

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2008-008

June 6, 2008

ALBERTA EMPLOYMENT AND IMMIGRATION
(formerly Alberta Human Resources and Employment)

Case File Number 3657

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (the “Act”), the Applicant asked Alberta Employment and Immigration (the “Public Body”) for the questions and results of a public opinion survey on employment standards, which had been conducted by telephone. The Public Body refused access, relying on the discretionary exceptions to disclosure set out in sections 24(1)(a), (b), (d) and (g) of the Act.

The Adjudicator found that all but one of the survey questions, and its responses, formed part of a statistical survey under section 24(2)(d) of the Act. As a public body may not withhold information under section 24(1) if the information is a statistical survey, the Adjudicator concluded that the Public Body had no authority to refuse access to most of the information in the records at issue.

The Adjudicator found that the Public Body did not properly apply section 24(1)(a) (advice, etc.) to the remaining question, as the question itself did not reveal any advice. He also found that the Public Body did not properly apply section 24(1)(a) to the responses to the question, as the members of the public who provided the responses were not engaged to provide advice, but merely asked to give brief comments.

The Adjudicator found that the Public Body did not show that it properly applied section 24(1)(b) (consultations or deliberations), 24(1)(d) (plans relating to personnel or

administration) or 24(1)(g) (a pending policy or budgetary decision) of the Act to the records at issue. The records did not reveal the substance of any consultations or deliberations that might be taking place on the part of officers or employees, and the Public Body pointed to no specific plan relating to its personnel or administration, or a pending policy or budgetary decision, that it was trying to protect.

As the information in the records at issue could not be withheld under section 24(1) of the Act, either because it was part of a statistical survey or did not meet the requirements of the subsections relied upon by the Public Body, the Adjudicator ordered the Public Body to give the Applicant access to all of the requested information.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 4(1)(j), 4(1)(q), 6(1), 6(2), 16, 24, 24(1), 24(1)(a), 24(1)(b), 24(1)(c), 24(1)(d), 24(1)(g), 24(2), 24(2)(d), 71(1), 72 and 72(2)(a); *Employment Standards Code*, R.S.A. 2000, c. E-9. **BC:** *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, ch. 165, s. 13(2)(b). **ON:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 13(1).

Authorities Cited: **AB:** Orders 96-006, 97-007, 98-011, 2000-003, 2001-002, F2003-013, F2004-026 and F2007-022. **ON:** Order PO-1726 (1999). **Other:** *The Concise Oxford Dictionary*, 7th ed. (J.B. Sykes, ed.) (Oxford: Clarendon Press, 1982); Government of Alberta, Service Alberta, Access and Privacy Branch, *Freedom of Information and Protection of Privacy: A Guide* (Edmonton: revised November 2006); Government of British Columbia, Ministry of Labour and Citizens' Services, *FOIPPA Policy and Procedures Manual* (online) (Victoria: last updated March 23, 2003); Government of Ontario, Ministry of Government and Consumer Services, Access and Privacy Office, *The Manual (Access and Privacy)* (online) (Toronto: last modified April 22, 2008).

I. BACKGROUND

[para 1] By letter dated December 19, 2005, the Applicant made a request under the *Freedom of Information and Protection of Privacy Act* (the "Act") to Alberta Human Resources and Employment, which is now called Alberta Employment and Immigration (the "Public Body"). The Applicant asked for the questions and results of a public opinion survey conducted by the Public Body, in the fall of 2005, on the topic of employment standards and a review of the *Employment Standards Code*.

[para 2] In a letter dated March 29, 2006, the Public Body refused the Applicant's request, citing the discretionary exceptions to disclosure set out in sections 24(1)(a), (b), (d) and (g) of the Act (advice, etc.).

[para 3] By letter dated April 11, 2006, the Applicant requested that this Office review the Public Body's decision to refuse access. Mediation was authorized but was not successful. The matter was therefore set down for a written inquiry.

