

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2010-029

April 21, 2011

ALBERTA EMPLOYMENT AND IMMIGRATION

Case File Number F4977

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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 information relating to complaints made by others under the *Employment Standards Code* against his former employer, Tesco Corporation (the “Affected Party”). The Public Body withheld all of the requested information under section 16(1) of the Act.

Under section 16(1), a public body must refuse to disclose information to an applicant if disclosure would reveal one of the types of information set out in section 16(1)(a), the information was supplied in confidence under section 16(1)(b), and disclosure could reasonably be expected to bring about one of the harms or outcomes set out in section 16(1)(c). As none of the harms or outcomes set out in section 16(1)(c) could reasonably be expected to occur on disclosure of the information at issue, the Adjudicator concluded that section 16(1) of the Act did not apply.

Under section 17(1) of the Act, a public body must refuse to disclose the personal information of a third party if it would be an unreasonable invasion of the third party’s personal privacy. The Adjudicator considered the application of this section because, even though the Applicant had requested no names, third party individuals had made the complaints against the Affected Party. The Adjudicator found that section 17(1) did not apply. The information at issue – consisting of the number and dates of complaints, the reasons for them by way of a very general topic, and the very general nature of their settlement or outcome – was not about any identifiable individuals and there was

therefore no personal information. Alternatively, if any third parties were identifiable by virtue of other information known to the Applicant, the Adjudicator found that disclosure of their personal information would not be an unreasonable invasion of their personal privacy.

As neither section 16(1) nor section 17(1) applied to the information at issue, the Adjudicator ordered the Public Body to give the Applicant access to it.

The Applicant argued that the Public Body had not fulfilled its duty to assist him under section 10(1) of the Act, and had not given him adequate reasons under section 12(1) for its refusal to grant him access to the requested information, as it had not provided him with copies of correspondence from the Affected Party to the Public Body in which the Affected Party objected to disclosure of the requested information. The Adjudicator concluded that neither section 10(1) nor section 12(1) required the Public Body to give the Applicant a copy of the objections, whether during the processing of his access request or at the time of its response refusing to grant access.

The Adjudicator accordingly concluded that the Public Body had met its duty to assist the Applicant under section 10(1), and that it had complied with section 12(1), insofar as it gave adequate reasons for its refusal to grant access. However, the Adjudicator found that the Public Body had failed to comply with the requirements of section 12(1) in a different respect, in that it had not described or classified the records being withheld.

The Adjudicator noted that an applicant may become entitled to a copy of a third party's earlier representations to a public body concerning disclosure of requested information if the matter proceeds to an inquiry and the applicant requires an actual copy of the representations in the interests of procedural fairness. In this case, the Adjudicator found that the Applicant did not require a copy of the Affected Party's earlier objections in order to fairly and properly respond to the issues in the inquiry, as the substance of the objections had been adequately summarized in the inquiry submissions of the Public Body and Affected Party that had been exchanged with the Applicant.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(h)(ii), 1(n), 1(n)(ix), 2(a), 3(a), 6, 10(1), 12, 12(1), 12(1)(a), 12(1)(b), 12(1)(c)(i), 12(1)(c)(ii), 12(1)(c)(iii), 12(2), 14(1)(c), 16, 16(1), 16(1)(a), 16(1)(a)(i), 16(1)(a)(ii), 16(1)(b), 16(1)(c), 16(1)(c)(i), 16(1)(c)(ii), 16(1)(c)(iii), 16(1)(c)(iv), 16(3), 16(3)(c), 17, 17(1), 17(2), 17(2)(a), 17(4), 17(4)(b), 17(4)(d), 17(5), 17(5)(a), 17(5)(c), 17(5)(e), 17(5)(f), 30, 30(1), 30(4)(c), 30(5)(b), 31, 31(2), 35(a), 55, 55(1)(a), 59(2)(a), 59(3)(a), 67(1), 67(1)(a)(ii), 69(3), 71(1), 71(2), 71(3)(b), 72, 72(2)(a) and 72(3)(a); *Employment Standards Code*, R.S.A. 2000, c. E-9, ss. 77, 82 to 85, 128 and 129; *Labour Relations Code*, R.S.A. 2000, c. L-1, ss. 1(j), 8(2), 16(4)(a), 65(1), 65(2), 65(3), 94, 97(1), 97(2), 99, 105(1), 117, 118, 119, 123(1), 137(1), 138(1) and 190(1); *Public Service Employee Relations Act*, R.S.A. 2000, c. P-43, ss. 1(k), 28(1), 29, 31(4), 33, 34, 36(2), 36(3), 51(2), 51(3) and 52(a).

Authorities Cited: AB: Orders 96-003, 96-013, 97-011, 99-018, 99-028, 99-038, 2000-003, 2000-014, 2001-002, F2003-005, F2003-014, F2004-008, F2004-013, F2004-026, F2004-028, F2005-011, F2006-014, F2007-013, F2008-012, F2008-025, F2008-028, P2006-004 and P2009-009; *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner)*, 2006 ABQB 515. **CAN:** *Gordon v. Canada (Minister of Health)*, 2008 FC 258. **ON:** Order MO-2199 (2007).

I. BACKGROUND

[para 1] In a letter dated March 18, 2009, the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to Alberta Employment and Immigration (the “Public Body”). He asked for “[t]he number, date, reason and settlement (outcome) of Employment Standard[s] complaints against Tesco Corporation”, excluding information from two particular files with which he was already familiar. Tesco Corporation was the Applicant’s former employer.

[para 2] In a letter dated April 9, 2009, the Public Body told the Applicant that disclosure of the requested information may affect the interests of Tesco Corporation and that the Public Body would therefore be consulting with it.

[para 3] In a letter dated May 14, 2009, the Public Body told the Applicant that it was refusing to grant him access to all of the requested information, on the basis of section 16(1) of the Act. In another letter dated June 1, 2009, the Public Body specified that it was applying “sections 16(1)(a)(ii), (b) and (c)(iii)(iv)”.

[para 4] In a letter dated June 8, 2009, the Applicant requested a review of the Public Body’s response to him. The Commissioner authorized a portfolio officer to investigate and try to settle the matter. This was not successful, and the Applicant requested an inquiry by letter dated November 20, 2009. A written inquiry was set down.

[para 5] As contemplated by section 67(1)(a)(ii) of the Act, I arranged for this office to notify Tesco Corporation as a party affected by the Applicant’s request for review. It is the business interests of Tesco Corporation that are arguably at stake under section 16(1), which was the provision applied by the Public Body. Tesco Corporation (the “Affected Party”) participated in the inquiry.

[para 6] I considered whether to notify and invite submissions from any other third parties but decided otherwise. The Public Body and Affected Party raise the possibility that the records at issue consist of the personal information of third parties to which section 17(1) might apply. These individuals are employees or former employees of the Affected Party, who made the employment standards complaints. However, I find that the existing submissions of the parties, along with my review of the records at issue themselves, enable me to decide the issue under section 17. Representations from additional persons are not necessary or desirable in this particular case. Given the nature of the information at issue, which is very general, I also believe that there is a limited potential for any adverse effect on any of the complainants if the information were

disclosed, assuming that the complainants are identifiable. On my consideration of the circumstances, it is my opinion that third party individuals are not affected in such a way as to require notice under section 67(1)(a)(ii).

II. RECORDS AT ISSUE

[para 7] The records submitted by the Public Body consist of “Claim Printouts” and “Claim/Complaint Detail” computer screenshots from the Employment Standards Information System. There are 17 pages in total, which were withheld from the Applicant in their entirety. I note that the Public Body previously submitted 18 pages of records to this Office, but page 18 was a duplicate of page 17.

[para 8] Not all of the information on the Claim/Complaint Detail screenshots is responsive to the Applicant’s access request. He asked only for the number of complaints against the Affected Party (which is evident by counting the number of them appearing in the records), the date of each complaint (which appears on each screenshot as the date that the complaint was “Registered”), the reason for each complaint (which is indicated on each screenshot in that there is a check mark in a box with an accompanying code, or abbreviation), and the settlement/outcome of each complaint (which appears on each screenshot as the “Status” and “Conclusion Reason”).

[para 9] The only responsive information appearing on the Claim Printouts is the “Claim Registered” date, and the last line of information under the heading “Description”, which indicates the outcome of the claim.

[para 10] The only responsive information on page 17 of the records is the information under the headings “Status” and “Operating Name” in all but the first three lines. This information again indicates the number of complaints against the Affected Party, and their outcomes.

[para 11] As only the information that I have just described is responsive to the Applicant’s access request, it is the only information to which I am referring when I refer generally to the records or information at issue in this Order.

[para 12] Finally, I note that the Affected Party sometimes prefaces its submissions with the phrase “if the records exist”, as though this inquiry involves an issue under section 12(2) of the Act, which allows a public body, under certain circumstances, to refuse to confirm or deny the existence of responsive records. However, the Public Body did not rely on that section.

III. ISSUES

[para 13] The Notice of Inquiry, dated August 30, 2010, set out the following issues, although I have slightly rephrased one and placed them in a different sequence for the purpose of discussion:

Did the Public Body comply with section 12(1) of the Act (contents of response)?

Did the Public Body comply with section 10(1) of the Act (duty to assist)?

Does section 16(1) of the Act apply to the records/information at issue (disclosure harmful to business interests of a third party)?

