdiction. I note as well that another point of comparison with other parts of the Act is that section 69(1), which requires me to conduct an inquiry, also contains the word "must", and that the interpretation urged by the ATA would result in a failure on my part to comply with that mandatory provision in this case.

[para 60] If I were to find that section 69(6) is a mandatory provision, it would remove an individual's right to a review under the FOIP Act if I failed to either meet the 90 day time limit or extend the time limit. I find that this interpretation could, in a given case, defeat one of the stated purposes of the FOIP Act, which is to provide individuals with independent reviews of decisions made by public bodies under this Act and to resolve complaints under this Act. In addition it would undermine the importance that

the courts have accorded to access to information and privacy legislation both for individual citizens and democracy as a whole. I find that this would not be a proper interpretation of section 69(6).

[para 61] Thus, applying the traditional mandatory/directory analysis to section 69(6), for the foregoing reasons, I interpret it as directory.

2. *The ‘evolved’ analysis: case-specific circumstances addressed in Kellogg*

[para 62] I turn, in the alternative, to the “evolved” analysis referred to in para 41 above. As noted, this analysis begins with the idea that the provision is obligatory by reference to its use of the word “must”, and proceeds to ask whether in the circumstances of the case, the court would intend non-adherence to this ‘obligatory’ provision to result in loss of jurisdiction. I will address the same case-specific factors in this case, derived primarily from the *Kellogg* decision, that I addressed in Order F2006-031.

a. *Would a finding that jurisdiction should be lost in the present circumstances have a negative operational impact on the FOIP Act?*

[para 63] One of the factors addressed in *Kellogg* was whether a finding that a section is a mandatory provision would result in a negative operational impact on the legislation - in this case, the FOIP Act. This factor can be treated in both a non-case specific and in a case-specific way.

[para 64] The ATA argues that if section 69(6) is construed as a mandatory provision it would have little negative operational impact, since section 69(6) only requires me to send an extension notice to the parties. The ATA emphasizes that the Commissioner has unilateral control over whether to send this notice to the parties. This point, which is not a case-specific one, has already been addressed at para 58 above. In most cases, it is not possible for me to accurately predict a completion date, and if I provide a date by guessing, for example, by substituting average completion dates, this is quite likely to be inaccurate. Thus the legislation requires me to do something that I often cannot realistically do. Since I would often fail to project a true completion date, it does not seem sensible that my failure to set an anticipated date should cause applicants or complainants to lose their remedies.

[para 65] In addition, as I did in Order F2006-031, I wish to address the “operational impact” consideration as it is specific to this case. As I noted in the earlier order, the *Kellogg* decision has had serious consequences, having given rise to numerous jurisdictional challenges, with an accompanying potential loss of the rights of applicants and complainants, as well as the potential impact on the ability of the Commissioner to provide guidance to public bodies and organizations about their information practices.

[para 66] In the circumstances of this case, I find that the “operational impact” consideration leads to the conclusion that jurisdiction should not be lost from any non-compliance with the provision.

b. *Impact on the Complainants, the Public Body and the ATA*

[para 67] Another factor addressed in *Kellogg* is what the Court characterized as the degree of prejudice to the parties. This is another factor that can be considered in both case-specific, and non-case-specific terms. The Court in *Kellogg* considered it in both ways. I have already noted that I cannot accept the Court's conclusion with respect to the balance of prejudice as between parties generally because it thought, in my view wrongly, that PIPA involves a balancing between the rights of complainants and organizations. FOIP clearly involves no such balancing. As I stated in paragraph 103 in Order F2006-031, the balance of prejudice for parties in general under FOIP – that applicants and complainants will lose rights to a review of the actions of public bodies, whereas public bodies will potentially suffer some uncertainty about timing of the process – favours a conclusion that there is no intention that jurisdiction should be lost when the terms of section 69(6) are not met.

[para 68] Further, in this case, the resulting decision could impact the ATA in only a very minor way. As I mentioned before, it is not subject to the FOIP Act, nor to any order I may make under the FOIP Act.

[para 69] With respect to the impact on parties in the particular circumstances of this case, the particular circumstance taken into account in *Kellogg* was whether alternative remedies were available to the complainant. As the Court took this account as a separate factor, I will do so as well.

c. *Are there alternative remedies available to the Complainants, the Public Body and the ATA?*

[para 70] The Court's view in *Kellogg* was that the complainant in that case could find a remedy in another forum. The Court said at paragraphs 76 and 77:

[76] It is also necessary to inquire as to whether alternative remedies are available to the complainant and affected organizations if the provision is interpreted to be mandatory.

