

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2008-014

July 2, 2008

ALBERTA FINANCE AND ENTERPRISE

Case File Numbers 3827 and 3860

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

Summary: The Applicant made a request under the *Freedom of Information and Protection of Privacy Act* to Alberta Finance, now Alberta Finance and Enterprise. The Applicant requested information regarding personal expense records of a Third Party that were generated while he was using a government credit card and correspondence between several named Government Ministers and employees regarding the same. The Applicant also requested all documents within a named file number.

Alberta Finance and Enterprise decided to withhold the majority of the information as either non-responsive or pursuant to section 17(unreasonable invasion of privacy).

The Commissioner held that Alberta Finance and Enterprise did not properly withhold a portion of the records as non-responsive or pursuant to section 17. The Commissioner ordered Alberta Finance and Enterprise to disclose that information to the Applicant.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n)(i), 1(n)(ii), 1(n)(iv), 1(n)(vii), 1(n)(viii), 17(1), 17(4)(d), 17(4)(e.1), 17(4)(f), 17(4)(g), 17(5)(a), 17(5)(e), 17(5)(f), 17(5)(g), 17(5)(h), 25, 71(2), 72.

Orders Cited: AB Orders: 96-020, 96-021, 97-002, 97-011, 98-007, 99-002, 2000-029, 2001-020, F2004-015, F2005-016, F2007-013

Cases Cited: *University of Alberta v. Pylypiuk* (2002), A.J. No. 445 (Alta. Q.B.)

I. BACKGROUND

[para 1] On July 17, 2006, the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to Alberta Finance, now Alberta Finance and Enterprise (the “Public Body”). The Applicant requested the following information:

- (a) Personal expense records of a Third Party using the government credit card;
- (b) Correspondence between any of the following: Shirley McClellan, Mark Norris, Peter Kruselnicki, Ralph Klein, Pat Black, Pat Nelson, the Third Party regarding the personal expenses of the Third Party using the government credit card; and
- (c) All documents in file #11032.

[para 2] The time period identified in the access request was for January 2001 to the date of the request.

[para 3] On July 19, 2006, the Public Body verbally consulted with the Applicant to clarify the scope of the access request. During that conversation, the Applicant confirmed that he wished to receive all correspondence and documentation pertaining to the criteria in his access request. The Applicant also confirmed that he wished to receive duplicates, but not duplicates of e-mails. Lastly, the Applicant confirmed that he wished to receive cover letters, transmission documents and confirmation of transmissions.

[para 4] On August 11, 2006, the Public Body advised the Applicant that the requested records contained information that may affect the interests of a third party and that the Public Body was required by section 30 of the Act to consult with that third party concerning possible disclosure. On that same date, the Public Body informed the Third Party about the request for information and that the Third Party’s views were being sought as to the possible disclosure of the information.

[para 5] On August 31, 2006, the Public Body received a letter from the Third Party objecting to the possible disclosure of the information to the Applicant.

[para 6] On September 12, 2006, the Public Body responded to the access request notifying the Applicant and the Third Party of its decision. The Public Body informed the parties that it intended to provide partial disclosure of the records to the Applicant.

[para 7] On September 29, 2006, the Third Party requested a review of the Public Body’s decision. On October 24, 2006, the Applicant also requested a review of the Public Body’s decision. Mediation was authorized but did not resolve the issues. The matter was set down for a written inquiry.

[para 8] The Public Body and the Applicant each submitted an initial and a rebuttal submission. The Public Body also submitted an *in camera* initial submission. The Third Party submitted an initial submission but did not submit a rebuttal.

II. INFORMATION/ RECORDS AT ISSUE

[para 9] The records at issue consist of 26 pages of records. The records include credit card statements, photocopies of cheques, and correspondence.

[para 10] The Public Body also withheld portions of government credit card statements under section 25. This information included the card number, credit limits, payments and balances on those statements. This information is not at issue in this inquiry.

III. ISSUES

[para 11] The inquiry notices identified one issue: Does section 17 of the Act (personal information) apply to the records/information?

[para 12] In the Public Body's initial submission, the Public Body claimed that portions of the records are non-responsive to the access request. I will also address this issue. Whether these records are responsive directly relates to the scope of the records which are relevant to the access request.