II. RECORDS AT ISSUE

[para 4] The public opinion survey requested by the Applicant was part of a larger review by the Public Body of Alberta's employment standards legislation and policies undertaken in 2005. The review also solicited the public's feedback by way of mail-in and online responses to a discussion guide. Here, the Applicant's specific request for information was only for that part of the public consultation conducted by way of a telephone survey or poll in the fall of 2005. In discussing the records at issue, the Applicant refers to "400 employer and 400 employee responses to a random telephone survey."

[para 5] Accordingly, the information at issue consists of the questions and results of the telephone survey. All of the questions and most of the results are contained in a report prepared by a third party consultant, which the Public Body submitted *in camera*.

[para 6] The questions asked during the telephone survey are found in an appendix to the report. There are nine pages of questions to employers and nine pages of questions to employees. The sets of questions are virtually identical – some are adapted as necessary – except that one question asked of employers (question A2) is not asked of employees. There are also "screener questions" to determine whether an individual wishes to participate in the survey, and is a qualified participant. Finally, there are an overall introduction and project summary, as well as background information for each question, which are provided to each participant by the individual conducting the survey. I find that all of the foregoing information is responsive to the Applicant's request for the survey questions. However, I do not find that the last two pages of the appendix are responsive to the Applicant's request for information. They therefore do not form part of the records at issue.

[para 7] In a section numbered 1.4.1 on page 2, the report contains a breakdown of sample sizes, responses to the preliminary "screener questions" and information about the consultant's success in obtaining completions of the surveys. A breakdown of employer responses to question A1 of the survey appears on pages 2 to 3 of the report, in a section numbered 1.4.2. Breakdowns of both employer and employee responses to questions B1 to I2, including breakdowns of employer responses by industry, appear on pages 5 to 43 of the report.

[para 8] Sections 1.4.1 and 1.4.2 and pages 5 to 43 of the report contain information in both table and text (written) format, and I consider all of it to be responsive to the Applicant's request for the survey responses. I note that the individuals conducting the survey promised the respondents confidentiality, and that the identities of the employers and employees who responded to the survey are not included in the report.

[para 9] The report does not contain employee responses to question A1 or responses to question A2 (which was asked of employers only). As a result, this Office asked the Public Body whether there were other records containing this information. The Public Body replied that the third party commissioned by it to prepare the report "did not

utilize the raw data collected from question A1 employee responses and from A2 employer responses to question A1 for inclusion in the report.”

[para 10] Section 6(1) of the Act grants an applicant a right of access – subject to exceptions to disclosure – to any record “in the custody or under the control of a public body.” The Public Body’s reply regarding the possibility of other responsive records does not indicate whether the third party nonetheless has the relevant survey responses, even though they were not included in the report prepared for the Public Body. If the third party retained the responses in a record – and that record is in the custody or under the control of the Public Body by virtue of commissioning the third party to conduct the survey and prepare the report – then the record is subject to the Applicant’s access request. Again, the Applicant requested the survey questions and results, not the report. This Order will therefore treat the employee responses to question A1 and the employer responses to question A2 as information that is responsive to the Applicant’s request. It is not necessary for me to see the responses themselves, as I am able to ascertain their nature and general content from my knowledge of the questions.

[para 11] The report also does not contain responses to question I3, which was a request for general comments from both employers and employees. However, the responses to question I3 may be found in a second document, consisting of eight pages, which was submitted by the Public Body *in camera* in another package (under Tab 3 of that package).

[para 12] To summarize, then, the records at issue consist of sections 1.4.1 and 1.4.2 and pages 5 to 43 of the report submitted by the Public Body *in camera* and the first 18 pages of the appendix to that report. The records at issue also consist of the eight pages of responses to question I3, found in a second document submitted by the Public Body *in camera*. Finally, if a relevant record exists and is in the custody or under the control of the Public Body, the information at issue also consists of the employee responses to question A1 and the employer responses to question A2.

III. ISSUE

[para 13] As set out in the Notice of Inquiry, dated November 21, 2007, the issue in this inquiry is whether the Public Body properly applied sections 24(1)(a), (b), (d) and (g) of the Act (advice, etc.) to the records/information.