[77] While the complainant would lose his right under PIPA to have an inquiry proceed, it must not be overlooked that the complainant originally raised this issue as a human rights complaint, which can still be pursued. Moreover, as a union member, this matter could be pursued through grievance proceedings.

[para 71] In a similar vein, the ATA argues that there would be no adverse impact on the Complainants if the inquiry were halted due to a loss of jurisdiction, as the Complainants had alternative remedies available and have already used them or foregone using them.

[para 72] The alternate remedies suggested by the ATA include litigation, inquiries under PIPA, a complaint of unprofessional conduct under the *Teaching Profession Act*, and the opportunity to write to various individuals regarding the issue. The ATA also refers to an investigation report by this office and suggests that this may have provided an alternative remedy.

[para 73] I have reviewed these suggested remedies. I find, for the reasons that follow, that none of them have provided the Complainants with an alternative remedy, nor is it clear that they would provide an alternative remedy in the future.

i. *Litigation*

[para 74] The ATA states that in June 2002, the Complainants were a party to a court action which addressed the disclosure of the records. In support, the ATA referred to several portions of a trial transcript in a defamation action, and also provided the reasons for judgment from that action.

[para 75] The ATA asserts that the records about which the present complaint was made were among the trial exhibits. As well, the ATA states that “[i]ssues about disclosure of documents as between school boards and the Association were raised during the course of the lengthy trial and resolved by the trial judge, but with little or no complaint by counsel for [the Complainants]”. The Affidavit in support of these assertions states that: “there was correspondence between Counsel [for the ATA and [counsel for the Complainants] over further document production on the eve of trial, and no allegations of improper collection, use or disclosure were made”. The affiant also states that there was a common binder of documents entered by agreement of all counsel at the commencement of the trial, and also that “to the extent that document production issues were aired at trial, they were addressed and resolved”, and that counsel representing the Complainants did not complain “on their behalf about production issues in relation to [the Public Body].

[para 76] It is not clear to me what documents are being referred to in all but the first of these statements. It is also not clear whether I am to take from these assertions and evidence that the alleged disclosures that form the substance of the present complaint took place in the context of formal document production during the course of the defamation action. I note that, as evidenced in an Exhibit to the Affidavit of the Privacy Officer of the ATA (Under Tab C, second series), the Adjudicator that had earlier been delegated to conduct this inquiry had asked for further information on this question after reviewing the submissions. She notes that the Public Body in its submissions states that the disclosure from it to the ATA occurred “pursuant to a Notice to Attend as Witness” issued in October 2005, but that there are other elements in both parties’ submissions suggesting that there may have been an earlier disclosure. Among other things, she asks the Public Body to advise when and in what context the disclosures at issue took place. I also note that the trial transcripts contain some discussions of whether what appear to be school officials sent particular documents to the ATA in an informal context.

[para 77] There seem to be two possibilities relative to the facts. One is that the complained-of disclosures were made according to civil procedure rules, for the purpose of providing relevant evidence to the court. If the disclosures were pursuant to such rules, it seems most unlikely to me that the court would entertain a complaint that the formal provision of information relevant to the proceeding before it was a disclosure that violated Part 2 of the FOIP Act, This is because the FOIP Act permits disclosures of information for the purpose of complying with the rules of court that relate to the production of information. I may add that the same point would apply to a complaint before me that was based on such facts.

[para 78] The other possibility is that the complained-of disclosure by the Public Body to the ATA took place or partly took place in some other context. If that is the case, then if this disclosure were in violation of the FOIP Act, that might be a reason for the court to refuse to admit the disclosed information into evidence. This approach has been suggested in a number of labour relations arbitration decisions. However, even if that were so, I do not believe that this would constitute an alternative remedy for the Complainants. If I find that the disclosure provisions of the Act have been violated, I may issue an order compelling the Public Body to stop disclosing the information. While this may seem largely ineffective if the disclosure has already been completed, it nevertheless prevents any further disclosures. This is something the court would not have the power to do. Thus, I do not believe that this would constitute an alternative remedy for the complainants, especially not at this time.