[para 13] The issues in this inquiry are as follows:

- A. Is/Are the information/records responsive to the Applicant's access request?
- B. Does section 17 of the Act (personal information) apply to the records/information?

IV. DISCUSSION

A. Is/Are the information/records responsive to the Applicant's access request?

[para 14] The Public Body states that records 1, 7, 18-22 and 26 are non-responsive to the Applicant's access request. In addition, the Public Body states that the business related transaction information on records 23-25 is also non-responsive.

[para 15] In Order 99-002, the former Commissioner interpreted the word "responsiveness" to mean anything that is reasonably related to an applicant's access request.

[para 16] I find that records 1 and 7 are responsive to the access request as those records are identified as part of file 11032. I find that this information is reasonably related to the Applicant's access request.

[para 17] However, I find that the business related transaction information on records 23-25 is non-responsive to the request as that information does not reasonably relate to the Applicant's request for "personal expense records" nor is it responsive to the other information requested in the access request. I uphold the Public Body's decision to withhold that information as non-responsive.

[para 18] I also find that the records 18, 19, 20, 21, 22 and 26 are non-responsive to the access request as they are not reasonably related to the access request. These records do not contain the personal expense records of the Third Party using the government credit card, do not consist of the correspondence between named parties nor are the records identified as belonging to file 11032. In particular, I note that although records 19-22 contain copies of personal cheques, I do not find that those records are "personal expense records using the government credit card". In addition, those records are not correspondence between the named parties nor are they identified as belonging to file 11032. I uphold the Public Body's decision to withhold those records as non-responsive.

[para 19] Lastly, I find that records 5, 6, 11, 12, 16 and 17 are also non-responsive to the access request. These records also consist of personal cheques and are not responsive to the information requested within the access request.

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

[para 20] Section 17 is a mandatory ("must") section of the Act. If section 17 applies, a public body must refuse to disclose the information. There are two criteria under section 17:

- (a) the information must be "personal information" of a third party; and
- (b) the disclosure of the personal information must be an unreasonable invasion of a third party's personal privacy.

[para 21] The information that remains at issue are records 1, 2, 3, 4, 7, 8, 9, 10, 13, 14 and 15 and the remainder of the information on the credit card statements in records 23-25 which includes the Third Party's name and information relating to the Third Party's personal expenses such as the date of purchase, the vendor name, location, amount of purchase and other transaction identifiers. Records 23-25 also contain headings and other template information generally found within credit card statements.

1. Is the information “personal information” of a third party?

[para 22] Personal information is defined in section 1(n). The Public Body states that sections 1(n)(i), (ii), (iv), (vii) and (viii) are relevant in this inquiry. These sections read as follows:

I In this Act,

...

(n) “personal information” means recorded information about an identifiable individual, including

(i) the individual’s name, home or business address or home or business telephone number

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

...

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

...

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

(viii) anyone else’s opinions about the individual,...

[para 23] In this inquiry, I find that there are two types of personal information: (a) personal information of the Government Ministers and employees including their names, titles, signatures, business addresses and business phone numbers; and (b) Third Party personal information which included credit card transaction information related to the Third Party’s personal expenses.

[para 24] The personal information of Government Ministers and other Government employees is found on records 1, 2, 3, 4, 7, 8, 9, 10, 13, 14, and 15. This personal information falls within the definition of personal information in section 1(n) and within the section 17(4)(g) presumption of unreasonable invasion of privacy. However, I do not find that the disclosure of this information would be an unreasonable invasion of privacy as, pursuant to section 17(5), this information relates to individuals who were acting in their capacity as public officials (Order F2007-013). Furthermore, as the Public Body did not apply any discretionary exceptions to that information and no other mandatory exceptions apply, I intend to order the Public Body to disclose that information to the Applicant.

[para 25] The Third Party’s personal information is found within the following records:

Records 3, 9, 14 - the subject line

Records 4, 10, 15 – the subject line and 1st sentence

[para 26] I also find that the Third Party's name on the credit card statements within records 23-25 is the Third Party's personal information along with the following information that relates to the Third Party's personal expenses: the date, vendor name, location, amount of purchase and transaction identifiers. I find that this information reveals information regarding items or services the Third Party purchased for his personal use.