[para 14] I have also decided to add the following issue, which the parties addressed in their submissions:

Does section 17(1) of the Act apply to the records/information (disclosure harmful to personal privacy)?

[para 15] By letter dated November 10, 2009, the Commissioner issued a decision in which he authorized the Public Body, under section 55(1)(a) of the Act, to disregard a subsequent access request made by the Applicant. In this other access request, the Applicant asked for a copy of the Public Body's file relating to its processing of the access request that is the subject of this inquiry. As explained in his submissions, the Applicant wanted, in particular, copies of the correspondence from the Affected Party to the Public Body in which the Affected Party set out its objections to disclosure of the information at issue in this inquiry. The Commissioner's decision to authorize the Public Body to disregard the Applicant's subsequent access request was upheld by the Court of Queen's Bench on judicial review.

[para 16] The information requested by the Applicant in his subsequent access request is not at issue in this inquiry, so I will not be reviewing whether he has a right to obtain that information under section 6 of the Act. The Applicant argues that the Public Body was wrong to request an authorization to disregard this other access request, and gave false and misleading information about him when doing so, but I have no jurisdiction to revisit the decisions of the Commissioner or the Court of Queen's Bench. I am, however, in a position to address the extent to which the Public Body was required to give the Applicant a copy of the Affected Party's objections to disclosure during or at the end of its processing of the access request that is the subject of this inquiry, whether as part of its duty to assist the Applicant under section 10(1) or as part of its reasons for refusing access under section 12(1)(c)(i).

[para 17] The Applicant makes submissions regarding the processes carried out by the portfolio officer of this Office prior to the inquiry. As investigation and possible settlement by a portfolio officer is separate from an inquiry, I have no ability to discuss the Applicant's comments in this regard. I am limited to reviewing his concerns in relation to the processes carried out by the Public Body, and processes in relation to the inquiry itself.

IV. DISCUSSION OF ISSUES

A. Did the Public Body comply with section 12(1) of the Act (contents of response)?

[para 18] Section 12(1) of the Act reads as follows:

12(1) In a response under section 11, the applicant must be told

- (a) whether access to the record or part of it is granted or refused,*
- (b) if access to the record or part of it is granted, where, when and how access will be given, and*
- (c) if access to the record or to part of it is refused,*
 - (i) the reasons for the refusal and the provision of this Act on which the refusal is based,*
 - (ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and*
 - (iii) that the applicant may ask for a review of that decision by the Commissioner or an adjudicator, as the case may be.*

[para 19] The Public Body provided two responses to the Applicant's access request, one by letter dated May 14, 2009 and the other by letter dated June 1, 2009. The Applicant specifically argues that these did not comply with the requirements of section 12(1)(c)(i). He does not raise concerns in relation to the other requirements set out above. In any event, I find that the Public Body's responses of May 14 and June 1, 2009, together, met the requirements of section 12(1)(a), 12(1)(c)(ii) and 12(1)(c)(iii). While I note that the first letter did not provide the title of the contact person, as required by section 12(1)(c)(ii), the second letter did. Section 12(1)(b) is not applicable, as the Public Body did not grant access to any of the requested records.

[para 20] I now turn to whether the Public Body adequately told the Applicant the reasons for its refusal to grant access to the requested records and the provision of the Act on which the refusal was based, as required by section 12(1)(c)(i).

[para 21] In the letter of May 14, 2009, the Public Body told the Applicant that "access to all of the information that you requested [information listed] is denied under section 16 of the Act". In that same letter, the Public Body reproduced the content of section 16(1) in full, but did not provide any other reasons for withholding the records. The Applicant then attended at the office of the Public Body on May 28 and 29, 2009, seeking a more detailed explanation regarding the application of section 16(1) to the

information that he had requested. In the letter of June 1, 2009, the Public Body wrote the following:

The FOIP Guidelines and Practices Manual states that section 16(1) creates a mandatory exception to disclosure for information which, if disclosed, would reveal certain types of third party business information supplied in confidence, and could also result in one or more specified harms. Section 16(1)(a) to (c) provides a three part test. The information in question must:

- *be of the type set out in section 16(1)(a);*
- *be supplied explicitly or implicitly in confidence by the third party (section 16(1)(b)); and*
- *meet one of the harms or other conditions set out in section 16(1)(c)*

As you are aware, consultation was sought with the affected third party, Tesco Corporation, as required under the Act. Their response was considered when a decision to apply sections 16(1)(a)(ii), (b) and (c)(iii)(iv) was made by this Public Body.

[para 22] In Order F2004-026 (at paras. 98 and 99), the Commissioner explained the requirements of section 12(1)(c)(i) as follows:

... In my view, the language of section 12 does not imply that a reason must in every case be given *in addition to* the naming (or quoting or summarizing) of a particular statutory exception. There are some circumstances in which both parts of the requirement in subsection (i) can be fulfilled by naming the section number (or describing the provision). While in some circumstances more in the way of an explanation may be called for, in others there would be nothing more that could usefully be said by way of providing a reason than what the provision creating the exception says. [...]

However, I do read into section 12(1)(c)(i) the requirement that in a response, responsive records that are being withheld be described or classified insofar as this is possible without revealing information that is to be or may be excepted, and that the reasons be tied to particular records so described or classified. At a minimum, it would, at least in most cases, be possible to set out the number of records being withheld under a particular subsection without disclosing the contents. [...]

In a footnote to one of the sentences above, the Commissioner added that Order 2000-014 (at para. 81) held, in a different context, that public bodies should be as specific as possible about records to which they have decided to grant access and not grant access.

[para 23] In Order F2007-013 (at para. 26), the Commissioner elaborated as follows:

Section 12 requires a public body to provide the following (see Order F2004-026):

(i) A description of the responsive records – The public body must describe or classify the responsive records without revealing information that is to be or may be excepted. At a minimum, a public body should disclose the number of “records”, or in other words the number of documents, withheld and the number of pages within each document.

(ii) The statutory exception applied – A public body must provide the statutory exception for withholding the pages of records and tie those exceptions to the particular records. However, a public body does not, in every case, have to provide reasons in addition to a statutory exception. There are circumstances in which section 12(c)(i) may be fulfilled by naming the section number or describing the provision, as nothing more could be said without revealing information that may be excepted.

[para 24] In this case, the Public Body did not describe or classify the records being withheld from the Applicant, which was possible without revealing information that may be excepted from disclosure, so the Public Body did not meet the requirements of section 12(1)(c)(i) in this respect. I therefore conclude that the Public Body did not fully comply with section 12(1). However, it is not necessary for me to order the Public Body to comply with its obligation to describe or classify the records being withheld, as it did so when it prepared and exchanged an index of records during this inquiry. Nonetheless, I remind the Public Body of its obligation to describe or classify the records being withheld, to the extent possible, when it initially responds to an applicant in the future.

[para 25] As for conveying its reasons for refusing access and the provision of the Act on which the refusal was based, the Public Body cites Order F2008-028 (at para. 274), which in turn cited one of the paragraphs of Order F2004-026 reproduced above, for the proposition that the language of section 12 does not imply that a reason for withholding the information must be provided in addition to the naming of a particular statutory exception. However, those Orders also noted that there may be situations in which more of an explanation is called for. In my view, a public body’s decision to apply section 16(1) of the Act is one such situation.

[para 26] Under section 16(1), there are a variety of types of information contemplated, and a variety of potential consequences that require a public body to withhold information that would reveal it. Therefore, to meet the requirements of section 12(1)(c)(i), a public body should give some detail about the way in which section 16(1) applies in the circumstances of the case. Unless it would reveal the information being withheld, a public body should generally give an indication of the nature of the business

information that it believes would be revealed on disclosure of records to the applicant, for instance in reference to the general categories set out in section 16(1)(a) (i.e., trade secrets, commercial information, financial information, labour relations information, scientific information and/or technical information). It should also indicate the harm or consequence under section 16(1)(c) that it believes would arise on disclosure of the information being requested (i.e., whether disclosure could reasonably be expected to harm significantly the competitive position of a third party, interfere significantly with the negotiating position of a third party, result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied, result in undue financial loss to a person or organization, result in undue financial gain to a person or organization, and/or reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute).

[para 27] In order to provide proper reasons under section 12(1)(c)(i), insofar as the application of section 16(1) is concerned, a public body may choose to cite or incorporate the language of specific sub-paragraphs of section 16(1) – that is, sub-paragraphs 16(1)(a)(i), 16(1)(a)(ii), 16(1)(c)(i), 16(1)(c)(ii), 16(1)(c)(iii) and/or 16(1)(c)(iv). Alternatively, it may provide its own wording that adequately explains its application of section 16(1). A public body is free to determine the specific content of its reasons for refusing access, provided that the reasons provide a minimum level of detail, in one form or another, as to how or why it applied section 16(1).

[para 28] Here, the Public Body's response of May 14, 2009 did not adequately provide its reasons under section 12(1)(c)(i), as it merely referred to and reproduced the whole of section 16(1). However, the Public Body's response of June 1, 2009 provided adequate reasons, as the response indicated the specific sub-paragraphs that the Public Body was applying as well as provided additional detail about the reasons for its decision, such as the fact that section 16(1) sets out a mandatory exception to disclosure, the applicable test for non-disclosure, and the fact that the Public Body consulted with the Affected Party and considered its response (implying that the Affected Party objected to disclosure).

