

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2014-25

June 24, 2014

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Numbers F6184 & F6244

Office URL: www.oipc.ab.ca

Summary: An individual made one request to Alberta Justice and Attorney General, and one request to Alberta Solicitor General and Public Security on February 22, 2012, under the *Freedom of Information and Protection of Privacy Act* (FOIP Act). These requests were for studies or documents related to the impact of the federal omnibus crime legislation (also known as Bill C-10) on the respective public body.

Each public body responded to the Applicant's request; Alberta Justice and Attorney General found 70 pages of responsive records, withholding some pages in their entirety and some in part under sections 4(1)(q), 17, 24(1)(a) and (b), and 27(1)(a), (b) and (c). Alberta Solicitor General and Public Security found 61 pages of responsive records, withholding some pages in their entirety and some in part under sections 21(1), 24(1)(a) and (h), and 27(1)(a) and (b).

The Applicant requested a review from this office of the response from both public bodies. Subsequent to these requests, these public bodies were combined and are now Alberta Justice and Solicitor General (the Public Body).

The Adjudicator determined that some of the records at issue were excluded from the scope of the Act under section 4(1)(q).

The Adjudicator determined that the Public Body properly applied section 17 to information in the records in most instances.

The Adjudicator found that the Public Body has properly applied section 21 to two pages of information but that it did not properly apply that section, or section 24, to a draft report, as it failed to provide sufficient argument or evidence to justify its application of those sections.

The Adjudicator also found that section 24 applied to some information in the records but ordered the Public Body to exercise its discretion to apply that section.

At the time of issuing the Order, the Adjudicator was not in a position to decide the issue of whether the Public Body had properly applied sections 24 or 27 of the Act to the records withheld under section 27.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 4, 17, 21, 24, 27, 32, 56, 72.

Authorities Cited: AB: 96-003, 96-006, 96-011, 96-012, 97-007, 97-009, 99-018, F2004-018, F2004-024, F2004-026, F2005-009, F2006-010, F2006-030, F2008-008, F2008-020, F2008-027, F2008-028, F2008-032, F2010-036, F2013-13, F2013-51.

Cases Cited: *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23, *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31, *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (CanLII), 2010 SCC 23, *Solosky v. The Queen* [1980] 1. S.C.R. 821.

I. BACKGROUND

[para 1] On February 22, 2012, an individual made one request to Alberta Justice and Attorney General, and one request to Alberta Solicitor General and Public Security under the *Freedom of Information and Protection of Privacy Act* (FOIP Act). Subsequent to these requests, these public bodies were combined and are now Alberta Justice and Solicitor General (the Public Body).

[para 2] The request to Alberta Justice and Attorney General was for

Any studies or documents related to the impact of the federal omnibus crime legislation (also known as Bill C-10) on Alberta Justice and Attorney General. This would include – but not be limited to – any calculations of dollar costs (actual or estimated), changes to case volumes in Court of Queen's Bench, Provincial court and Youth Court (actual or estimated), workloads for judges, provincial Crown prosecutors, duty counsel, legal aid workers, court clerks and other officers of the court, as well as any resulting or anticipated staffing changes in any of those areas.

[para 3] The request to Alberta Solicitor General and Public Security was for

Any studies or documents related to the impact of the federal omnibus crime legislation (also known as Bill C-10) on Alberta Solicitor General and Public Security. This would include – but not be limited to – any calculations of dollar costs (actual or estimated), changes to populations in remand and sentenced custody (actual or estimated), caseloads for community corrections (actual or estimated), and any resulting or anticipated staffing changes, ie Sheriffs, police, correctional officers, probation officers, etc.

[para 4] Alberta Justice and Attorney General, and Alberta Solicitor General and Public Security each responded to the Applicant’s request; the former found 70 pages of responsive records, withholding some pages in their entirety and some in part under sections 4(1)(q), 17, 24(1)(a) and (b), and 27(1)(a), (b) and (c). The latter found 61 pages of responsive records, withholding some pages in their entirety and some in part under sections 21(1), 24(1)(a) and (h), and 27(1)(a) and (b).