IV. DISCUSSION OF ISSUE

[para 14] The provisions of section 24 of the Act that are relevant to this inquiry are as follows:

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

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

...
 - (d) *plans relating to the management of personnel or the administration of a public body that have not yet been implemented,*
 - (g) *information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision...*
- ...
- (2) *This section does not apply to information that*
 - (d) *is a statistical survey,*

...

[para 15] Under section 71(1) of the Act, it is up to the Public Body to prove that the Applicant has no right of access to the record or part of the record that has been requested.

1. A statistical survey

[para 16] Under section 24(2)(d) of the Act, section 24(1) does not apply to information that is a statistical survey. Section 24(2) sets out specific kinds of information that cannot be withheld under section 24(1), even though that information might otherwise fall within section 24(1) (Order 98-011 at para. 81). This means that, regardless of whether a statistical survey reveals advice or any other type of information enumerated in section 24(1), a public body has no discretion to withhold the information in reliance on section 24(1). The determining factor is not the substantive content of the information but whether or not it is a “statistical survey”.

[para 17] The Public Body submits that the records at issue are the result of a survey but not a statistical survey. The Applicant submits that the records are the result of a public opinion survey, which it says can be an example of a statistical survey if it

compiles data, produces a report outlining the statistical breakdown of the data, and utilizes common statistical concepts and techniques.

[para 18] The term “statistical survey” is not defined in the Act and I could find no definition articulated in an order issued by this Office. The Applicant offers the following definition of “statistical,” which in turn refers to the following definition of “statistics”:

“statistical” – of or pertaining to statistics.

“statistics” – 1. numerical facts systematically collected (statistics of population, crime; vital statistics). 2. ... science of collecting, classifying and using statistics, esp. in or for large quantities or numbers.

[*The Concise Oxford Dictionary*, p. 1038.]

[para 19] I also note the following definitions of a statistical survey in manuals prepared to assist in the interpretation and application of the Act, or of comparable legislation:

“Statistics” is the science of collecting and analyzing numerical data and the systematic presentation of such facts. “Statistical surveys” are general views or considerations of subjects using numerical data. [Government of Alberta, *Freedom of Information and Protection of Privacy: A Guide*, p. 175.]

“Statistical survey” refers to a specific study of a condition, situation or program, by means of data collection and analysis. [Government of British Columbia, *FOIPPA Policy and Procedures Manual*, online.]

A “statistical survey” is a record showing the collection, analysis, interpretation and presentation of aggregate data in relation to a topic or issue which is the object of study, for example, a poll. [Government of Ontario, *The Manual (Access and Privacy)*, online.]

[para 20] On review of the foregoing definitions, and for the purpose of section 24(2)(d) of the Act, I conclude that a “statistical survey” is a collection, interpretation and presentation of numerical data relating to the study of a topic, issue, situation or program. The data being collected may consist of the general views of the subjects being surveyed, and a poll can be an example of a statistical survey (but is not necessarily one).

[para 21] I find that most of the information in the records at issue is part of a “statistical survey” within the meaning of section 24(2)(d) of the Act. The information was collected, interpreted and presented in the form of numerical or statistical data indicating the percentage of participants who selected a particular response to a question posed during the survey. That the information discloses the views or opinions of the

individuals being surveyed – rather than raw or objective “facts” about them – does not detract from my conclusion that there is a statistical survey.

[para 22] I note that section 24(2) of the Act does not make section 24(1) inapplicable to a “public opinion poll” – unlike the comparable legislation in B.C. [B.C.’s *Freedom of Information and Protection of Privacy Act*, s. 13(2)(b)]. However, I do not believe that the decision not to refer to a public opinion poll in Alberta’s Act was intended to mean that a public opinion poll may – by that nature alone – be subject to the discretionary exceptions to disclosure under section 24(1). In referring to a “statistical survey” but not a “public opinion poll”, the intent behind section 24(2)(d) was to render section 24(1) inapplicable to statistical information, but not non-statistical information, arising out of a survey.