[para 29] The Applicant submits that, even though the Public Body cited specific sub-paragraphs of section 16(1) in its letter of June 1, 2009, it did not explain how the sub-paragraphs apply to the information being withheld. However, I find that the Public Body provided a sufficient amount of detail as to why and how it applied section 16(1) in this case. The reasons given by a public body under section 12(1)(c)(i) do not have to be particularly lengthy. While a longer explanation might be recommended in some cases, a public body does not have to explain, in its initial response to an applicant, how each sub-paragraph of section 16(1) applies to the information being withheld. Of course, this may become necessary if the matter proceeds to a review by this Office.

[para 30] The Applicant argues that the Public Body should have given him a copy of the file generated during the processing of his access request, or at least the Affected Party's objections, in order to adequately explain its decision to withhold the requested

information. However, section 12(1)(c)(i) requires that a public body give its reasons for refusing access, not that it provide a copy of any part of its processing file or any particular document to an applicant. Moreover, a public body is entitled to determine the content of its reasons. It is not required even to summarize or paraphrase a third party's objections to disclosure of the requested information, although this might be encouraged, provided that information that may be excepted from disclosure under the Act would not be revealed.

[para 31] The Applicant submits that the Public Body did not properly provide its reasons for refusing access because it did not provide convincing arguments that section 16(1) applies in the first place. However, the reasons for a public body's refusal to grant access to information, as set out in its response to an applicant, do not have to be correct or sufficient for the purpose of applying the exception to disclosure. Section 12(1)(c)(i) requires only that reasons be given, leaving the question of whether the particular exception to disclosure was properly applied to be reviewed if the applicant challenges the public body's decision.

[para 32] As will be explained later in this Order, the application of section 17(1) has become an issue in this inquiry. The Applicant argues that it should not be an issue because the Public Body did not refer to that provision in its response under section 12(1)(c)(i). The application of section 17 must be considered in this inquiry, even if the Public Body did not previously cite or even consider it, because it sets out a mandatory exception to disclosure and arguably applies in this case. In terms of compliance with section 12(1)(c)(i), the Public Body was not required to cite section 17(1) in its response to the Applicant, as the Public Body had chosen to rely on a different section of the Act in order to refuse access. Having said this, public bodies are encouraged to consider the application of section 17(1) where it might apply, and note the section in the response to an applicant if they find that it does apply, even in the alternative. In this particular case, it is not clear whether the Public Body believed that section 17(1) applied but chose not to cite it, did not consider its application, or considered its application but determined that the section did not apply. I therefore make no comment on whether this was a case where the Public Body should have been encouraged to cite section 17(1) in the alternative.

[para 33] Finally, I note that the Public Body's June 1, 2009 response was late, given that it had earlier extended the time for responding to the Applicant's access request, under section 14(1)(c), only up to May 14, 2009. However, the timing of the Public Body's response is not an issue in this inquiry. The Applicant is concerned about the contents of the Public Body's response under section 12(1)(c)(i), not about the fact that it opted to give two responses, one of which was a few weeks late. His argument is that the responses, together, were deficient in terms of complying with section 12(1).

[para 34] Having said this, the Public Body should have provided, on or before May 14, 2009, a response to the Applicant that was fully compliant with 12(1)(c)(i). It did the next best thing by doing so after the Applicant contacted it for a more detailed explanation. Section 12(1)(c)(ii) contemplates that an applicant might ask a public body

questions about its refusal to grant access, but adequate reasons for the refusal should be in the public body's response in the first place.

[para 35] I conclude that the Public Body did not comply with section 12(1) of the Act, but only in that it did not describe or classify the records being withheld from the Applicant.

B. Did the Public Body comply with section 10(1) of the Act (duty to assist)?

[para 36] Section 10(1) of the Act reads as follows:

10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[para 37] The Public Body has the burden of proving that it fulfilled its general duty to assist the Applicant under section 10(1) (Order 99-038 at para. 10; Order F2004-008 at para. 10). Having said this, I will limit my review of the Public Body's duty to assist to the specific concerns raised by the Applicant. In particular, he is concerned that the Public Body did not provide him with a copy of the Affected Party's representations concerning disclosure of the information requested by him, which the Affected Party had provided to the Public Body. I will also make some comments about an applicant's right, outside the context of section 10(1), to obtain a copy of a third party's representations concerning disclosure.

1. Does section 10(1) require an applicant to be given a copy of a third party's representations concerning disclosure?

[para 38] The Applicant submits that the Public Body failed in its duty to assist him under section 10(1) of the Act because it did not provide him with a copy of its "processing file" – i.e., the set of records created and compiled by the Public Body when processing his request for the records at issue in this inquiry. In particular, the Applicant argues that he was entitled to obtain a copy of the "third party objections" – i.e., the correspondence from the Affected Party to the Public Body in which the Affected Party provided its views on whether or not the Applicant should be granted access to the information that he had requested. The Applicant argues that not producing the processing file means that the Public Body did not respond to him openly and completely.

[para 39] In the preceding part of this Order, I explained that the Public Body was not required to give the Applicant a copy of any part of its processing file in order to give the reasons for its refusal to grant access to the records at issue, within the terms of section 12(1)(c)(i). In this part of the Order, I will discuss whether it was required to do so as part of its more general duty to assist the Applicant, within the terms of section 10(1).

[para 40] I will first reproduce relevant parts of sections 30 and 31 of the Act, which set out a scheme governing a public body's responsibilities when processing an access request that involves the interests of a third party, as in this case:

30(1) When the head of a public body is considering giving access to a record that may contain information

- (a) that affects the interests of a third party under section 16, or*
- (b) the disclosure of which may be an unreasonable invasion of a third party's personal privacy under section 17,*

the head must, where practicable and as soon as practicable, give written notice to the third party in accordance with subsection (4).

...

(4) A notice under this section must

- (a) state that a request has been made for access to a record that may contain information the disclosure of which would affect the interests or invade the personal privacy of the third party,*
- (b) include a copy of the record or part of it containing the information in question or describe the contents of the record, and*
- (c) state that, within 20 days after the notice is given, the third party may, in writing, consent to the disclosure or make representations to the public body explaining why the information should not be disclosed.*

(5) When notice is given under subsection (1), the head of the public body must also give the applicant a notice stating that

- (a) the record requested by the applicant may contain information the disclosure of which would affect the interests or invade the personal privacy of a third party,*
- (b) the third party is being given an opportunity to make representations concerning disclosure, and*
- (c) a decision will be made within 30 days after the day notice is given under subsection (1).*

31(1) Within 30 days after notice is given pursuant to section 30(1) or (2), the head of the public body must decide whether to give access to the record or to part of the record, but no decision may be made before the earlier of

(a) 21 days after the day notice is given, and

(b) the day a response is received from the third party.

(2) On reaching a decision under subsection (1), the head of the public body must give written notice of the decision, including reasons for the decision, to the applicant and the third party.

(3) If the head of the public body decides to give access to the record or part of the record, the notice under subsection (2) must state that the applicant will be given access unless the third party asks for a review under Part 5 within 20 days after that notice is given.

(4) If the head of the public body decides not to give access to the record or part of the record, the notice under subsection (2) must state that the applicant may ask for a review under Part 5.

[para 41] To summarize, if a public body is considering giving an applicant access to a record that may contain information that affects a third party's interests, section 30(1) requires the public body to give notice to the third party (where practicable). In turn, section 30(4)(c) requires the public body to tell the third party that the third party may consent to disclosure of the requested information or make representations explaining why the information should not be disclosed. In relation to an applicant, the public body is required by section 30(5)(b) to give notice to him or her that a third party is being given an opportunity to make representations concerning disclosure. Finally, section 31(2) requires the public body to give both the applicant and the third party notice of its decision on whether to give the applicant access to the requested records, including the reasons for the decision.

[para 42] The Applicant argues that procedural fairness required that he be given a copy of the Affected Party's objections to disclosure, so that he could provide a response to the Public Body. He submits that the laws of natural justice require opposing positions, accusations and statements of fact to be made available to all parties, so that they can be verified or refuted. He says that he was excluded from the process, and that government officials and corporations should not be able to agree among themselves to keep information secret. The Applicant cites guidelines, as well as tribunal and court decisions, in which principles regarding natural justice, administrative fairness and participation rights are laid out.

[para 43] While procedural fairness is obviously important, the Legislature has already set out what it considers to be the required level in this context. First, an applicant must be informed, under section 30(5)(b), of the fact that a third party is being consulted. Even if the applicant is not given a copy of any subsequent objections (and may not be told the identity of the third party in many cases), the notice enables him or her to provide further views to the public body, now that he or she knows at least that a third party is involved. Second, procedural fairness is contemplated in section 31(2), in

that it requires the public body, after considering any representations of the third party, to give the applicant the reasons for its decision as to whether to give access to the requested records. However, as under section 12(1)(c)(i), these reasons do not have to include a copy of any part of the public body's processing file, including the third party's objections. A public body is free to explain its reasons, provided that they are adequate, in whatever form it chooses.

[para 44] If a public body were required to give an applicant a copy of a third party's representations concerning disclosure, section 30, 31 or another section would likely have set out this obligation (probably also with the discretion to sever parts of the representations, if the public body considered that appropriate). Section 67(1), for instance, requires the Commissioner or his delegate to give a copy of an applicant's request for review to certain parties. By contrast, section 30 and 31 set out a fairly comprehensive scheme for balancing an applicant's right of access with the interests of a third party, and it does not include any exchange of representations. If the Legislature had meant for a public body to give certain documents to the applicant, it presumably would have said so in a provision.