[para 5] The Applicant requested a review of the response from both Alberta Justice and Attorney General, and Alberta Solicitor General and Public Security. The Commissioner authorized a portfolio officer to investigate and try to settle the matter. This was not successful; the Applicant requested an inquiry and the matter was set down. As these public bodies had merged into Alberta Justice and Attorney General, one inquiry was held for both files.

II. RECORDS AT ISSUE

[para 6] The records at issue consist of the withheld portions of the records located by Alberta Justice (records relating to F6184) and the withheld portions of the records located by Alberta Solicitor General and Public Security (records relating to F6244).

III. ISSUES

[para 7] The issues as set out in the Notice of Inquiry dated December 2, 2013, are as follows:

- 1. Are the records excluded from the application of the Act by section 4(1)(q)?**
- 2. Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information in the records?**
- 3. Did the Public Body properly apply section 21(1) of the Act (disclosure harmful to intergovernmental relations) to the information in the records?**
- 4. Did the Public Body properly apply section 24(1) of the Act (advice from officials) to the information in the records?**
- 5. Did the Public Body properly apply section 27(1) of the Act (privileged information) to the information in the records?**

6. Does section 32 of the Act (information must be disclosed if in the public interest) require the Public Body to disclose the information in the records?

IV. DISCUSSION OF ISSUES

1. Are the records excluded from the application of the Act by section 4(1)(q)?

[para 8] This section states:

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

...

(q) a record created by or for

(i) a member of the Executive Council

(ii) a Member of the Legislative Assembly, or

(iii) a chair of a Provincial agency as defined in the Financial Administration Act who is a member of the Legislative assembly

That has been sent or is to be sent to a member of the Executive Council, a Member of the Legislative Assembly or a chair of a Provincial agency as defined in the Financial Administration Act who is a member of the Legislative Assembly;

[para 9] The Public Body states that this exclusion applies to pages 18-20 and 54-56 (in F6184) in their entirety. Having reviewed these pages, I agree that the records consist of correspondence between members of the Legislative Assembly, and therefore fall within the scope of section 4(1)(q); I do not have jurisdiction to review the Public Body's response with respect to those pages.

2. Does section 17 of the Act (disclosure harmful to personal privacy) apply to information in the records?

[para 10] The Public Body applied section 17 to information on pages 42, 43, 45, 49, 51, 53, 57 and 58 in F6184. The withheld information consists primarily of names of third parties, as well as, on page 58, a description of information provided by one individual on the Premier's webpage.

Is the information personal information?

[para 11] Section 1(n) defines personal information under the Act:

1 In this Act,

...

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

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

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

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

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

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

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

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

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

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

[para 12] Names of third parties are personal information under the FOIP Act. However, previous orders from this office have found that section 17 does not apply to information that reveals only that an individual was acting in a formal, representative, professional, official, public or employment capacity, unless that information also has a personal dimension (Order F2008-028, para. 54). Such information may have a personal dimension if there is associated information suggesting that an individual performing work-related or business responsibilities was acting improperly, there are allegations that the work-related act of an individual was wrongful, or disclosure of information is likely to have an adverse effect on the individual (see Orders F2006-030 at paras. 12, 13, and 16; F2008-020 at para. 28).

[para 13] The names withheld under section 17 are names of individuals who sent or received correspondence from the Public Body; in all but one instance, the individuals appear to have been acting in a personal capacity. However, the name withheld on page 53 is of an individual who, based on the context of the other records at issue, appears to have been acting in a work-related capacity. There is no indication that there is a personal dimension to this information; as such, I find that section 17 does not apply to the name withheld on page 53.

[para 14] The description of information on the Premier’s webpage that was provided by an individual consists of personal information about that individual. However, if the individual’s name were severed, it seems that this description would not be sufficiently detailed so as to identify the individual. The Public Body has not provided me with an explanation as to why it decided to withhold the information it did, as it could have

severed only the individual's name (i.e. why the Public Body considered the information, absent the name, to be about an identifiable individual). In my view, with the name withheld (the first and third items of information withheld on page 58 under section 17), the remaining information (the second item of information withheld on page 58 under section 17) is not identifiable and cannot be withheld as personal information under section 17.

Would disclosure of the personal information in the records just discussed be an unreasonable invasion of a third party's personal privacy?

[para 15] Section 17 states in part:

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.

...

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

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

...

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

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

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

...

(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,

...