[para 23] Indeed, the Public Body points out that the last question in each of the surveys – question I3 – solicited general comments from the participants and did not generate statistics. I agree that question I3, and the responses to it, do not form part of a statistical survey. The question did not collect numerical data, and the record containing the responses does not present numerical data. However, this does not mean that the other questions and results are not part of a statistical survey. At most, the Public Body may refuse access to only part of the records at issue. Section 6(2) of the Act states that an applicant has a right of access to the remainder of the record where information excepted from disclosure can reasonably be severed.

[para 24] I specifically considered whether two other survey questions, and the responses to them, are or are not part of a statistical survey. Questions C2a and C3 were open-ended questions, rather than questions offering a choice of alternatives. However, the range of responses was collected and presented in statistical format in the report. I therefore find that questions C2a and C3, and their responses, are part of the statistical survey.

[para 25] I conclude that questions A1 up to and including I2 in both the employer and employee surveys, and the responses to them, are part of a statistical survey under section 24(2)(d) of the Act. Accordingly, the discretionary exceptions to disclosure under sections 24(1)(a), (b), (d) and (g) cannot apply, and the Public Body had no authority to withhold this information. I also find that the “screeener questions” associated with both surveys form part of a statistical survey, as a form of the responses was presented in statistical format in the report prepared for the Public Body.

[para 26] In reference to the records at issue, I find that all of the information on the first 18 pages of the appendix to the report, being the two sets of survey questions, falls under section 24(2)(d) of the Act, with the exception of question I3. For clarity, I find that section 24(2)(d) also applies to the introduction and project summary given by the caller to the participant, as well as the background information provided before asking each specific question. All of this context forms part of the statistical survey and, moreover, does not reveal any information falling within section 24(1) in any event. The background information that is interwoven with the questions does not disclose any

advice, etc. that the Public Body may have obtained prior to conducting the survey. In other words, the information accompanying the questions suggests no proposed or pre-determined action that might be interpreted as revealing advice, recommendations or policy options from a particular source.

[para 27] I find that all of the information contained in sections 1.4.1 and 1.4.2 and on pages 5 to 43 of the report submitted by the Public Body *in camera* falls under section 24(2)(d) of the Act, as these sections and pages set out the responses to questions A1 to I2 of the survey. Even though, in addition to numerical and statistical presentations of the data in tables, there is written text that describes the results of the survey, I find that the written information remains part of the statistical survey. The text repeats the content of certain questions and indicates the percentage associated with certain responses, without adding any information on the part of the third party consultant that may be construed as falling outside the scope of the statistical survey itself.

[para 28] Finally, I find that the employee responses to question A1 and employer responses to question A2 – which are not found in the report or any other document submitted by the Public Body – would also be subject to section 24(2)(d) of the Act. Given the nature of questions A1 and A2, and the set of alternative responses contemplated by them, the responses would be statistical. If they are in a record that is in the custody or under the control of the Public Body, the responses may therefore not be withheld by the Public Body under section 24(1), even if the third party consultant chose not to use the raw data from questions A1 and A2 for inclusion in the report.

[para 29] As I cannot apply section 24(2)(d) of the Act (statistical survey) to all of the information in the records at issue, I must proceed to review the Public Body's application of sections 24(1)(a), (b), (d) and (g) to question I3 and the responses to it.

2. Advice, proposals, recommendations, analyses or policy options

[para 30] I concluded above that most of the information in the records at issue cannot fall within section 24(1) of the Act, as it is part of a statistical survey under section 24(2)(d). With respect to question I3 of the telephone surveys conducted on the employers and employees – which question is found in the appendix to the report submitted by the Public Body *in camera* – I find that the question itself does not fall within advice, etc. under section 24(1)(a). It has been held that section 24(1)(a) does not apply to an indicator of the topic under discussion, unless it would allow an accurate inference to be drawn about the substance of the advice (Order F2004-026 at para. 77). I find no such inference on the face of the question here. It solicits comments very generally.