[para 45] Moreover, there is a good reason why no such provision was included in the Act. A public body is not required to give an applicant a copy of the representations of a third party because the third party must be free to discuss the information being requested and disclose information about itself or its business, without the applicant obtaining, by way of the representations, the very information being requested or other information that may be subject to an exception to disclosure under the Act.

[para 46] Given the foregoing, I cannot read into section 10(1) an obligation on the part of a public body to give an applicant a copy of a third party's representations concerning disclosure. As for giving an applicant a copy of any other part of the file generated while processing an access request, this is likewise not part of a public body's duty to assist under section 10(1). The Applicant suggests that the Public Body should have given him copies of records containing the views of the FOIP Coordinator or the head of the Public Body, so as to explain the decision to refuse access. Again, however, nothing in the Act contemplates this as part of the responsibilities of a public body when processing an access request. To include the responsibility in the duty to assist under section 10(1) would be to inappropriately broaden the scope of that section.

[para 47] If an applicant wishes to obtain copies of particular records in a public body's processing file, he or she may ask for them, whether informally or by way of a formal access request, as the Applicant did here. However, there is no requirement in the Act that the public body provide copies. It is a decision for the public body to make, which may then be the subject of a review by this Office.

[para 48] The Applicant cites section 35(a) of the Act, which requires a public body to make every reasonable effort to ensure that an individual's personal information is accurate and complete if it will be used to make a decision that directly affects the individual. He says that the Public Body contravened this section by using what he

assumes to be inaccurate statements about him in the Affected Party's objections in order to refuse access to the information that he had requested.

[para 49] An issue under section 35(a) was not identified for this inquiry. This was proper, as the Public Body's use of the Applicant's personal information while processing his access request would have to first be the subject of a separate complaint to this Office. A complaint about the use of personal information under Part 2 of the Act is a matter to be treated separately from a public body's response to an access request under Part 1. Still, the Applicant is referring to section 35(a), which reflects an objective of fair decision-making by public bodies, to support his view that he should have been given a copy of the Affected Party's representations under section 10(1). However, as I have already explained above, section 30 of the Act sets out the applicable procedural fairness requirements with respect to a public body's decision-making process when it responds to an access request that involves interests of both an applicant and third party. The duty to assist under section 10(1) does not include an obligation to give the applicant a copy of a third party's representations, including for the purpose of enabling the applicant to comment on their accuracy.

[para 50] Given the foregoing, I conclude that the Public Body complied with its duty to assist the Applicant under section 10(1) of the Act.

2. The extent to which an applicant may obtain a copy of a third party's representations in other ways

[para 51] In this part of the Order, I will comment on the extent to which an applicant may be entitled to a copy of a third party's representations concerning disclosure, whether by way of a separate access request for them or during an inquiry before this Office.

[para 52] The Applicant made a separate access request for the file generated by the Public Body during the processing of the access request that is the subject of this inquiry. The Public Body was authorized to disregard this other access request because the Commissioner found that it was systematic in nature and amounted to an abuse of right under section 55(1)(a) of the Act, due to the number and nature of the Applicant's previous access requests to the Public Body. The Commissioner also noted that the Affected Party's objections, which are primarily what the Applicant wanted from the processing file, would be addressed in the present inquiry, making the Applicant's request for the processing file somewhat duplicative of the review that was already under way.

[para 53] I do not take the Commissioner's decision to mean that an applicant's request for records from a file generated during the processing of a previous access request will necessarily be authorized to be disregarded under section 55 of the Act, if a public body asks. The Commissioner's decision regarding the Applicant's access request was made on the basis of the particular facts and circumstances. Still, one of the considerations was that there would essentially be a duplication of process, had the

subsequent access request proceeded. While an applicant's access request for a third party's objections to disclosure is not the same thing as a request to obtain a copy during an inquiry in relation to the original access request, the result might be similar, despite the different contexts and decision-makers. In the first context, the public body decides whether exceptions to disclosure apply to the third party objections, which decision may go on to be reviewed by this Office. In the second context, the Commissioner or Adjudicator conducting the inquiry into the original access request decides whether the applicant should be given a copy of the third party objections in the interest of procedural fairness, but also bearing in mind the Act's provisions on privacy and exceptions to disclosure.

[para 54] If a matter proceeds to inquiry, an applicant may become entitled to an actual copy of the representations made by a third party to the public body during the processing of the access request, if the applicant requires a copy in order to address the arguments and evidence presented against him or her. In this inquiry, the Public Body made an application to submit material *in camera*, which included copies of the correspondence containing the Affected Party's representations to the Public Body under section 30 of the Act. As set out in a decision letter sent to the parties on October 27, 2010, I found that the Applicant did not require copies of the correspondence in order to fairly and properly respond to the issues in the inquiry, as the substance of the correspondence between the Public Body and Affected Party had been sufficiently summarized in their submissions exchanged with him, and because disclosure of some of the material might have been harmful to the business interests of the Affected Party under section 16, or might have been an unreasonable invasion of the personal privacy of third party individuals under section 17. I therefore accepted copies of the correspondence itself *in camera*.

[para 55] The Applicant objects to my decision to accept, *in camera*, the earlier representations of the Affected Party to the Public Body concerning disclosure. He says that they should not have been submitted in secret. My letter of October 27, 2010 already indicated the reasons for my decision and I will not change it. However, to explain further to the Applicant, section 69(3) of the Act states that no party to an inquiry is entitled, as a matter of course, to have access to or comment on the representations made by another party. Under section 59(2)(a), the Commissioner or his delegate may disclose information to an opposing party if it is necessary to conduct the inquiry, but this does not include, under section 59(3)(a), information that a public body would be authorized or required to withhold from the applicant. Essentially, it is section 59(2)(a) and the principles of procedural fairness that require the substance of the Affected Party's objections to be adequately summarized in the open submissions so that the Applicant may respond. It is section 59(3)(a) that precludes me from requiring the Applicant to be given the information in the Affected Party's objections that might fall under section 16(1) or 17(1).

[para 56] The Applicant does not believe that all of the *in camera* material might be subject to section 16(1) or 17(1), but I also accepted parts of it because the content had been adequately summarized in the open submissions of the other parties. The Applicant

suspects that the *in camera* material contains opinions or allegations about him, to which he is entitled to respond, but any such information about him is sufficiently included in the open submissions.

C. Does section 16(1) of the Act apply to the records/information (disclosure harmful to business interests of a third party)?

[para 57] Section 16 of the Act reads, in part, as follows:

16(1) The head of a public body must refuse to disclose to an applicant information

(a) that would reveal

(i) trade secrets of a third party, or

(ii) commercial, financial, labour relations, scientific or technical information of a third party,

(b) that is supplied, explicitly or implicitly, in confidence, and

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

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person or organization, or

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

...

(3) Subsections (1) and (2) do not apply if

...

(c) the information relates to a non-arm's length transaction between a public body and another party, or

...

[para 58] As this inquiry relates to a decision to refuse access to records, the Public Body has the burden, under section 71(1) of the Act, of proving that the Applicant has no right of access to the records that it withheld under section 16(1). In its submissions, the Public Body says that the Affected Party has the burden, but this would only have been the case, under section 71(3)(b), if the Public Body had decided to give the Applicant access to the records at issue. Having said this, in order to meet its burden in this inquiry, the Public Body can be assisted by the Affected Party. Indeed, the Public Body relies in large part on the submissions of the Affected Party and the representations that it made when the access request was being processed.

[para 59] A public body cannot withhold information under section 16(1) if any of the circumstances under section 16(3) exist. In this case, the Applicant submits that employers receive preferential treatment during the investigation of employment standards complaints. He says that Employment Standards officers are biased in favour of employers, give employers legal or policy advice that they do not give to complainants, and ignore employers' non-compliance with the *Employment Standards Code* when they encounter it. I therefore considered whether section 16(3)(c) applies, under which section 16(1) cannot apply if information relates to a non-arm's length transaction between a public body and another party.

[para 60] Even assuming that the Public Body's investigation of the complaints against the Affected Party can be characterized as a "transaction" between the Public Body and the Affected Party, I would not find that the transaction falls within the category of non-arm's length. The Public Body contends that it is impartial to the interests of all parties. The Affected Party denies any "conspiracy" between it and the Public Body. In any event, I see no evidence to suggest that the Public Body and Affected Party have a non arm's length relationship that influenced the former's investigation of the complaints made against the latter – or influenced the Public Body's response to the Applicant's access request, as also suggested by him.

[para 61] The Affected Party argues that the Applicant is attempting to use the Act and his access request to obtain records that he has been unable to obtain in the course of an underlying court action between them. While the Affected Party notes that section 2(a) of the Act grants a right of access subject to exceptions to disclosure, it submits that the Applicant is misusing the Act in a crusade against his former employer, in other words to harm the Affected Party.