[para 27] However, I do not find that the remainder of the information within the records consists of Third Party personal information. Records 1 and 7 consist of internal memoranda which refer to the government's decision to take certain actions regarding its credit card usage, including training and approval processes. Although the Third Party's prior credit card use for personal expenses, arguably, may have prompted the actions outlined in those memoranda, the memoranda do not refer to the Third Party. I also find that records 2, 8 and 13 do not contain the Third Party's personal information. Although the records refer to credit card use by staff within the Department of Economic Development, the records do not specifically refer to the Third Party. I also find that the remaining information on records 3, 9, 14 including dates, file numbers and template headings are not Third Party personal information. In addition, I find that the remaining information on records 4, 10 and 15 do not consist of Third Party personal information. This information includes dates, file numbers and template headings as well as information regarding internal government consultations. This information is not Third Party personal information. Lastly, I find that the remaining information on records 23-25 is not the Third Party's personal information. This information consists of headings and other template information generally found on credit card statements. As the Public Body did not apply any discretionary exceptions to the information identified above and no other mandatory exceptions apply, I intend to order the Public Body to disclose this information to the Applicant.

2. Would the disclosure of the personal information be an unreasonable invasion of a third party's personal privacy as provided in sections 17(1) and 17(4)?

[para 28] Section 17(1) reads:

17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[para 29] Section 17(4) lists a number of circumstances where a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy. The Public Body considered whether sections 17(4)(d), (e.1), (f) and (g) are relevant in this inquiry.

[para 30] These sections read:

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

...

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

(e.1) the personal information consists of an individual's bank account information or credit card information,

(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,

(g) the personal information consists of the third party's name when

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party, ...

a. Section 17(4)(d) – Employment or educational history

[para 31] In Order 2000-029, the term “employment history” was defined as a broad, general phrase that covers information pertaining to an individual's work record.

[para 32] In Order F2004-015, I held that the notes made during an investigation into activities of staff involved in an incident did not constitute “employment history” of those persons. However, I held that the results or conclusions of that investigation may be part of a personnel file and of a person's “employment history”.

[para 33] In this inquiry, it is clear from the records that the Public Body reviewed the Third Party's credit card expenditures. However, the Third Party's personal information in the records do not refer to the results or conclusions of an investigation. The records contain information regarding the outstanding credit card balance and information regarding the Third Party's credit card transactions for personal use. However the records do not go further and disclose the results or conclusions of an investigation. Pursuant to the reasoning in Order F2004-015, I find that the presumption in section 17(4)(d) does not apply to the Third Party's personal information in the records.

b. Section 17(4)(e.1) – Bank account information or credit card information

[para 34] The Public Body states that the records contain the Third Party's bank account information and other related personal and financial information.

[para 35] After a review of the records, I find that section 17(4)(e.1) applies to the Third Party's credit card information within records 23, 24 and 25. Although the credit card information relates to a credit card that was issued by a government department, the records show that it was issued in the Third Party's name for use by the Third Party. I find that the presumption in section 17(4)(e.1) applies to that information.

c. Section 17(4)(f) – Personal recommendations or evaluations, character references or personnel evaluations

[para 36] In Order 97-002, the former Commissioner held that recommendations, evaluations or references must be about an identifiable individual and must be provided by someone other than the third party.

[para 37] In that Order, the former Commissioner also addressed the meaning of “personal evaluations” and “personnel evaluations”. He also adopted the Concise Oxford Dictionary definition of “evaluate” which means to “assess; appraise; find or state the number or amount of; find a numerical expression for”. He held that although “personal evaluations” or “personnel evaluations” may be made according to measurable standards, those evaluations may also be made by applying knowledge, training and experience. The former Commissioner found that the following criteria were relevant in determining whether personal information constitutes “personal evaluations” or “personnel evaluations”:

- (i) Was an assessment either made according to measurable standards or based upon professional judgment?
- (ii) Was the particular evaluation done by a person who had the authority to do the evaluation?