[para 31] It only remains for me to consider the Public Body's application of section 24(1)(a) of the Act to the responses to question I3.

[para 32] In order for the Public Body to refuse access to information under section 24(1)(a), the purported advice, proposals, recommendations, analyses or policy options

must meet the following criteria: (1) be sought or expected or be part of the responsibility of a person by virtue of that person's position, (2) be directed toward taking an action, and (3) be made to someone who can take or implement the action (Order 96-006 at p. 9 or para. 42; Order F2004-026 at para. 55).

a) *Information sought or expected by virtue of position*

[para 33] The first requirement of the test under section 24(1)(a) of the Act is that the information was sought or expected, or was part of the responsibility of a person, by virtue of that person's position. In this inquiry, the responses to question I3 of the surveys were provided by general stakeholders and members of the public. Even though the responses came to the Public Body by way of a third party consultant, the responses to question I3 are not found in the report prepared by that consultant. The responses appear alone in a separate document, with no information added by the consultant that might fall within section 24(1).

[para 34] I first need to consider the extent to which a general stakeholder or member of the public can provide advice, etc. to a public body within the meaning of section 24(1)(a). The Applicant submits that the information from a public opinion survey does not fall under the section, as a public body's solicitation of opinions from the public is not with the same intent or purpose as the solicitation of advice from a staff member, outside expert or consultant. The Applicant argues that these latter persons are asked for their opinion due to their knowledge, authority, position or expertise, and that an opinion from a member of the public does not require any of these qualities.

[para 35] The Public Body argues that section 24(1) is broad, in that information needs only to be developed "by or for" a public body, and that this can extend to information provided by the general public. It submits that advice and recommendations from the public are just as important as those obtained from government officials, and therefore ought to be protected to the same extent, in the government decision-making process.

[para 36] Certain cases previously decided by this Office involved or possibly involved advice, etc. that had been provided by persons other than officials and employees of a public body. The inquiry that resulted in Order F2003-013 involved a request for records of a meeting, discussions and correspondence regarding a particular matter. The Commissioner accepted the public body's application of section 24(1)(a) to information that constituted advice, including advice from a "stakeholder". However, it is not clear who that stakeholder was, or what its relationship was to the public body.

[para 37] The inquiry that resulted in Order 2001-002 involved a request for copies of letters and submissions received by a public body from specified organizations in the context of a review of legislation. The former Commissioner found that the content of what is now section 24(1)(a) did not apply to *unsolicited* lobbying documents sent from the organizations to the public body to persuade the public body to act in a certain manner (at para. 47). He did conclude, on the other hand, that the public body had

properly applied the section to other records, which were presumably solicited and therefore sought by the public body (at para. 50). I further note that the only records requested were letters and submissions from three named organizations which were not part of government (at para. 1). However, the relationship between the public body and these organizations, why they were specifically asked to provide the information, and the precise content of the letters and submissions, are all unknown on the face of the order.

[para 38] In the inquiry that resulted in Order F2004-026, an applicant asked for records documenting communications between the public body and any government department, cabinet minister or ministerial staff concerning the enactment, promulgation and implementation of a bill. The applicant also asked for records documenting communications between the public body and any employer, employers' organization, union or other stakeholder (at para. 1). Without appearing to distinguish the source of the communication, the Commissioner concluded that section 24(1) applied to the substantive parts of communications that expressly or implicitly sought an opinion as to the appropriateness of particular proposals respecting the legislation at issue (at para. 90). However, subsequent to the applicant's initial request for information, the public body agreed to release information to which it had initially applied the exception to disclosure under section 16 of the Act (disclosure harmful to business interests of a third party), once it notified the third parties (at para. 4). This suggests that the information from the third parties (i.e., the general stakeholders) was not at issue in the context of section 24(1).