[para 62] Section 3(a) states that the Act is "in addition to" existing procedures for access to information or records. An applicant generally has a right to request information under the Act for any reason. Both the Affected Party and the Applicant note that production during a court action is restricted to records that are relevant and material to the litigation. The Act has no similar limitation in terms of the right to request and obtain records. Where there is more than one procedure for an applicant to obtain records, and especially where the procedures have different scopes, an applicant is perfectly entitled to use those different procedures as he or she sees fit. Of course, there are exceptions to disclosure under the Act, and I must decide whether any apply in this

case. In this respect, the Applicant's alleged motive to harm the Affected Party may be relevant to determining whether section 16(1) applies, assuming that the harm is contemplated by that section. The underlying litigation between the parties may also be relevant to determining whether section 17(1) applies, as discussed later in this Order.

[para 63] In order to qualify for the exception to disclosure set out in section 16(1) of the Act, the records at issue must satisfy the following three-part test:

Would disclosure of the information reveal trade secrets of a third party or commercial, financial, labour relations, scientific or technical information of a third party under section 16(1)(a)?

Was the information supplied, explicitly or implicitly, in confidence under section 16(1)(b)?

Could disclosure of the information reasonably be expected to bring about one of the outcomes set out in section 16(1)(c)?

(Order F2004-013 at para. 10; Order F2005-011 at para. 9)

[para 64] I will now review each of the above questions in turn (although I have shortened the heading for the first one).

1. Would disclosure of the information reveal one of the types of information set out in section 16(1)(a)?

[para 65] The Public Body submits that the information at issue may reveal the Affected Party's commercial information under section 16(1)(a)(ii) of the Act. The category of "commercial information" has been defined to include such information as that relating to the buying, selling, or exchange of merchandise or services (Order 96-013 at para. 16). There is nothing commercial about the information relating to the employments standards complaints in this inquiry.

[para 66] The Public Body alternatively says that there is labour relations information. The Affected Party likewise submits that the information requested by the Applicant would reveal its labour relations information under section 16(1)(a)(ii). It notes that "labour relations" has been defined as "relations between management and employees" or "a specific relationship between two or more identifiable workers, working groups or employers" (Order 2001-002 at paras. 22 and 23).

[para 67] The Applicant argues that the term "labour relations" should be narrowly construed, so as not to encompass matters relating to enforcement of the *Employment Standards Code* and an employer's obligation to meet the mandatory minimum requirements set out in that legislation.

[para 68] The information at issue consists of the number and dates of complaints against the Affected Party that have been made by its employees under the *Employment Standards Code*, the reason for those complaints, and the nature of their settlement or outcome. In Order 2000-003 (at para. 99), the former Commissioner stated that the term “labour relations” should not be limited (to mean only collective relations, for instance), as that would unduly restrict its scope, whereas there should be a more comprehensive definition. On the basis of these comments, I will accept, for the purpose of discussion, that disclosure of the information at issue would reveal the Affected Party’s labour relations information. The information is about the relationship between the Affected Party, as an employer, and its workers in matters concerning compliance with employment standards.

[para 69] However, as I will explain further below, I find that none of the outcomes set out in section 16(1)(c) could reasonably be expected to occur on disclosure of the information at issue. This includes the possibility of revealing information supplied in relation to a “labour relations dispute” under section 16(1)(c)(iv).

2. Was the information supplied, explicitly or implicitly, in confidence under section 16(1)(b)?

[para 70] The Public Body submits that section 16(1)(b) of the Act applies, on the basis that the Affected Party supplied it with information in confidence during the investigation of the employment standards complaints. The Applicant argues that section 16(1)(b) does not apply because the Affected Party was not, in fact, the one that supplied the information revealed by the records at issue. The Affected Party submits that section 16(1)(b) applies, on the basis that information was implicitly supplied in confidence by the employees who made the complaints.

[para 71] I note that section 16(1)(b) may be satisfied even though someone other than the third party whose business interests are arguably at stake supplied the information to the public body (Order 2000-003 at para. 119). It would appear that this possibility arises where a third party’s business information of the type set out in section 16(1)(a) was provided to a public body not by that particular third party directly, but by another party to whom the third party initially provided the information (see Order 2000-003 at paras. 120 and 121). In this inquiry, however, I find that the information at issue, arising out of the complaints made by employees of the Affected Party, was not the result of an indirect supply of the Affected Party’s confidential business information via the employees.

[para 72] The information at issue reveals the fact that employment standards complaints were made against the Affected Party, along with the number, dates and reasons. The general topics of the complaints show that they relate to some aspect of employee pay and benefits, but no details are given. In my view, none of this information can be characterized as being supplied in confidence by the Affected Party to the employees, who in turn passed it along to the Public Body. The employees decided on their own to make complaints on particular dates for particular reasons. I see no

aspect of the requested dates, and the general reasons for the complaints, that can be construed as a confidential matter as between the Affected Party and its employees.

[para 73] The information at issue also reveals the very general nature of the settlement or outcome of each complaint, such as whether the complaint did or did not have merit, a settlement did or did not occur, or a remedy did or did not result. The mere fact that a complaint had merit or not, accompanied by no details whatsoever, reveals no information that can be characterized as being supplied directly or indirectly in confidence. On the other hand, it is possible that even the general information about a settlement or remedy might reveal information supplied by the Affected Party in confidence to Employment Standards. While no details are given in the records at issue here, the fact of the settlement or remedy may, in and of itself, be confidential.

[para 74] I find that the information at issue does not, for the most part, reveal information supplied in confidence under section 16(1)(b) of the Act. A small portion possibly does. However, I find that none of the outcomes set out in section 16(1)(c) could reasonably be expected to occur on disclosure of the information requested by the Applicant, as I will now explain.

3. Could disclosure of the information reasonably be expected to bring about one of the outcomes set out in section 16(1)(c)?

[para 75] In its June 1, 2009 letter to the Applicant, the Public Body specifically cited section 16(1)(c)(iii) and (iv) as the grounds for its refusal to grant access to the records at issue. In the Affected Party's submissions, it does not argue that either of these apply, but rather section 16(1)(c)(i). In the Public Body's inquiry submissions, it discusses each of 16(1)(c)(i), (ii), (iii) and (iv).

[para 76] In order for information to fall under section 16(1)(c), one must consider the connection between disclosure of the specific information and the outcome or harm that is alleged, how the outcome or harm would constitute damage or detriment, and whether there is a reasonable expectation that the outcome or harm will occur (Order 96-013 at para. 33). Stated differently, there must be a clear cause and effect relationship between disclosure of the withheld information and the outcome or harm alleged; the outcome or harm that would be caused by the disclosure must constitute damage or detriment and not simply hindrance or minimal interference; and the likelihood of the outcome or harm must be genuine, and conceivable (Order 96-003 at p. 6 or para. 21).

[para 77] The test regarding a reasonable expectation that a particular harm or outcome will occur must be satisfied on a balance of probabilities, meaning that the evidence must involve more than speculation or a mere possibility; the evidence must demonstrate a probability that the outcome or harm in question will occur on disclosure and not just a well-intentioned but unjustifiably cautious approach to the avoidance of any risk whatsoever because of the sensitivity of the matters at issue (Order 96-013 at paras. 31 and 33). The requirement for an evidentiary foundation for assertions of harm

was upheld in *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner)*, 2006 ABQB 515 (at paras. 6, 59 and 60).

[para 78] The Affected Party contends that this inquiry is part of a prolonged dispute with the Applicant, during which the Affected Party has been exposed to claims affecting its commercial reputation and the ongoing administration of its workforce. The Applicant counters that section 16(1)(c) does not encompass protecting corporations from the prospect of paying damages that might result from a court action, or protecting them from embarrassment or other consequences arising from exposure of what he considers their illegal employment practices.

[para 79] With respect to harm, the Affected Party says that releasing the requested information to the Applicant means that an internal enforcement standards matter will become a matter of public record, and cause other employees of the Affected Party to become involved in the dispute. The result, according to the Affected Party, will be a disruption to its workplace or a labour interruption. The Affected Party's view is that the foregoing falls within the terms of section 16(1)(c)(i), in that a labour disruption or interruption will significantly harm its competitive position, especially given the nature of the oil and gas industry, the international supply chain, and the ability of the Affected Party's clients to consider other suppliers.

[para 80] I find no clear cause and effect relationship between release of the information about the employment standards complaints against the Affected Party and the labour disruption or interruption that it says will occur. It is a leap to say that other employees' knowledge of the complaints, their general topics and the general nature of their outcomes will result in what the Affected Party appears to be saying would be a strike, a mass of resignations, or a preoccupation on the part of a great number of employees with the Applicant's litigation or their own new claims. Even if the information at issue becomes known to employees and some of them react to it in a negative way, become involved in the Applicant's lawsuit or make their own employment standards complaints – which might possibly affect the Affected Party's administration of its workforce to some degree – the Affected Party has not demonstrated that the harm would be “significant” and would affect its “competitive position”. On my review of the Affected Party's submissions, I find that the alleged harm caused by disclosure would amount, at most, to a hindrance or minimal interference. There is no genuine and conceivable link between disclosure of the information at issue and the Affected Party's suppliers going elsewhere for the services, products and equipment that the Affected Party offers.

[para 81] As for the Affected Party's assertion that the Applicant's claim has affected its commercial reputation, and that release of the records at issue will do further damage to it, harm to reputation is not, in and of itself, one of the outcomes set out in section 16(1)(c) of the Act. The Affected Party also argues that employment standards complaints raise an issue of non-compliance that it considers “sensitive” to its business interests, but sensitivity alone does not bring disclosure of information within the scope of section 16(1)(c).