[para 38] I find that the presumption in section 17(4)(f) does not apply to the Third Party's personal information. The Third Party's personal information does not consist of a personal recommendation or a character reference nor does it fulfill the criteria outlined in Order 97-002 regarding personal evaluations or personnel evaluations. The personal information does not contain an assessment made according to measurable standards or based upon professional judgment which was done by a person who had the authority to do such an evaluation.

d. Section 17(4)(g) – Third Party's name

[para 39] The Public Body states that records contain the Third Party's name along with other personal information about the Third Party such as the purchases made by the Third Party for his personal use. The Public Body states that a disclosure of this information would reveal details of the Third Party's personal life.

[para 40] I find that section 17(4)(g) applies to the Third Party's personal information withheld in records 3, 4, 9, 10, 14, 15, 23 and 24. I find that, pursuant to section 17(4)(g)(i), the personal information in those records consists of the Third Party's name and other personal information about the Third Party.

3. Section 17(5)

[para 41] I have found that either section 17(4)(e.1) and/or 17(4)(g) applies to the Third Party's personal information at issue in this inquiry. However, section 17(5) states that a public body must consider all relevant circumstances including, but not limited to, those set out in that section. The Public Body states that it considered whether sections 17(5)(a), (e), (f), (g), and (h) applied to the records at issue. These sections read:

17(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,

...

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

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

(g) the personal information is likely to be inaccurate or unreliable,

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

a. Section 17(5)(a) – Subjecting the activities of the Government of Alberta or a public body to public scrutiny

[para 42] The Public Body states that a certain amount of public scrutiny is warranted in this case where a Government employee used a Government-issued credit card for personal use which was payable, at least initially, by the Government of Alberta. However, the Public Body states that this factor must be balanced against the Third Party's personal privacy.

[para 43] The Public Body states that the Act has two main objectives, to provide a right of access and to protect personal privacy. The Public Body states that it attempted to strike a balance between these objectives by deciding to release information regarding when the credit card was used for personal purposes and how much of a liability was incurred. However the Public Body decided that because the purchases were actually made at the Third Party's own expense, the release of other details concerning the transactions would only serve to reveal personal information about the Third Party

without promoting public scrutiny of the Government of Alberta or the Public Body. The Public Body also referred to the Auditor General Report 2006-2007 (Vol. 1 pages 17 and 171 to 181) which reported on this matter.

[para 44] In Order F2005-016 I held that for section 17(5)(a) to apply as a relevant circumstance, there must be evidence that the activities of the Government of Alberta or a public body have been called into question, which necessitates the disclosure of personal information. I also said the following:

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

[para 45] In this inquiry, I find that the three criterion are fulfilled. The Applicant is not the only person that has decided that public scrutiny of the Third Party's credit card use and the government's response to that use was necessary. The Auditor General has also reviewed and reported on the matter. I also find that the Applicant was concerned with the actions of a number of government employees within the Public Body including those individuals who became aware of the credit card use and subsequently reviewed the matter. Lastly, the Public Body states that it has not yet disclosed any of the responsive records.

[para 46] However, notwithstanding the above three criteria, it should be noted that the overriding consideration under section 17(5)(a) is whether the activities of the Government of Alberta or a public body have been called into question which necessitates a disclosure of personal information (Order F2005-016). In addition, in *University of Alberta v. Pylypiuk* (2002), A.J. No. 445 (Alta. Q.B.), Justice Gallant stated that public scrutiny of government or public body activities under section 17(5)(a) requires some public component, such as public accountability, public interest and public fairness.

[para 47] In the present case, it is clear that the Third Party's use of the government credit card and the government's review of the matter has been called into question. After a review of the Third Party's personal information that remains at issue on records 3, 4, 9, 10, 14 and 15, I find that the disclosure of this information would promote public scrutiny of the Public Body's review of the Third Party's credit card use and use of government credit cards in general. Although the Third Party's personal information on those pages consist of general references to the Third Party's credit card use and outstanding balance, the disclosure of that information in the context of the records in their entirety would provide further information regarding the review process by the Public Body. I find that section 17(5)(a) is a relevant circumstance in regard to that information.

[para 48] I also find that section 17(5)(a) is a relevant circumstance that weighs in favour of disclosing the Third Party's name, the dates and amounts of the Third Party's personal expense purchases found within the credit card statements on records 23-25. Given the concerns that have been raised about the Third Party's credit card use for personal expenses and the approval processes regarding those expenses, I find that the disclosure of this information would contribute to public accountability and public interest.