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

(i) the personal information was originally provide by the applicant.

[para 16] Section 17 is a mandatory exception; if the information falls within the scope of the exception, it must be withheld.

[para 17] Under section 17, if a record contains personal information of a third party, section 71(2) states that it is then up to the applicant to prove that the disclosure would not be an unreasonable invasion of a third party's personal privacy. The Applicant states that he does not object to the withholding of the names of correspondents.

[para 18] Neither party has argued that section 17(2) or (3) apply to any of the withheld information, and from the face of the records, neither provision appears to apply.

Section 17(4)

[para 19] The Public Body argues that sections 17(4)(g)(i) and 17(4)(g)(ii) apply to the personal information, creating a presumption that disclosing the information would be an unreasonable invasion of personal privacy. I agree that section 17(4)(g) applies to the information withheld under section 17 (except the information on pages 53 and 58 to which section 17 does not apply).

Section 17(5)

[para 20] The factors giving rise to a presumption that disclosing the personal information is an unreasonable invasion of personal privacy must be weighed against any factors listed in section 17(5), or other relevant factors, that weigh in favour of disclosure. As the Applicant does not object to the withholding of correspondents' names in the records, there are no factors that weigh in favour of disclosing those names.

Weighing factors under section 17

[para 21] I find that there are no factors weighing in favour of disclosing the third party personal information in the records, and therefore that it would be an unreasonable invasion of privacy of third parties to disclose this information.

3. Did the Public Body properly apply section 21(1) of the Act (disclosure harmful to intergovernmental relations) to the information in the records?

[para 22] The Public Body has applied section 21(1) to information on pages 1-20, 54 and 55 of the records relating to F6244. The relevant portions of this provision state:

21(1)The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm relations between the Government of Alberta or its agencies and any of the following or their agencies:

(i) the Government of Canada or a province or territory of Canada,

(ii) a local government body,

- (iii) *an aboriginal organization that exercises government functions, including*
 - (A) *the council of a band as defined in the Indian Act (Canada), and*
 - (B) *an organization established to negotiate or implement, on behalf of aboriginal people, a treaty or land claim agreement with the Government of Canada,*
- (iv) *the government of a foreign state, or*
- (v) *an international organization of states,*

or

- (b) *reveal information supplied, explicitly or implicitly, in confidence by a government, local government body or an organization listed in clause (a) or its agencies.*

(2) The head of a public body may disclose information referred to in subsection (1)(a) only with the consent of the Minister in consultation with the Executive Council.

(3) The head of a public body may disclose information referred to in subsection (1)(b) only with the consent of the government, local government body or organization that supplies the information, or its agency.

[para 23] The Public Body's submission discusses the application of section 21(1)(b) only to information that was supplied by the Government of Quebec (Quebec). This argument appears to apply only to the information withheld on pages 54 and 55, as there is no indication that any information in pages 1-20 was supplied by Quebec.

[para 24] In Order F2004-018, the Commissioner stated that four criteria must be met before section 21(1)(b) applies:

There are four criteria under section 21(1)(b) (see Order 2001-037):

- a) the information must be supplied by a government, local government body or an organization listed in clause (a) or its agencies;
- b) the information must be supplied explicitly or implicitly in confidence;
- c) the disclosure of the information must reasonably be expected to reveal the information; and
- d) the information must have been in existence in a record for less than 15 years.

[para 25] The Public Body states that the records were supplied in confidence for the purpose of the Federal-Provincial-Territorial (FPT) discussions. It further states that it consulted with Quebec on May 4, 2012, and that Quebec responded by stating the records would be withheld under its own legislation, under a provision similar to section 21(1)(a).

[para 26] The Applicant argues that Quebec has made public statements regarding Bill C-10 and that this mitigates any potential harm caused by disclosure. Unlike section 21(1)(a), section 21(1)(b) does not require the Public Body to show a reasonable expectation of harm from the disclosure of information; rather, it applies where

information was supplied in confidence by a body listed in section 21(1)(a) (Quebec is a body falling within section 21(1)(a)(i)).

[para 27] With respect to the information in pages 54 and 55, it is clear from the face of the records that they originated from Quebec, and that the records have been in existence for fewer than 15 years. The disclosure of the records would also clearly reveal the information that was supplied by Quebec.