[para 39] Given the foregoing, I find that previous orders of this Office are unclear regarding the extent to which a general stakeholder or member of the public can give advice, etc. within the meaning of section 24(1)(a) of Act. In addition to my not knowing the identity of the parties providing the information or the content of the records at issue in some of these other inquiries, I do not know specifically why the information fell within section 24(1)(a) – apart from being solicited and therefore sought by the public body in one case. As the issue appears not to have been squarely addressed in a previous order of this Office, I will decide, in this inquiry, the extent to which general stakeholders and members of the public can give advice, etc. within the meaning of section 24(1)(a). In particular, I will consider this question as it relates to persons responding to a survey or poll (the non-statistical part, as the statistical part cannot fall under section 24(1) in any event).

[para 40] The Applicant cited an Ontario order, in which it was stated: "Input to the government by members of the public on issues canvassed by the focus group session, although arguably helpful in the formulation of government policy, does not constitute advice or recommendations" (Order PO-1726 at para. 15). However, the applicable section of Ontario's *Freedom of Information and Protection of Privacy Act* allows a public body to refuse to disclose a record only where the disclosure would reveal advice or recommendations "of a public servant, any other person employed in the service of an institution or a consultant retained by an institution" [section 13(1)]. Alberta's section 24(1)(a) is broader in that it does not specify who must provide the advice or

recommendations. It states only that the information must be developed “by or for a public body.”

[para 41] Under other sections of the Act, it has been concluded that, for a record to be created “by or for” a person, the record must be created “by or on behalf” of that person [Order 97-007 at para. 15, discussing what is now section 4(1)(q); Order 2000-003 at para. 66, discussing what is now section 4(1)(j)]. I adopt the same conclusion in respect of section 24(1)(a). I further note that section 24(1)(c) refers to information developed “by or on behalf” of a public body. While I acknowledge that different wording is used in subsections 24(1)(a) and (c), I believe that the intent behind both subsections is to allow a public body to withhold information developed by or on behalf of it. In other words, I equate “by or for” in subsection 24(1)(a) with “by or on behalf” in subsection 24(1)(c). As a result, it is not sufficient under section 24(1)(a) for an organization or individual to simply have provided information *to* a public body.

[para 42] In my view, for information to be developed by or on behalf of a public body under section 24(1)(a) of the Act, the person developing the information should be an official, officer or employee of the public body, be contracted to perform services, be specifically engaged in an advisory role (even if not paid), or otherwise have a sufficient connection to the public body. I do not believe that general feedback or input from stakeholders or members of the public normally meets the first requirement of the test under section 24(1)(a), as the stakeholders or members of the public do not provide the information by virtue of any advisory “position”. This is even if the public body has sought or expected the information from them.

[para 43] To put the point another way, the position of the party providing information under section 24(1)(a) – or the relationship between that party and the public body – should be such that the public body has specifically sought or expected, or it is the responsibility of the informing party to provide, more than merely thoughts, views, comments or opinions on a topic. General stakeholders and members of the public responding to a survey or poll are not engaged by the public body in a sufficient advisory role. They have simply been asked to provide their own comments, and have developed nothing on behalf of the public body.

[para 44] I distinguish the foregoing, however, from situations where a public body might ask a specific stakeholder – who has a particular knowledge, expertise or interest in relation to a topic – to provide advice, proposals, recommendations, analyses or policy options for it, thereby engaging the stakeholder to develop information “on behalf of” the public body. In other words, I do not preclude the possibility of a stakeholder providing advice, etc. by virtue of its position, and therefore within the meaning of section 24(1)(a) of the Act. In such a case, the stakeholder (again, even if not paid) would be specifically engaged in an advisory role and therefore have a sufficiently close connection to the public body. This may be what occurred in the context of the inquiries that gave rise to some of the previous orders of this Office, which are discussed above.

b) Conclusion under section 24(1)(a)

[para 45] I conclude that question I3 of the telephone surveys does not fall under section 24(1)(a) of the Act, as the question itself reveals no advice, etc. I also conclude that the responses to question I3 do not fall under section 24(1)(a), as they were not sought or expected, or part of the responsibility of a person, by virtue of that person's position. The stakeholders and members of the public who provided the responses were not sufficiently engaged by the public body in an advisory role. (Although the third party who conducted the survey and prepared the results was contracted by the Public Body, it merely collected and presented the public's views, providing no additional information falling within section 24(1)(a).)