[para 79] I note as well that consent to production of a document by a person in one context such as at trial, or failure to object to or complain about such production in that context, does not preclude a complaint under the Act about disclosure of the same record in another context.

[para 80] In view of the foregoing, I find that the ATA has not provided me with sufficient evidence and explanation to satisfy me that the litigation to which it referred could, or (assuming this to be relevant) that it could have in the past, provided an alternative remedy for the present complaint.

ii. PIPA case files P0019 and P0465

[para 81] The ATA states that the Complainants had an alternative remedy under PIPA. It refers to the Complainant's two previous complaints that were made to this office, case files P0019 and P0465.

[para 82] After a review of the documentation provided by the ATA regarding case files P0019 and P0465, I find that neither of the case files provided the Complainants with an alternative remedy. The material provided as part of the ATA's submissions show that the issue in case file P0019 was whether the ATA properly responded to a request from the Complainants for personal information. The issue in case file P0465 was whether the ATA had the authority to collect, use and disclose the Complainants' personal information under PIPA. Neither of those case files addressed whether the

Public Body had the authority under the FOIP Act to disclose the Complainant's personal information to the ATA.

iii. Section 24(1) of the Teaching Profession Act

[para 83] The ATA states that the Complainants had an alternative remedy under section 24(1) of the *Teaching Profession Act*. It states that the Complainants could have made a complaint of unprofessional conduct under that provision.

[para 84] In the submissions before me, there is a disagreement as to whether the Complainants made a complaint to the ATA regarding the Public Body's alleged disclosure to the ATA and, if so, whether this complaint was made under the *Teaching Profession Act*. The ATA suggests that the Complainants did not avail themselves of the opportunity to make a complaint under the *Teaching Profession Act*. The trial transcripts submitted by the ATA also indicate that, at that time of the trial, the Complainants had not made a complaint pursuant to the *Teaching Profession Act*. However, in their rebuttal submission the Complainants state that they made a complaint to the ATA regarding "unprofessional conduct". However, they did not state whether a formal complaint was made under section 24(1) of the *Teaching Profession Act*.

[para 85] Section 24(1) of the *Teaching Profession Act* provides that any person may make a complaint to the Executive Secretary of the ATA. Section 23(1) further defines what conduct may constitute unprofessional conduct. These sections read:

23(1) Any conduct of a member that, in the opinion of a hearing committee,

(a) is detrimental to the best interests of

(i) students as defined in the School Act,

(ii) the public, or

(iii) the teaching profession,

(b) contravenes sections 16 to 65 or a bylaw made under section 8(f) or (g), or

(c) harms or tends to harm the standing of teachers generally,

whether or not that conduct is disgraceful or dishonourable, may be found by a hearing committee to constitute unprofessional conduct.

24(1) Any person may make a complaint to the executive secretary and the complaint shall be dealt with in accordance with this Act and the bylaws.

[para 86] After a review of section 24(1), it is unclear whether the Public Body's alleged disclosure to the ATA would fall within the definition of unprofessional conduct. Of further concern is a potential conflict of interest, as the Public Body's alleged disclosure was allegedly made to the ATA - the very organization to which complaints under the *Teaching Profession Act* are to be made. For these reasons I find that it is uncertain whether section 24(1) of the *Teaching Profession Act* would apply to the Public Body's alleged disclosure of records to the ATA, and whether it could have provided or could still provide the Complainants with an alternative remedy.

iv. *Complaints made to former Premier Klein, the former Minister of Learning, College of Alberta Superintendents, Alberta School Boards Association*

[para 87] In the ATA's affidavit, the ATA states that the Complainants have already made a number of complaints to a number of individuals including former Premier Klein, the former Minister of Learning, the College of Alberta Superintendents and the Alberta School Boards Association. A review of the ATA's affidavit shows that the Complainants wrote to the above individuals regarding several matters, including the Public Body's use and disclosure of the Complainants' son's personal information to a private company. However, there is no evidence before me that the Complainants wrote to these individuals regarding the Public Body's alleged disclosure of personal information to the ATA. In addition, there is no evidence before me as to whether a letter to these individuals regarding the alleged disclosure would have provided or could provide the Complainants with an alternative remedy.

v. *Investigation report 2000-IR-007*

[para 88] In the ATA's affidavit, the ATA refers to Investigation Report 2000-IR-007 and suggests that this investigation may have provided the Complainants with an alternative remedy.