[para 49] However, I find that a disclosure of the remaining Third Party personal information on the records would not contribute to public scrutiny and, in particular, public accountability, public interest or public fairness. This personal information consists of vendor names, vendor location and other transaction identifiers on the credit card statements within records 23-25 that relate to the Third Party's personal expenses. I do not find that the disclosure of this personal information would promote public scrutiny. The Auditor General found that the Third Party used the credit card for personal expenses. In addition, I have also already found that section 17(5)(a) weighs in favour of disclosing the charges incurred as personal expenses, by date and amount. I do not find that a disclosure of the Third Party personal information that remains at issue would provide further information that would contribute to public scrutiny. In coming to this conclusion, I took note of the fact that there is a difference between satisfying public curiosity and promoting public scrutiny. The disclosure of further information regarding the personal credit card transactions such as the vendor names, locations of the vendors or other transaction identifiers may satisfy public curiosity. However, I do not find that the disclosure of this information would promote further public scrutiny.

[para 50] In the Applicant's submission, the Applicant stated that disclosure of the records is essential in order to allow for public accountability and thereby subject the activities of the Government of Alberta to public scrutiny. In support, the Applicant referred to the *Credit Card Policy Directive* ("Directive") issued by the Alberta Government on December 16, 1998. The Applicant states that this Directive applied to the Third Party and to the Minister of the Department involved. The Applicant states that the requested records relate to the use of a government issued credit card and are essential in determining whether the Directive was followed.

[para 51] After a review of the Directive I do not find that the Third Party personal information that remains at issue would assist the Applicant in determining whether the Directive was followed. The Directive regulated the use of credit cards in the conduct of government business by requiring individuals to submit their original supporting documentation for the purchase to the respective department accounting offices. It also required the Minister to approve the expenses incurred by a deputy head using such a credit card. The Third Party personal information at issue does not contain supporting documentation or information regarding whether the Minister approved the expenditures.

[para 52] The Applicant also referred to Procurement Card Policy contained in section 5.07 of the Public Body's Administrative Policies and Procedures Manual. I do

not find that the Procurement Card Policy is relevant to the application of section 17(5)(a) as the Policy only refers to procurement cards and does not relate to the government credit cards that are at issue in this inquiry.

b. Section 17(5)(e) – Unfair exposure to financial or other harm

[para 53] The Public Body states that if the Third Party's banking information is disclosed into the public domain, financial harm could result.

[para 54] The Third Party states that disclosure of his personal information will unfairly expose him to assumptions regarding his lifestyle and spending habits and thereby impair his ability to seek gainful employment in markets where that information is disclosed.

[para 55] The Applicant states that much of the information that the Third Party argues is potentially harmful has already been disclosed into the public domain. The Applicant states that there has been a significant amount of information already published by the Auditor General as well as extensive media reporting.

[para 56] In Order 2001-020, the former Commissioner held that the focus under section 17(5)(e) is unfair harm to a third party.

[para 57] I do not find that a disclosure of the remaining Third Party personal information would expose the Third Party to financial or other harm. Although the Third Party's personal cheques within records 5, 6, 11, 12, 16, 17 and 19-22 contained banking information, I have already found that these personal cheques are non-responsive to the access request. The Third Party states that disclosure of the records would unfairly expose him to assumptions regarding his lifestyle and spending habits and therefore impair his ability to seek gainful employment. I find that there is insufficient evidence before me that a disclosure of that information would result in the harm the Third Party alleges. I do not find that section 17(5)(e) is a relevant circumstance regarding that information.

c. Section 17(5)(f) – Supplied in confidence

[para 58] The Public Body submits that information regarding the details of the personal charges incurred by the Third Party and information regarding subsequent repayment was supplied in confidence.

[para 59] The Third Party states that he considered the details of the charges and his subsequent repayment to be supplied in confidence.

[para 60] The Applicant states that the information was not supplied in confidence. The Applicant states that the Third Party was not told that the information related to his credit card expenses would be kept confidential, nor did he request that the information be kept confidential. In addition, the Applicant states that the Third Party, as a public

employee, could reasonably have expected that his use of the government credit card could be subject to scrutiny.