[para 82] The Affected Party alternatively says that the process of internally remedying employment standards complaints involves confidentiality. It suggests that there will be a disruption to its workforce because the employees who made the employment standards complaints will be upset that information was released, despite the Affected Party's past persistent efforts to protect their privacy. I likewise find this assertion, and its connection to a labour disruption and harm to the Affected Party's competitive position, to be overstated. Again, there is unlikely to be any significant effect on the Affected Party's administration of its workforce and employee productivity if the information at issue were disclosed to the Applicant or fell into the public domain. It can be readily explained to the particular employees that the information about their complaints was released further to a determination of this Office made under the Act. I fail to see how they will react in such a way that the outcome contemplated in section 16(1)(c)(i) will follow.

[para 83] Given the foregoing, I find that section 16(1)(c)(i) does not apply in this inquiry.

[para 84] As for the other three sub-paragraphs of section 16(1)(c), the inquiry submissions of the Public Body (although not the inquiry submissions of the Affected Party) raise the possibility that they may be applicable, sometimes based on the content of the Affected Party's representations made to the Public Body under section 30. Much of that content is essentially the same as what I have set out above, as taken from the Affected Party's inquiry submissions, except that the Public Body suggests that the harm or outcome falls under section 16(1)(c)(ii), (iii) or (iv), as opposed to section 16(1)(c)(i).

[para 85] I find that disclosure of the information at issue could not reasonably be expected to result in information relating to employment standards no longer being supplied to the Public Body under section 16(1)(c)(ii). I agree with the Applicant when he says that employees concerned about violations of the *Employment Standards Code* will continue to make complaints. He also notes that there is a mandatory requirement for employers to cooperate with Employment Standards and to provide information and records to verify compliance (see section 77 of the *Employment Standards Code*).

[para 86] I also find that section 16(1)(c)(iii) does not apply in this case. For the same reasons set out above, there is no link between disclosure of the information at issue and a disruption to the Affected Party's workforce that would result in other clients going elsewhere and thereby giving rise to a "financial loss" under section 16(1)(c)(iii). In addition, the possibility that the Affected Party may have to pay damages to the Applicant if his lawsuit is successful, or pay amounts to other employees as a result of new employment standards complaints, does not constitute "undue" financial loss.

[para 87] As for the application of section 16(1)(c)(iv), the Public Body notes that investigators respond to complaints in accordance with the *Employment Standards Code* and determine whether there has been compliance. The Applicant acknowledges that employment standards officers are responsible for enforcement of employment standards, but argues that they are significantly different from a person or body appointed to resolve

or inquire into a labour relations “dispute”. He argues that there is no “dispute” over what constitutes the mandatory minimum requirements of the *Employment Standards Code*, as they are non-negotiable. He says that employment standards complaints, investigations and violations should not be misconstrued as labour relations matters.

[para 88] In Order 2000-003 (at para. 127), the former Commissioner stated:

In keeping with the definition of “labour relations”, I believe that a “labour relations dispute” would refer to any conflict related to labour relations.

I disagree with the breadth of this definition. While I accept a relatively broad interpretation of what constitutes “labour relations” for the purpose of answering the threshold question of whether information falls under section 16(1)(a)(ii) of the Act, I interpret section 16(1)(c)(iv) more narrowly, given the various other terms that it uses. In particular, section 16(1)(c)(iv) refers to a “labour relations dispute”, which has a narrower meaning than simply “any” conflict “related to” labour relations.

[para 89] Section 16(1)(c)(iv) incorporates language found in legislation such as the *Labour Relations Code* and *Public Service Employee Relations Act*. Under these enactments, “arbitrators”, “mediators”, “officers” and other persons or bodies may be “appointed” [see, e.g., sections 8(2), 16(4)(a), 65(2), 94, 97(1), 97(2), 105(1), 117, 118, 119, 137(1) and 138(1) of the *Labour Relations Code*, and sections 28(1), 31(4), 33, 34, 51(2) and 52(a) of the *Public Service Employee Relations Act*]. The persons and bodies appointed under these enactments “resolve” disputes or “inquire into” matters [see, e.g., sections 16(4)(a), 65(1), 65(3), 99, 123(1) and 190(1) of the *Labour Relations Code*, and sections 29, 36(2), 36(3), 51(2) and 51(3) of the *Public Service Employee Relations Act*]. Finally, although “labour relations” is not defined in the *Labour Relations Code* or *Public Service Employee Relations Act*, the term “dispute” is central in both enactments. Section 1(j) of the *Labour Relations Code* defines “dispute” as “a difference or apprehended difference arising in connection with the entering into, renewing or revising of a collective agreement”. I adopt this definition as the definition of “labour relations dispute” for the purpose of section 16(1)(c)(iv) of the Act. Section 1(k) of the *Public Service Employee Relations Act* defines “dispute” in a fashion similar to the *Labour Relations Code*.

[para 90] The *Employment Standards Code* uses some of the same language set out in section 16(1)(c)(iv). However, it does not contain the idea of a labour relations dispute. Rather, it deals with employment standards disputes or complaints, which are not the same thing. An employment standards dispute or complaint is one regarding whether an employer has met minimum requirements for terms and condition of employment, as set by the government. These matters arise in relation to alleged non-compliance with legislated standards rather than in connection with a collective agreement between an employer and its employees. Had the Legislature intended to include the notion of employment standards disputes in 16(1)(c)(iv), I believe that it would have done so, as opposed to referring only to labour relations disputes.

[para 91] At the same time, I acknowledge that section 16(1)(c)(iv) does not refer to any particular enactments, and I therefore do not purport to restrict the scope of the section to matters under the *Labour Relations Code* and *Public Service Employee Relations Act*. There may be other legislation or schemes under which persons or bodies are appointed to resolve or inquire into a “labour relations dispute”. The *Employment Standards Code* is just not one of them.

[para 92] I accept the former Commissioner’s broader definition of what constitutes “labour relations” information under section 16(1)(a)(ii), as the phrase “labour relations” there is not surrounded by all of the other terms contained in section 16(1)(c)(iv). As noted above, the *Labour Relations Code* and *Public Service Employee Relations Act* do not actually define “labour relations”. However, they do use and/or define the other terms set out in section 16(1)(c)(iv), resulting in my conclusion that the reference to “an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute” is meant to encompass those persons or bodies addressing particular matters under the *Labour Relations Code*, the *Public Service Employee Relations Act*, and sufficiently analogous legislation or schemes.

[para 93] Given my interpretation of what constitutes a labour relations dispute, I find that the information at issue in this inquiry will not reveal information contemplated by section 16(1)(c)(iv). The employment standards officers who obtained information in order to resolve the complaints under the *Employment Standards Code* do not fall within the class of persons and bodies set out in section 16(1)(c)(iv), as they were not resolving or inquiring into a “labour relations dispute” within the meaning of that section. This is notwithstanding that the employment standards officers obtained labour relations information, in a broader sense.

[para 94] As none of the harms or outcomes set out in section 16(1)(c) could reasonably be expected to occur on disclosure of the information at issue in this inquiry, I conclude that section 16(1) of the Act does not apply to any of it. Accordingly, the Public Body did not have the authority to withhold the information from the Applicant in reliance on section 16.

D. Does section 17(1) of the Act apply to the records/information (disclosure harmful to personal privacy)?

[para 95] In their respective submissions, both the Public Body and Affected Party say that the application of section 17(1) of the Act should be considered, in the alternative, if it is found that section 16(1) does not apply to the records at issue. The Applicant argues that section 17(1) should not be considered, as the Public Body did not apply it at the time of its response to him and the issue was raised at a late stage.

[para 96] Because section 17(1) sets out a mandatory exception to disclosure and it arguably applies in this case, I must consider it. The privacy interests of third party individuals cannot be disregarded simply because a public body did not initially rely on section 17(1) when responding to an access request.

[para 97] Section 17 of the Act reads, in part, as follows:

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.

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

(a) the third party has, in the prescribed manner, consented to or requested the disclosure,

...

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

...

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation,

...

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

...

(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,

...

(c) the personal information is relevant to a fair determination of the applicant's rights,

...

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

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

...

[para 98] In the context of section 17, the Public Body must establish that the severed information is the personal information of a third party, and may present argument and evidence to show how disclosure would be an unreasonable invasion of the

third party's personal privacy. The Affected Party can assist the Public Body in this regard. If a record does contain personal information about a third party, section 71(2) states that it is then up to the Applicant to prove that disclosure would not be an unreasonable invasion of the third party's personal privacy.

1. Do the records consist of the personal information of third parties?

[para 99] Under section 1(n) of the Act, "personal information" means "recorded information about an identifiable individual", and includes various types of information.

[para 100] Here, the information responsive to the Applicant's access request consists of very limited information about employment standards complaints made against the Affected Party by its employees. Specifically, the information at issue consists of the number of complaints, their dates, the reasons for them given by way of a general topic, and the general nature of their settlement or outcome.

[para 101] In instances where records refer to an individual who has made a complaint about another party, the information is not necessarily "about" the individual making the complaint, but rather is about the party being complained about (Order P2009-009 at para. 30, citing Order P2006-004 at para. 12). Here, I find that only some of the information at issue is the personal information of the complainants, assuming that they are identifiable (a question that I discuss further below).

[para 102] The number of complaints revealed in the records at issue is nobody's personal information. It is information about the Affected Party, which is not an individual.