[para 28] Regarding whether the information was supplied explicitly or implicitly in confidence, the fact that Quebec did not consent to the disclosure of the records (which I presume from the Public Body's statement that Quebec would withhold the information in response to an access request), does not necessarily indicate that the information was supplied in confidence. The following test has been adopted for determining whether information was supplied in confidence (See Orders 99-018 and F2008-027):

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

- (1) Communicated to the institution on the basis that it was confidential and that it was to be kept confidential.
- (2) Treated consistently in a manner that indicates a concern for its protection from disclosure by the Third Party prior to being communicated to the government organization.
- (3) Not otherwise disclosed or available from sources to which the public has access.
- (4) Prepared for a purpose which would not entail disclosure.

[para 29] In a letter to the Public Body dated April 8, 2014, I asked it to provide more evidence that the information at pages 54-55 of the records in F6244 was supplied by Quebec in confidence. I stated:

Such evidence might consist of information regarding the Federal-Provincial-Territorial discussions, including the context of the discussions, type of information generally discussed, and whether information shared at these discussions is usually expected to remain confidential. The Public Body should also address how the information was used and disseminated within or by the Public Body.

[para 30] By letter dated May 6, 2014 The Public Body declined to provide any further information to the inquiry. However, the context of the records and the information contained therein indicates the likelihood that they would have been implicitly supplied in confidence; further, there is no indication that they were disseminated outside the FPT discussions. The fact that Quebec did not consent to the disclosure of the records supports a finding of an expectation of confidentiality (although, as noted, it does not support the

finding by itself). I therefore find that the test for applying section 21(1)(b) to pages 54 and 55 of F6244 has been met.

[para 31] The Public Body did not specify what subsection of 21(1) it believes applies to the information on pages 1-20 of F6244, nor did it make any specific arguments as to how section 21(1) applies to the information in these pages.

[para 32] Section 21 addresses intergovernmental relations, or exchanges of information *between* the Government of Alberta and a government listed in section 21(1)(a), as discussed in Order F2008-027. For section 21(1)(a) to apply, there must be an entity listed in section 21(1)(a) with which its relations will be harmed.

[para 33] A public body must also satisfy the “harm test” articulated in previous Orders of this Office:

- there must be a clear cause and effect relationship between the disclosure and harm alleged;
- the harm that would be caused by the disclosure must constitute damage or detriment and not simply hindrance or minimal interference; and
- the likelihood of harm must be genuine and conceivable (Order 96-003 at para. 21; Order F2005-009 at para. 32).

[para 34] Recently, in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31, the Supreme Court of Canada stated that the harm test set out in *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23 is to be used where an access-to-information provision permits the withholding of information where disclosure could reasonably be expected to cause the identified harm. It said at paragraph 54:

This Court in *Merck Frosst* adopted the “reasonable expectation of probable harm” formulation and it should be used wherever the “could reasonably be expected to” language is used in access to information statutes. As the Court in *Merck Frosst* emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence “well beyond” or “considerably above” a mere possibility of harm in order to reach that middle ground: paras. 197 and 199. This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and “inherent probabilities or improbabilities or the seriousness of the allegations or consequences”: *Merck Frosst*, at para. 94, citing *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41, at para. 40.

[para 35] In this case, the Public Body has not identified the entity listed under section 21(1)(a) with which it has a relationship that would be harmed by the disclosure of the information in pages 1-20. Given the subject-matter of the Applicant’s request, possibly the Public Body is concerned with the relationship between the Government of Alberta and the Government of Canada; however, this is merely conjecture on my part. The

Public Body has also not addressed how the harms test would be met if the information were disclosed, and it is not clear from the records themselves what the harm would be.

[para 36] I find that the Public Body has not met its burden to show that section 21(1) applies to the information in pages 1-20 of F6244. As the Public Body also applied section 24(1)(h) to those pages, I will also consider below whether that provision applies to them.

Exercise of Discretion under section 21(1)(b)

[para 37] Although section 21(1)(b) is a discretionary exception, section 21(3) states that a public body may disclose information to which section 21(1)(b) applies *only* with the consent of the relevant body. The Public Body consulted with Quebec, which declined to consent to the disclosure of the information to which this provision applies; as such, the Public Body may not disclose the information.