[para 46] As I find that the first part of the test under section 24(1)(a) of the Act is not met in this inquiry, it is not necessary for me to consider the other two parts of the test. The Public Body had no discretion to refuse to disclose to the Applicant the substance of question I3, or the responses to it. The Public Body has not met its burden, under section 71(1) of the Act, of proving that the Applicant has no right of access.

[para 47] The Public Body also applied section 24(1)(b) (consultations or deliberations), section 24(1)(d) (plans relating to personnel or administration) and section 24(1)(g) (a pending policy or budgetary decision) of the Act to the records at issue. I only need to consider the application of these sections to question I3 and the responses to it. I do not need to consider them in relation to the information that I found was part of a statistical survey under section 24(2)(d), as section 24(1) cannot apply in any event. However, I believe that my conclusions below would apply to the information in the statistical survey anyway.

3. Consultations or deliberations

[para 48] Section 24(1)(b) of the Act gives a public body the discretion to withhold information that would reveal "consultations or deliberations involving officers or employees of a public body, a member of the Executive Council or the staff of a member of the Executive Council." I do not find that the compilation of the information obtained during the telephone surveys involved any of these specified individuals. The information was gathered from members of the public. I do not believe that the fact that the information was collected on behalf of the Public Body – and therefore on behalf of its officers and employees – is sufficient to say that these individuals were "involved" in the consultations or deliberations. They have merely received the information.

[para 49] The purpose of section 24(1)(b) is to allow persons having the responsibility to make decisions to freely discuss the issues before them in order to arrive at well-reasoned decisions; the intent is to allow such persons to address an issue without fear of being wrong, "looking bad" or appearing foolish if their frank deliberations were to be made public (Order 96-006 at p. 10 or para. 48; Order F2004-026 at para. 56). In this inquiry, I acknowledge that the persons making possible decisions are officers, employees, the Minister and/or ministerial staff of the Public Body. However, the results

of the telephone surveys disclose only the views and opinions of the public. The survey does not reveal the substance of any consultations or deliberations on the part of individuals specified in section 24(1)(b), or discussions leading up to any actual decision.

[para 50] The Public Body argues that consultations and deliberations with respect to changes to employment standards legislation and policies are still ongoing, and that its officers and employees must be permitted to operate in a “zone of confidentiality” until final decisions are made. While all of this may be true, it remains that the survey results do not reveal the consultations or deliberations that may be taking place. They reveal only the research or background information on which the consultations or deliberations – or any advice, etc. under section 24(1)(a) – might be based.

[para 51] I accordingly find that the Public Body has not established that section 24(1)(b) of the Act (consultations or deliberations) applies to the information at issue. The Public Body has not met its burden, under section 71(1), of proving that the Applicant has no right of access. It therefore had no discretion to withhold the information in reliance on section 24(1)(b).

4. Plans relating to personnel or administration

[para 52] Section 24(1)(d) of the Act gives a public body the discretion to withhold information that would reveal “plans relating to the management of personnel or the administration of a public body that have not yet been implemented.” The Public Body does not fully explain how the information gathered during the telephone surveys would reveal plans relating to the management of its personnel or the Public Body’s administration. It refers vaguely to “employment standards programs and services” and “education and enforcement activities”, submitting that the survey results would disclose “action plans not yet implemented”.

[para 53] The information gathered during the surveys relates generally to employment matters, but I do not find that it relates specifically to the management of personnel or human resources within the Public Body itself, or other aspects of its administration. I do not interpret section 24(1)(d) so broadly that it would include the possible changes to employment standards legislation and policies envisioned by the Public Body’s overall review. These possible changes would apply throughout Alberta, whereas I believe that section 24(1)(d) is intended to refer to *internal* administrative matters of a public body. This would include a public body’s business and financial planning, processes used to support the delivery of its programs and services, and management of other matters analogous to the reference to “personnel” specifically included in the section.