[para 103] Assuming that a complainant is identifiable, the fact of the complaint, its date and the reason for making it constitute the complainant's personal information. In particular, the fact of the complaint and its reason may be characterized as the complainant's views or opinions about the Affected Party under section 1(n)(ix).

[para 104] Here, the settlement or outcome of a complaint is sometimes information about the complainant in that, for instance, the "Conclusion Reason" sometimes reveals information about what the complainant did to advance or resolve the complaint. In such instances, the information is very general, but it is nonetheless the personal information of the complainant in question if he or she is identifiable.

[para 105] Turning now to whether the complainants are identifiable, the Applicant did not request their names or addresses appearing on the Claim/Complaint Detail screenshots. However, the Affected Party argues that the Applicant will likely be able to identify the particular complainants, even if information is redacted from the records.

[para 106] The Public Body similarly submits that the Applicant is able to identify the third party individuals who made the complaints. It notes that, with his access request, he provided a redacted copy of a "Temporary Foreign Worker Application" that

he had obtained following an access request under federal legislation to Human Resources Development Canada. The Public Body's Access Coordinator says, by way of an affidavit, that the Applicant verbally indicated to her that he was able to identify the employee of the Affected Party to whom the document related, even though some information had been redacted. In response, the Applicant swore an affidavit in which he says that the federal record was "generic" and denies that he indicated that he was able to identify an employee of the Affected Party based on it.

[para 107] The Applicant's access request to Human Resources Development Canada, following which he obtained access to the Temporary Foreign Worker Application, is not the subject of this inquiry. However, both parties made submissions in relation to the document in order to argue that the Applicant can, or cannot, identify the third party individuals in this inquiry. On my review of the Temporary Foreign Worker Application, I see that it was completed by the Affected Party, not the employee to whom the form related, and the form does not refer to any particular employee. I fail to see how any of the information on it enabled the Applicant to identify the employee of the Affected Party to whom the document related.

[para 108] I also fail to see how disclosure of the information at issue in this inquiry, in and of itself, will serve to identify any particular individuals. The date that a complaint was made does not reveal who made it. All of the complaints relate to some aspect of pay and benefits, which is a matter that any employee of the Affected Party could have made at any point in their employment or afterwards. The reason for each complaint consists merely of one or more codes checked off on the Claim/Complaint Detail screenshots. These codes stand for a very general topic and provide no detail whatsoever about the nature of the complaint. Finally, without any name or address connected to it, the information conveyed by the "Conclusion Reason" as to what complainants may have done to advance or resolve their complaint does not reveal their identities. Again, the information is very general (it appears to be template wording) and does not provide sufficient detail that would serve to identify the complainants.

[para 109] If the Applicant happened to know the identity of the employee to whom the Temporary Foreign Worker Application related, he knew it based on information from other sources, not the information revealed to him on the document itself. That question is not a matter for me to decide, but it does raise the possibility that the Applicant already knows or can readily ascertain the identities of the third party individuals in this inquiry. The Public Body cites Order 99-018 (at para. 21), in which the former Commissioner stated:

... [I]t is not necessary to specifically name employees for there to be recorded information about an identifiable individual. Facts and events, the context in which information is given, as well as the nature and content of the information may also be personal information if it is shown to be recorded information about an identifiable individual. The key here is whether there is an "identifiable" individual.

[para 110] The Affected Party submits that the complainants are identifiable due to the Applicant's former employment with the Affected Party and his ability to cross-reference material that he has gathered in other contexts. The Applicant counters that the Affected Party employs a large number of employees and has a high turnover rate, he worked for the Affected Party for a limited period of time, and he usually worked in the field alone or with only one other person. He therefore says that it would be very difficult, if not impossible, for him to link the employment standards complaints to specific individuals. He argues that the Act should not be interpreted to such a restrictive degree that records are deemed inaccessible based on what one thinks that the specific applicant already knows or is able to obtain by other means.

[para 111] In his rebuttal submissions, the Applicant writes that certain employees, who were contacted by the Affected Party following a court order, and the employees who made the employment standards complaints are different employees. The Affected Party interprets this to mean that the Applicant knows who the complainants are. I do not have the same interpretation. The Applicant is arguing that the two classes of employees are not the same, given the contexts. According to him, the complainants are likely former employees who made complaints around the same time that he did, whereas the employees contacted during the litigation are current employees.

[para 112] When determining whether information is about an identifiable individual, one must look at the information in the context of the record as a whole, and consider whether the information, even without personal identifiers, is nonetheless about an identifiable individual on the basis that it can be combined with other information from other sources to render the individual identifiable [Order F2006-014 at para. 31, citing Ontario Order MO-2199 (2007) at para. 23]. Information will be about an identifiable individual where there is a serious possibility that an individual could be identified through the use of that information, alone or in combination with other available information [Order F2008-025 at footnote 1, citing *Gordon v. Canada (Minister of Health)*, 2008 FC 258 at para. 34].

[para 113] In this case, I find no serious possibility that the Applicant can identify the complainants on the basis of the information in the records at issue in conjunction with other information available to him. The Affected Party notes that he has amassed various records relating to its other employees, but the sample of records that were placed before me in this inquiry – such as records of employment, a table with information about employment standards permits and temporary foreign worker applications – are also devoid of personal identifiers. In any event, I do not see how the Applicant would be able to ascertain the identities of the complainants by comparing other material in his possession with merely the dates that complaints were registered with Employment Standards, the general topic of the complaint, or the general nature of the settlement or outcome.

[para 114] As for whether the Applicant already knows the identities of the complainants, he effectively says that he does not, although I do not see that he ever says this directly. Despite the lack of a clear assertion that he does not know the identity of

any of the complainants, I find, on a balance of probabilities and based on the submissions and evidence before me, that the Applicant does not already know the identity of the individuals who made the employment standards complainants.

[para 115] Given the foregoing, I find that the information that has been requested by the Applicant is not information about identifiable individuals. There is therefore no personal information to which section 17(1) of the Act can apply, and I conclude that section 17(1) does not apply.

[para 116] In the event that I am wrong, in that one or more of the complainants is, in fact, already known to the Applicant or identifiable, and therefore some of the information at issue is third party personal information, I will now go on to review whether disclosure would be an unreasonable invasion of their personal privacy. I conclude, in the alternative, that it would not be.

2. Would disclosure be an unreasonable invasion of personal privacy?

[para 117] In this part of the Order, I will work from the premise that the Applicant already knows or can readily ascertain the identities of the third party individuals who made the complaints against the Affected Party, and that the dates of, reasons for and, in some instances, the settlement/outcome of the complaints therefore constitute their personal information to which section 17(1) can apply.

[para 118] Under section 17(2) of the Act, a disclosure of personal information is expressly not an unreasonable invasion of a third party's personal privacy in certain circumstances. I find that none of the circumstances exist in this inquiry.

[para 119] Section 17(2)(a) states that a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the third party has consented to the disclosure. The Affected Party refers to section 17(2)(a), as though the lack of an individual's consent (whether there was an objection, or consent was not sought or obtained) means that disclosure is an unreasonable invasion of personal privacy. The Affected Party is citing section 17(2)(a) for a corollary that is not present in the provision. The fact that an individual objects to disclosure, or his or her consent has not been obtained, does not mean that section 17(1) applies. The absence of consent, however, may be a relevant circumstance weighing against disclosure under section 17(5).

[para 120] The Affected Party cites section 17(4)(d), under which there is a presumption against disclosure of personal information that relates to employment history. I find that the presumption against disclosure under this section does not arise in this inquiry. The term "employment history" has been described as a complete or partial chronology of an individual's working life (Order F2003-005 at para. 73). I take the reference to an individual's "working life" to be to facts about his or her past employment (such as might also appear in a résumé or curriculum vitae), or information about the management of the individual's employment, such as information relating to performance and discipline. In my view, the fact that the individuals here made

complaints about the Affected Party to the Public Body, and the nature and outcome of those complaints, is not part of their employment history, within the terms of section 17(4)(d). I realize that each complaint involves an employer and an employee, and the matter is of interest to both of them, but this does not mean that the information is about the employment history of the employee. Basically, the complaints are about the history of the *employer*, regarding its possible non-compliance with employment standards.

[para 121] In any event, assuming that there is information about identifiable third party individuals, I find that the presumption against disclosure under section 17(4)(b) arises, on the basis that the personal information is an identifiable part of a law enforcement record (and disclosure is not necessary to dispose of the law enforcement matter or to continue an investigation). Under section 1(h)(ii), law enforcement includes “an administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred”. In this case, the records in which the information at issue appears were generated in the context of the Public Body’s administrative investigations under the *Employment Standards Code* (see, e.g., sections 77 and 82 to 85), and they include the complaints giving rise to the investigations. The Affected Party may be subject to a penalty or sanction under the *Employment Standards Code* for failing to pay earnings or provide anything to which an employee is entitled (see sections 128 and 129).

[para 122] Even where a presumption against disclosure arises under section 17(4) of the Act, all of the relevant circumstances under section 17(5) must be considered in determining whether a disclosure of personal information would constitute an unreasonable invasion of a third party’s personal privacy.

[para 123] The Applicant submits that it is in the public interest for the records that he has requested to be accessible, and for the Employment Standards office to be accountable and transparent. He says that he wishes to scrutinize and expose its decisions, which he contends are inefficient and ineffective. He believes that Employment Standards is giving preferential treatment to employers rather than making decisions properly based on the legislation.