4. Did the Public Body properly apply section 24(1) of the Act (advice from officials) to the information in the records?

[para 38] The Public Body applied sections 24(1)(a), (b) and (h) to information in the records for both F6184 and F6244. These provisions state:

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

(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council,

(b) consultations or deliberations involving

(i) officers or employees of a public body

(ii) a member of the Executive Council, or

(iii) the staff of a member of the Executive Council,

...

(h) the contents of a formal research of audit report that in the opinion of the head of the public body is incomplete unless no progress has been made on the report for at least 3 years.

[para 39] The Public Body has applied section 27(1)(a) to the same information to which it applied sections 24(1)(a) and (b) in each instance in F6184, and to which it applied section 24(1)(a) for pages 39-45 and 47-53 in F6244. With one exception, the Public Body has not provided the withheld information pursuant to the solicitor-client privilege protocol, and I cannot make any determinations regarding the application of sections 24(1)(a) and (b) to the information in those pages. The one exception is page 12 in F6184, which I will discuss below.

[para 40] The Public Body's letter of March 21, 2014 indicates that the Public Body is no longer claiming solicitor-client privilege over information withheld on pages 15, 36-

39 and 40 of F6184 and that “more time is needed for our office to review these particular records and see if a second release can be provided to the Applicant during this Inquiry.” The Public Body’s index of records indicates that it has also applied section 24(1)(a) and/or (b) to information in these pages; however, the Public Body did not respond to my request for unredacted versions of these records. As such, I cannot make any determinations regarding the application of sections 24(1)(a) and (b) to the information in those pages.

[para 41] The Public Body has applied only section 24(1)(a) to pages 21-26, 28, 32-38, and 57-61 in F6244; it applied only section 24(1)(h) to pages 1-20 of F6244. As I have both a redacted and unredacted version of these pages, I can make a determination as to whether the exception was properly applied to these records.

Section 24(1)(a)

[para 42] In previous orders, the Commissioner has stated that the advice, proposals, recommendations, analyses or policy options under section 24(1)(a) should:

1. be sought or expected, or be part of the responsibility of a person by virtue of that person’s position,
2. be directed toward taking an action,
3. be made to someone who can take or implement the action. (See Order 96-006, at p.10)

[para 43] In Order F2013-13, the adjudicator stated that the third arm of the above test should be restated as “created for the benefit of someone who can take or implement the action” (at paragraph 123).

[para 44] The first step in determining whether section 24(1)(a) was properly applied is to consider whether a record would reveal advice, proposals, recommendations, analyses, or policy options. Section 24(1)(a) does not apply to a decision itself (Order 96-012, at para. 37).

[para 45] Further, section 24(1)(a) applies only to the parts of the records that reveal substantive information about which advice was sought. Information such as the names of the individuals involved in the advice, dates, and information that reveals only the fact that advice is being sought (rather than the substance of the advice) cannot generally be withheld under section 24(1) (see Order F2004-026, at paragraph 89).

[para 46] Regarding the meaning of “analyses” in section 24(1)(a), in Order 97-007, former Commissioner Clark stated:

While there is some discretion exercised in choosing which facts are gathered, without more, a compilation of facts is not an analyses. Gathering pertinent factual information is only the first step that forms the basis of an analyses. It is also the common thread of “advice, proposals, recommendations, or policy options” because they all require, as a base, a compilation of pertinent facts.

[para 47] This was cited in F2008-032, in which the adjudicator concluded that

“Advice” then, is the course of action put forward, while “analyses” refers to the examination and evaluation of relevant information that forms, or will form, the basis of the advice, recommendations, proposals, and policy options as to a course of action.

[para 48] The Public Body’s submissions state only that the disclosure of advice could harm a public body’s internal decision-making process, and that the information withheld under section 24(1)(a) contains advice, recommendations and analysis.

[para 49] The Applicant states that full and frank discussions can be protected by withholding the names of Public Body employees under section 17. As discussed above, past orders of this Office have stated that section 17 does not apply to individuals acting in their work capacity and the Public Body has not withheld the names of Public Body employees under this provision. Further, protecting the identity of the author of advice or recommendations may aid full and frank discussions, but section 24(1)(a) also protects the *content* of those discussions (to the extent that the content reveals the advice, analysis, policy options etc.).