[para 61] In Order 98-007, the former Commissioner stated that the primary concern of section 17(5)(f) is to honour promises of confidentiality made to individuals providing personal information and to protect their privacy and the privacy of others to whom the information relates.

[para 62] There is no evidence before me, either by affidavit or on the face of the records, that the Third Party's personal information that remains at issue was supplied in confidence. There is also no evidence that a promise of confidentiality was made to the Third Party in regard to that personal information. As such, I find that section 17(5)(f) is not a relevant circumstance that weighs against the disclosure of the Third Party's personal information in the records at issue.

d. Section 17(5)(g) – Personal information likely to be inaccurate or unreliable

[para 63] The Third Party states the personal information within the records is inaccurate and unreliable. In support, the Third Party refers to the fact that when the Applicant made another similar access request to Alberta Economic Development, the Third Party's former employer, the responsive records identified by that department varied from those responsive records identified by the Public Body.

[para 64] The Public Body disagrees with the Third Party. The Public Body states that to the best of its knowledge, the personal information within the records is accurate and reliable.

[para 65] The Applicant states that the differences in responsive records identified by the Public Body and another government department do not suggest that the personal information at issue is inaccurate or unreliable.

[para 66] In Order 97-002, the former Commissioner held that the reference to accuracy in section 17(5)(g) refers to whether the records contain a correct reflection of the personal information received or provided. The focus is whether the comments or information is accurately recorded, not on the accuracy of the comments or information recorded.

[para 67] I find that there is insufficient evidence before me that the personal information that remains at issue is likely to be inaccurate or unreliable. Although the responsive records identified by the Public Body may vary from those records identified as responsive by Alberta Economic Development, this, in and of itself, does not suggest that the Public Body's records are inaccurate or unreliable. It is conceivable that different government departments would have custody of different records. I do not find that section 17(5)(g) is a relevant circumstance in this inquiry.

e. Section 17(5)(h) – Unfair damage to the reputation of the Third Party

[para 68] The Public Body states that if the Third Party's personal information at issue were publicly disclosed, it would unfairly damage the reputation of the Third Party.

[para 69] The Third Party states that a disclosure of his personal information could unfairly damage his reputation. The Third Party states that at the time he used the credit card for personal expenses, he was following what he thought was acceptable government practice.

[para 70] The Applicant states that there has already been extensive publication of events related to the information at issue and that disclosure of all relevant information in this inquiry would allow for a more accurate and complete portrayal of events and assist in preventing unfair damage.

[para 71] In Order 97-002, the former Commissioner held that the focus of section 17(5)(h) is unfair damage to a person's reputation. Consequently, the application of this section is not dependent on whether the damage or harm envisioned by the section is present or foreseeable, but whether this damage or harm would be unfair to the individual involved.

[para 72] There is no evidence before me that a disclosure of the Third Party's personal information in the records would unfairly damage the Third Party's reputation. I find that a disclosure of the Third Party's personal information in records 3, 4, 9, 10, 14 and 15 would not unfairly damage the Third Party's reputation as this information contains only general references to the Third Party's credit card use and outstanding balances. Similar information has already been disclosed pursuant to the Auditor General's report. In addition, I do not find that a disclosure of the Third Party's personal information within records 23-25 would unfairly damage the reputation of the Third Party. Although these records disclose information regarding the Third Party's personal use of the government credit card, there is insufficient evidence before me, on the face of the records or otherwise, that a disclosure of this information would unfairly damage the Third Party's reputation. I find that section 17(5)(h) is not a relevant circumstance that weighs against disclosure of the personal information.

f. Additional relevant circumstance - Third Party's refusal to consent to disclosure

[para 73] The Public Body states that the Third Party's refusal to consent to disclosure of the records at issue is a relevant circumstance that weighs against disclosure.

[para 74] In Orders 96-020, 96-021 and 97-011, the former Commissioner held that a third party's refusal to consent to the release of their personal information was a relevant circumstance that weighed against disclosure. I similarly find that the Third Party's refusal to consent in this inquiry is a relevant circumstance that weighs against disclosure of the Third Party's personal information.