[para 89] I have reviewed this investigation report. It addressed the Public Body's authority to collect and use personal information of children at a school, the Public Body's authority to disclose that information to a private company, to the RCMP and to the police, and whether the Public Body had instituted sufficient safeguards to protect this personal information from misuse. The investigation report did not, however, address whether the Public Body was authorized to disclose the Complainants' personal information to the ATA.

vi. *Conclusion*

[para 90] As I find that none of the suggested remedies provided the Complainants with an alternative remedy, nor is it clear that they would provide an alternative remedy in the future, in the circumstances of this case, the "alternative remedy" consideration leads to the conclusion that jurisdiction should not be lost from any non-compliance with section 69(6).

d. *Would a finding that jurisdiction should be lost in circumstances such as the present be contrary to the public interest?*

[para 91] The fifth factor addressed by *Kellogg* was whether a finding that a section is mandatory provision would be contrary to the public interest.

[para 92] In Order F2006-031, I considered whether *Rahman v. Alberta College and Assn. of Respiratory Therapy* [2001] A.J. No. 343 (ABQB), which had interpreted as directory a provision requiring that a disciplinary hearing be held within 90 days, applied in the case then before me. This case discussed the question in terms of the impact on the public interest. The case had been distinguished by the Court in the *Kellogg* case because the Court in *Rahman* had found there was no prejudice to the respondent from delay, and because there was no ability under the statute in *Rahman* to extend time. Despite this, I held that *Rahman* applied on the facts in F2006-031. I took into account that on the facts in F2006-031, the greater prejudice would be suffered by the Complainant. As well, I referenced my earlier point that because completion dates were not accurately predictable, the ability to extend the time under section 69(6) to a particular date did not make compliance with the statute more easily achievable. Thus, I relied on the principle in *Rahman* that the public interest is best served where a decision maker whose role includes performing a public duty fulfills that role, so that the persons to whom the statute grants rights may have their rights upheld despite technical breaches or fault on the part of a decision-maker. I assess the balance of prejudice in this case in a manner similar to that in Order F2006-031, and I adopt my reasoning from that case on the “public interest” factor. Thus, this factor weighs in favour of a finding that the legislature did not intend that jurisdiction should be lost in circumstances such as the present.

e. *The factors set out in the Bridgeland case*

[para 93] I turn finally to the factors set out in the decision of the Alberta Court of Appeal in *Bridgeland-Riverside Community Association v. City of Calgary*, cited at para 42 above, for whether a proceeding is vitiated by a procedural defect. Failure to provide an extension and anticipated date of completion during the course of an ongoing proceeding is, in my view, a procedural defect. The factors set out by the Court were: were whether the statute prescribes a vitiating effect; whether a real possibility of prejudice to the attacking party is shown; and whether the procedure was so dramatically devoid of the appearance of fairness that the administration of justice is brought into disrepute.

[para 94] In this case the legislation at issue does not prescribe the consequence that jurisdiction should be lost. The parties did not argue, nor would I agree, that the timing of the steps taken in this case give rise to such unfairness as would bring the administration of justice into disrepute. The only effect on the Public Body in this case from any failure to comply with section 69(6) is that it faced some degree of uncertainty as to when particular steps in the process would be taken. I do not believe this equates with prejudice. As well, as in the *Petherbridge* case, had the statute in this case been complied

with, the Public Body's position would have been no different relative to any substantive issue or its ability to address any substantive issue. On the basis of the factors set out in the *Bridgeland* case, I do not believe that any failure to meet the terms of section 69(6) should be held to vitiate these proceedings.

f. Conclusion

[para 95] Taking into account the circumstances of this case, I find the Legislature did not intend that loss of jurisdiction should result from any failure on my part to meet the requirements of section 69(6).

3. Conclusion

[para 96] I find that I did not lose jurisdiction to hear this inquiry.

V. ORDER

[para 97] I make the following Order under section 72 of the FOIP Act.

[para 98] I find that I properly delegated my authority to an Adjudicator to conduct the preliminary steps she took in this case.

[para 1] I find that I did not lose jurisdiction on the basis of section 69(6) of the FOIP Act. I will conclude this inquiry and issue a decision relative to the issues as stated in the Notice of Inquiry.

Frank Work, Q.C.
Information and Privacy Commissioner