Application of section 24(1)(a) to the records at issue in F6184

[para 50] The only page to which section 24(1)(a) has been applied by the Public Body in F6184 and that has been provided to me is page 12. It is not clear why the Public Body provided me with an unredacted copy of this page, since it has also applied section 27(1)(a) to information in this page (and has not provided me with unredacted copies of other pages to which section 27(1)(a) has been applied).

[para 51] The Public Body’s index of records indicates that the Public Body has not provided some information on this page to the Applicant on the basis that it is not responsive to the Applicant’s request. The record itself does not indicate what information the Public Body considered to be unresponsive; however, page 12 is the second page of a briefing note, the first page of which was not provided to the Applicant on the basis that it is unresponsive to his request. I agree that the primary subject-matter of the briefing note is not Bill C-10 (the topic of the Applicant’s request). Only the last section of the briefing note discusses Bill C-10. In my view, the information in the top half of page 12 (before the heading at the middle of the page) is not responsive to the Applicant’s request. The substantive content of the remainder of the page (but not the heading, date, or names and contact information of the authors/submitters of the briefing note) consists of analysis and advice that refers to Bill C-10, and is information to which section 24(1)(a) applies.

Application of section 24(1)(a) to the records at issue in F6244

[para 52] The information in pages 21-26 is nearly identical to the information in pages 33-38 and 56-61; page 26 contains a small amount of additional information not

contained in pages 33-38 or 56-61. However, a comparison of these pages indicated that the Public Body's severing is not entirely consistent. The information withheld on pages 21 and 33 has been disclosed on page 56 (which was disclosed in its entirety). The entire second paragraph (including the heading) and the first sentence of the third paragraph on page 26 were disclosed in pages 38 and 61. The disclosure of the above information in pages 21, 26 and 33 will no longer reveal advice to officials since it has already been provided to the Applicant; therefore, I will order the Public Body to disclose that information.

[para 53] Pages 21-26 comprise a briefing note for the Minister. The information withheld in the middle of page 22 (the first full paragraph severed in its entirety) consists of statistical information; in my view, this information is better characterized as background facts than advice or analysis. The heading three-quarters of the way down the page (the second heading on the page) reveals only the topic of the next section of the briefing note. None of this is information that can be withheld under section 24(1)(a). This applies to the information withheld on pages 34 and 57 as well.

[para 54] The first three paragraphs of page 23, and the information withheld in the last paragraph, contain analysis that led to the advice and recommendations to the Minister. The disclosure of the two headings on this page would also reveal analysis, and not just the topic discussed. This information is properly withheld under section 24(1)(a). However, most of the fourth paragraph on this page appears to consist of background facts and cannot be withheld under that provision, with the exception of the last sentence of that paragraph, which contains analysis to which the exception applies.

[para 55] The Public Body withheld half of a graph on pages 24, 36 and 59; the Applicant argues that section 24(2)(d) applies to that information; I will discuss the interaction between sections 24(1)(a) and 24(2)(d) to this information in a subsequent section of this Order.

[para 56] Page 25 was withheld in its entirety. I accept that the information in this page consists of analysis and as such, section 24(1)(a) applies; however, the headings reveal only the topics discussed and cannot be withheld.

[para 57] Page 26 was also withheld in its entirety, but as discussed above, some of the information on this page has been disclosed on pages 38 and 61 (and therefore cannot be withheld on page 26). The remainder of the information on this page consists of analysis, as well as recommendations to the Minister; therefore, section 24(1)(a) applies. However, the headings do not reveal the analysis or recommendations and so cannot be withheld under this provision.

[para 58] Page 28 is a briefing note, with some information withheld. The Public Body has disclosed the information that consists only of background facts; I accept that the remaining information is better characterized as analysis than background facts, and that section 24(1)(a) applies.

[para 59] Pages 30-32 are titled “Advice to Minister” regarding Bill C-10. Only the last bullet point on page 32 has been withheld; this bullet point contains the same analysis that I found was properly withheld in pages discussed above; therefore, section 24(1)(a) applies to this information as well.