4. Did the Applicant meet the burden of proof?

[para 75] Section 71(2) of the Act states that an applicant bears the burden of proving that disclosure of the third party personal information would not be an unreasonable invasion of privacy under the Act. I find that the Applicant met this burden of proof in regard to the personal information of Government Ministers and employees on records 1, 2, 3, 4, 7, 8, 9, 10, 13, 14 and 15. This personal information falls within the definition of section 1(n) and fulfills the presumption against disclosure within section 17(4)(g). However, I do not find that the disclosure of this information would be an unreasonable invasion of privacy as this information relates to individuals who were acting in their capacity as public officials.

[para 76] I also find that the Applicant met this burden of proof in regard to the Third Party's personal information on records 3, 4, 9, 10, 14 and 15 and the Third Party's name, the date of the personal transactions and amount of those purchases on records 23-25. This personal information similarly falls within the definition of personal information and fulfills the presumption against disclosure within section 17(4)(g) and/or section 17(4)(e.1). However, I find that the disclosure of this information would be desirable for the purpose of subjecting the Government of Alberta or the Public Body to public scrutiny. I find that, pursuant to section 17(5)(a), the disclosure would promote public scrutiny of the Public Body's review of the Third Party's credit card use and use of government credit cards in general. I find that this factor weighs heavily in favour of disclosure. Although the Third Party's refusal to consent to the disclosure of this information is a relevant circumstance that weighs against disclosure, I do not find that this circumstance outweighs the application of section 17(5)(a).

[para 77] However, I do not find that the Applicant met this burden of proof in regard to the vendor name, vendor location and transaction identifiers on records 23-25. I find that the presumption against disclosure under section 17(4)(g) and/or 17(4)(e.1) applies to this personal information. Furthermore, I find that the Third Party's refusal to consent is a relevant circumstance that weighs against the disclosure of this personal information.

5. Conclusion under section 17

[para 78] I find that section 17(1) applies to the vendor name, location and transaction identifiers on records 23-25. Disclosure of this information would be an unreasonable invasion of personal privacy as provided by section 17(1) and must not be disclosed. I intend to order the Public Body not to disclose this information to the Applicant.

[para 79] I find that section 17(1) does not apply to the Records 1, 2, 3, 4, 7, 8, 9, 10, 13, 14 and 15 and to the Third Party's name, the date and amount of the personal transactions on records 23-25. Disclosure of this information would not be an unreasonable invasion of privacy. I also find that section 17(1) does not apply to the

headings and other template information on records 23-25 as that information is not personal information. Furthermore, as there are no other mandatory exceptions that apply and the Public Body did not apply any discretionary exceptions to this information, I intend to order the Public Body to disclose this information to the Applicant.

V. ORDER

[para 80] I make the following order under section 72 of the Act.

A. Is/Are the information/records responsive to the Applicant's access request?

[para 81] The Public Body properly withheld records 18, 19, 20, 21, 22 and 26 and business related transaction information on records 23-25 as non-responsive to the Applicant's access request. The Public Body is not required to disclose this information. I also find that records 5, 6, 11, 12, 16 and 17 are non-responsive to the access request. The Public Body is not required to disclose this information.

[para 82] The Public Body did not properly withhold records 1 and 7 as non-responsive. However, the Public Body applied section 17 to those records. I have addressed those records under that provision.

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

[para 83] I find that section 17(1) applies to the vendor name, location and transaction identifiers on records 23- 25. Disclosure of this information would be an unreasonable invasion of personal privacy as provided by section 17(1) and must not be disclosed. I order the Public Body not to disclose this information to the Applicant.

[para 84] I find that section 17(1) does not apply to the Records 1, 2, 3, 4, 7, 8, 9, 10, 13, 14 and 15 and to the Third Party's name, the date and amount of the personal transactions on records 23-25. Disclosure of this information would not be an unreasonable invasion of privacy. I also find that section 17(1) does not apply to the headings or other template information on records 23-25 as that information is not personal information. Furthermore, as there are no other mandatory exceptions that apply and the Public Body did not apply any discretionary exceptions to this information, I order the Public Body to disclose this information to the Applicant.

[para 85] I order the Public Body to notify me within 50 days of receiving a copy of this Order that it has complied with the Order.

Frank Work, Q.C.
Information and Privacy Commissioner