[para 54] Moreover, section 24(1)(d) applies to plans *that have not yet been implemented*. The implication is that the provision protects the *premature* release of plans that have *already* been decided by a public body. The provision recognizes that a public body’s ability to manage personnel and administration might be compromised if information about its plans was released prior to implementation (Order F2007-022 at

para. 45). In this inquiry, the Public Body points to no specific plan the implementation of which it wishes to protect (it could have elaborated *in camera* if its submissions would disclose the decision). Given the breadth and generality of the survey results, they neither reveal nor suggest any particular plan relating to the Public Body's personnel or administration.

[para 55] I accordingly find that the Public Body has not established that section 24(1)(d) of the Act (plans relating to personnel or administration) applies to the information at issue. The Public Body has not met its burden, under section 71(1), of proving that the Applicant has no right of access. It therefore had no discretion to withhold the information in reliance on section 24(1)(d).

5. A pending policy or budgetary decision

[para 56] Section 24(1)(g) of the Act gives a public body the discretion to withhold "information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision." Again, the Public Body does not fully explain why this section applies to the information gathered during the telephone surveys. It only refers vaguely to "employment standards programs and services" and "education and enforcement activities", submitting that the survey results would disclose "pending policy decisions".

[para 57] Although the survey results might provide background information for future policy or budgetary decision decisions, I do not find that they reveal any actual decision. In other words, the information gathered during the surveys might be used to support a variety of legislative and policy changes. In referring to a decision that is *pending*, I believe that the intent of section 24(1)(g) of the Act is to protect a decision that has already been made – and not merely any number of possible decisions. In other words, there is no actual decision that is revealed on the face of the survey results. Moreover, as in the context of section 24(1)(d) discussed above, the Public Body has shown me no particular policy or budgetary decision that it is trying to protect from disclosure (again, it could have elaborated *in camera* if necessary).

[para 58] I accordingly find that the Public Body has not established that section 24(1)(g) of the Act (a pending policy or budgetary decision) applies to the information at issue. The Public Body has not met its burden, under section 71(1), of proving that the Applicant has no right of access. It therefore had no discretion to withhold the information in reliance on section 24(1)(g).

[para 59] Given my conclusions in this Order, I intend to order the Public Body to disclose to the Applicant all of the information in the records at issue, which records consist of certain parts of the report and the second document submitted *in camera*. Due to the scope of the Applicant's request, I did not find that the entire report was responsive. However, in complying with this Order, the Public Body may choose to consider the release of the entire report to the Applicant.

V. ORDER

[para 60] I make this Order under section 72 of the Act.

[para 61] Except with respect to question I3 and the responses to it, I find that section 24(2)(d) of the Act applies to all of the information in the records at issue, as the information forms part of a statistical survey. The Public Body had no authority to refuse to disclose this information under section 24(1).

[para 62] I find that the Public Body did not properly apply section 24(1)(a) (advice, etc.), section 24(1)(b) (consultations or deliberations), section 24(1)(d) (plans relating to personnel or administration) or section 24(1)(g) (a pending policy or budgetary decision) of the Act to the remaining records at issue. It therefore had no discretion to refuse to disclose the information under these sections.

[para 63] Under section 72(2)(a) of the Act, I order the Public Body to give the Applicant access to all of the records at issue.

[para 64] If the employee responses to question A1 and employer responses to question A2 are in a record that is in the custody or under the control of the Public Body, I also order the Public Body to give the Applicant access to this information. These responses would also form part of a statistical survey, and the Public Body would therefore have no authority to withhold them under section 24(1) of the Act.

[para 65] I further order the Public Body to notify me, in writing and within 50 days of receiving a copy of this Order, that it has complied with the Order.

Wade Riordan Raaflaub
Adjudicator