[para 60] Pages 33-38 and 56-61 are both titled “Advice to Minister” regarding a Federal/Provincial/Territorial meeting and appear to be nearly identical documents; as noted above, they are also substantially similar to the briefing note in pages 21-26. I have already discussed the information withheld from pages 33, 34 and 57. Pages 35 and 58 are similar to page 23 and consist mostly of analysis; however, most of the second last paragraph appears to be background facts to which section 24(1)(a) doesn’t apply. Only the last sentence of that paragraph contains analysis that can be withheld under that provision.

[para 61] The first paragraph of pages 36 and 59 consist of information that I found was properly withheld from the last paragraph of page 23. I will address the partially withheld graph on these pages in the discussion of section 24(2)(d).

[para 62] Pages 37 and 60 have been withheld in their entirety. As I found with page 25 (which is nearly identical), the information in this page consists of analysis and as such, section 24(1)(a) applies; however, the headings reveal only the topics discussed and cannot be withheld.

[para 63] Pages 38 and 61 are largely similar to page 26; I accept that the information withheld on page and 61 consists of analysis; therefore, section 24(1)(a) applies. However, the headings do not reveal the analysis and so cannot be withheld under this provision. Information withheld on pages 26 and 38 that has been disclosed on page 61 cannot be withheld, nor can the headings on those pages.

Section 24(1)(h)

[para 64] The Public Body applied this provision to pages 1-20 of F6244. In Order F2010-036, the adjudicator found that the purpose of this provision is to enable public bodies to complete formal audit and research reports. A public body may withhold all the information in an incomplete report, not simply information that would reveal its decision making process. The adjudicator said:

This suggests that this provision is not intended to protect a public body's decision making process, although it may also have that effect. Significantly, section 24(1)(h) does not apply when a formal research or audit report is complete, or is incomplete but no progress has been made on the report for three years. This limitation in the application of section 24(1)(h) supports the interpretation that section 24(1)(h) is intended to enable public bodies to complete formal research and audit reports by allowing them to withhold their contents before the final research or audit report is complete. Conceivably, making the contents of an incomplete audit or research report public could have the effect of interfering with, or otherwise limiting, the ability of a public body to complete such a report.

[para 65] Section 24(1)(h) cannot be applied to a report on which progress has not been made for over three years. In the Order cited above, the adjudicator made the following comments on the application of this provision in that case:

I accept the Public Body's evidence that the final audit report, which is complete, contains more information than the draft versions it withheld. Therefore, the draft versions are incomplete, in the sense that they do not contain all the information in the final version. However, section 24(1)(h) refers to the completion of a formal *report*, not the completion of drafts of the report.

When applying section 24(1)(h), the key point is to consider whether the report has been completed. Once the final version of the report has been completed, the report is no longer incomplete within the terms of this provision.

[para 66] The Public Body states that "at the time of the access request, the report was incomplete. The draft was continually being refined and additional research was undertaken." It is not clear to me whether the Public Body meant that the report was incomplete at the time of the request but may be complete now, or whether it remains incomplete. In my letter to the Public Body of April 8, 2014, I asked the following:

If the Report has since been completed, I ask the Public Body to comment on the application of Order F2010-036 (paragraph 97), specifically, whether section 24(1)(h) still applies to the report in the responsive records.

If the report has not been completed, I ask the Public Body to provide evidence regarding when the draft report was last worked on and the timelines regarding progress made.

[para 67] The Public Body did not respond to my request for further information. I have no way of knowing whether the report remains in draft form and/or when progress had last been made on it. The Public Body has the burden of satisfying me that section 24(1)(h) applies to the information; it has not met this burden. As such, I find that this provision does not apply.

Section 24(2)(d)

[para 68] Section 24(2) prevents the head of a public body from applying section 24(1) to certain types of information. Section 24(2)(d) states that a public body cannot withhold information under section 24(1) if that information is a statistical survey. The Applicant cites Order F2008-008, which defines "statistical survey" as "a collection, interpretation and presentation of numerical data relating to the study of a topic, issue, situation or program." He also states that the Public Body has withheld a portion of a graph that meets this definition of statistical survey, on pages 24, 36 and 59 of F6244.