[para 124] Under section 17(5)(a), a relevant circumstance in favour of disclosure of third party personal information is that it is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny. I find that this circumstance is not present in this inquiry. In order for personal information to be disclosed on the basis of public scrutiny, disclosure of it must be necessary in order to scrutinize the activities of the public body that have been called into question. Here, I find that disclosure of the information requested by the Applicant would not assist in public scrutiny. The dates of complaints, reasons for them and the general nature of their settlement or outcome reveals nothing about the Public Body’s processes or handling of employment standards complaints. The information at issue provides no details about why a complaint took a certain period to resolve or why it resulted in a certain outcome. While the Applicant also wishes to scrutinize the conduct of the Affected Party in terms

of its compliance with the *Employment Standards Code*, section 17(5)(a) is directed at scrutinizing the activities of public bodies.

[para 125] The Affected Party argues that disclosure of information in the records at issue will adversely affect the third party complainants because they may become embroiled in the lawsuit between the Applicant and Affected Party and will risk becoming witnesses at trial. While section 17(5)(e) sets out a relevant circumstance against disclosure if a third party will be exposed unfairly to financial or other harm, being involved in a lawsuit as a witness is not something that I would characterize as harm, let alone unfair harm.

[para 126] The Affected Party submits that it is reasonable to assume that the employees made their complaints to Employment Standards in confidence, which is a factor weighing against disclosure of their personal information under section 17(5)(f). With its materials, the Public Body included a copy of an information sheet entitled “Filing a Confidential Complaint with Employment Standards”, which contemplates that complainants might provide their personal information in confidence, although this does not mean that all of them choose to do so.

[para 127] The context in which third party personal information is given in the course of an investigation can make it reasonable to conclude that such information was supplied in confidence (Order F2003-014 at para. 18). In this inquiry, I am prepared to assume, for the sake of analysis, that the third party individuals made their complaints to the Public Body in confidence and that any of their personal information that they provided leading up to the settlement or outcome was supplied in confidence.

[para 128] The Affected Party says that, since the onset of the Applicant’s dispute with it, he has attempted to obtain the information of other employees in order to advance his claims and litigation against the Affected Party. The Affected Party notes a court order in the underlying court action, issued March 28, 2009 and entered February 24, 2010, in which the judge ordered it “to attempt to seek permission from current or former employees of Tesco Corporation ... to release their personal contact information to [the Applicant]”. The Affected Party provided a copy of the letter that it then sent to some of its employees, seeking their consent to release their contact information to the Applicant. It says that only three employees consented, arguing that this means that the information requested by the Applicant in this inquiry should not be released to him.

[para 129] The Applicant counters that the aforementioned court order concerned his request for the contact information of 28 employees, not every employee of the Affected Party. He says that the employees who received the letter from the Affected Party are not the same as the ones who made the employment standards complaints. He argues that the circumstances and contexts are completely different, adding that it is highly possible that most, if not all, of the complainants would consent to the release of generic records that verify the number and nature of the Affected Party’s contraventions of the *Employment Standards Code*. The Applicant also notes another court order, issued February 24, 2010 and entered March 15, 2010, in which the judge required the Affected Party to disclose

portions of the curricula vitae and performance appraisals of individuals in a list. In other words, the judge has ordered the disclosure of the personal information of certain individuals without any reference to their consent.

[para 130] The Affected Party submits that release of the information that the Applicant has requested in this inquiry would be “contrary” to the court order issued March 28, 2009. However, that court order says nothing about whether the Affected Party can or cannot release the personal information of its employees; it says only that the Affected Party must provide a list to the Applicant of those who consent, those who do not, and those who did not respond. Even if the intent of the court order issued March 28, 2009 was that the Affected Party would not release the contact information of employees without their consent, the information at issue in this inquiry does not consist of any contact information. Moreover, the court order was for the purpose of the litigation as opposed to the access request that is the subject of this inquiry, and the judge made no reference whatsoever to the Act when making his order. The arguments of the Affected Party in relation to the court order militate against disclosure if any of the employees who objected to the disclosure of their contact information to the Applicant are among those who made an employment standards complaint. Even then, the court order of March 28, 2009 would not preclude disclosure altogether.

[para 131] For the sake of analysis, I am prepared to assume that the complainants here would not consent, if now asked, to disclosure of their personal information. A third party’s refusal to consent to the disclosure of his or her personal information is a factor weighing against disclosure (Order 97-011 at para. 50; Order F2004-028 at para. 32). However, I find that this factor – along with the presumption against disclosure under section 17(4)(b) and my assumption that the complainants supplied their personal information in confidence under section 17(5)(f) – is outweighed by the following other relevant circumstance.

[para 132] The Applicant indicates that he may use the information that he has requested for the purpose of his lawsuit against the Affected Party. He writes that parties to a civil action are allowed to gather records and evidence to support their positions, and that he has a right to defend against illegal employment practices and bring his concerns to the Court of Queen’s Bench. He argues that the Affected Party is contesting release of the records at issue to him so as not to be “held accountable in a court of law”.

[para 133] Under section 17(5)(c), a factor weighing in favour of the disclosure of third party personal information is that it is relevant to a fair determination of an applicant’s rights. In order for section 17(5)(c) to be a relevant consideration, all four of the following criteria must be fulfilled: (a) the right in question is a legal right drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; (b) the right is related to a proceeding that is either existing or contemplated, not one that has already been completed; (c) the personal information to which the applicant is seeking access has some bearing on or is significant to the determination of the right in question; and (d) the personal information is required

in order to prepare for the proceeding or to ensure an impartial hearing (Order 99-028 at para. 32; Order F2008-012 at para. 55).

[para 134] Parts (a) and (b) of the foregoing test are met. The Applicant has issued a statement of claim, in which he seeks damages from the Affected Party on the basis that he was dismissed from employment, without just cause, because he had made a claim to Employment Standards for outstanding statutory vacation pay, and succeeded with that claim.

[para 135] I find that parts (c) and (d) of the test under section 17(5)(c) are also met. The third party personal information at issue in this inquiry reveals the dates that complaints were made about the Affected Party by other employees, the general reason for those complaints, and the general nature of their settlement or outcome. The Applicant believes that the records will support his allegations against the Affected Party regarding its non-compliance with labour laws and, in turn, his alleged constructive dismissal. He says that the records would verify that the Affected Party's alleged mistreatment of him was not an isolated case. He believes that access to the records at issue may decrease the number of witnesses who he intends to call in his action against the Affected Party. Further, given the preoccupation of both parties with the Applicant's contact with current and former employees, there is an underlying suggestion that the Applicant was constructively dismissed because the Affected Party thought that he would cause or encourage other employees to make complaints to Employment Standards. In my view, the information in the records at issue has a sufficient bearing on the lawsuit that the Applicant has commenced, and he requires the information in order to prepare for it. This does not necessarily mean that the information is relevant and material to the litigation – that is for the parties or a judge to decide – but the records at issue are at least significant enough for that determination to be made. The question of whether the information would be admissible in the underlying court action is itself part of a fair determination of the Applicant's rights.

[para 136] In considering the presumption against disclosure and all of the relevant circumstances drawn to my attention, I find that the fact that the third party personal information is relevant to a fair determination of the Applicant's rights outweighs the facts, or assumed facts, that the information appears in a law enforcement record, the third parties provided it in confidence, and they would not consent to its disclosure. The personal information is minimal and contains very little detail. A reasonable balance between the Applicant's right of access and the privacy interests of the third party complainants results in the conclusion that the information at issue should be released to the Applicant. Disclosure of the very general topic of each third party's complaint, the date that it was made, and the very fact that it was made would not be an unreasonable invasion of personal privacy, given the significance of this information to the Applicant's legal claim against the Affected Party. The records at issue also reveal, in a very general way, the extent to which each complainant resolved or succeeded with their complaint, but I also find that this information may be disclosed, without unreasonably invading their personal privacy, in the interest of permitting a fair determination of the Applicant's rights.

[para 137] Therefore, if I am wrong in the preceding part of this Order, in that the information at issue actually consists of information about identifiable individuals, or individuals already known to the Applicant, and therefore consists of their personal information, I would still find that section 17(1) of the Act does not apply.

V. ORDER

[para 138] I make this Order under section 72 of the Act.

[para 139] I find that the Public Body did not fully comply with section 12(1) of the Act, as it did not describe or classify the records being withheld from the Applicant at the time of its response to him. However, I find it unnecessary to make an order, under section 72(3)(a), for the Public Body to comply with its duty, as it described and classified the records during this inquiry. I find that the Public Body complied with other aspects of its duty under section 12(1), including its obligation to give the Applicant reasons for refusing to grant him access to the requested records.

[para 140] I find that the Public Body complied with its duty to assist the Applicant under section 10(1) of the Act.

[para 141] I find that section 16(1) of the Act does not apply to the information requested by the Applicant, as disclosure would not be harmful to the business interests of the Affected Party.

[

para 142] I find that section 17(1) of the Act does not apply to the information requested by the Applicant, as it does not consist of the personal information of identifiable individuals. Alternatively, disclosure of the information would not be an unreasonable invasion of their personal privacy.

[para 143] Under section 72(2)(a) of the Act, I order the Public Body to give the Applicant access to the information responsive to his access request, as set out in paragraphs 8, 9 and 10 of this Order.

[para 144] I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Wade Riordan Raaflaub
Adjudicator