[para 69] I agree with the definition of statistical survey provided in Order F2008-008 (and adopted in subsequent orders). The graph referred to by the Applicant represents inmate population by year; the Public Body disclosed the portion of the graph that reveals the information relevant to 2012 and prior, but has withheld the information relating to

subsequent years. The Public Body has not explained in its submissions why it has done this; however, as the records were created in 2012, it seems reasonable to conclude that the information in the graph relating to the years up to 2012 meets the definition of statistical survey, being a collection of numerical data relating to the topic of inmate population. However, the graph relating to the years after 2012 would have to be based on projected data, rather than actual data. In my view, projected data is not a “collection of” numerical data; rather, it is an estimate based on the analysis of past data. Therefore, projected data, even if presented in a form that appears to be a statistical survey (e.g. a graph) is not a statistical survey. Instead, it is an analysis of past data and projection of future data. I find that section 24(2) does not exclude the application of section 24(1)(a) from the graph referred to by the Applicant, and that section 24(1)(a) applies.

Exercise of Discretion

[para 70] In order to properly exercise discretion in determining whether to withhold information, a public body should consider the FOIP Act’s general purposes, the purpose of the particular provision on which it is relying, the interests that the provision attempts to balance, and whether withholding the records would meet the purpose of the Act and the provision in the circumstances of the particular case (Order F2004-026 at para. 46).

[para 71] In *Ontario (Public Safety and Security) v. Criminal Lawyers’ Association*, 2010 SCC 23 (CanLII), 2010 SCC 23, the Supreme Court of Canada commented on the exercise of discretion to withhold information under a law enforcement exception to access in Ontario’s legislation. It said (my emphasis):

At the second stage, the head must weigh the public *and private* interests in disclosure and non-disclosure, and exercise his or her discretion accordingly.

[para 72] The purpose of section 24(1) is to protect the ability of a public body to obtain and consider frank advice without interference.

[para 73] The Public Body did not make any submissions specifically addressing its exercise of discretion, although I asked it to do so in my letter of April 8, 2014. The Public Body noted in its initial submission that the “disclosure of advice could reveal information that would cause damage to a public body’s internal decision-making process.” This is an appropriate factor to consider in exercising discretion to withhold information.

[para 74] The Public Body’s arguments regarding the applicability of section 32 (discussed below) indicate that the Public Body also considered the public interest in disclosing the information. I accept that the Public Body properly exercised its discretion in applying section 24(1)(a).

5. Did the Public Body properly apply section 27(1)(a) of the Act (legal privilege) to information in the records?

[para 75] The Public Body applied section 27(1)(a) (solicitor-client privilege) to information on pages 1-10, 12, 16, 17, 21, 22-27, 29-35, 46-48, 58, 59, 61, 62, 64, and 65-70 of F6184, and 39-45 and 47-53 of F6244; section 27(1)(b) to information on pages 1-5, 7-10, 12, 17, 21-27, 29-41, 46-48, 58, 59, 61, 62, 64-70 of F6184 and 39-45 and 47-53 of F6244; and section 27(1)(c) to information on pages 1 and 15 of F6184.

[para 76] These provisions state the following:

27(1) The head of a public body may refuse to disclose to an applicant

(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege,

(b) information prepared by or for

(i) the Minister of Justice and Attorney General,

*(ii) an agent or lawyer of the Minister of Justice and Attorney General,
or*

(iii) an agent or lawyer of a public body,

in relation to a matter involving the provision of legal services, or

(c) information in correspondence between

(i) the Minister of Justice and Attorney General,

(ii) an agent or lawyer of the Minister of Justice and Attorney General, or

(iii) an agent or lawyer of a public body,

and any other person in relation to a matter involving the provision of advice or other services by the Minister of Justice and Attorney General or by the agent or lawyer.

Application of section 27(1)(a) to page 12 of F6184

[para 77] The Public Body withheld several pages from the Applicant, in whole or in part, on the basis that the information in them is subject to solicitor-client privilege (section 27(1)(a)). Of these pages, the Public Body provided me with an unredacted copy of only page 12 of F6184. I found above that half of the page is unresponsive to the Applicant's request, and that section 24(1)(a) applies to much of the remaining information. I found that section 24 does not apply to the heading in the middle of the page, or the date, and name and contact information of the authors/submitters at the bottom of page 12. If the information on page 12 is protected by solicitor-client privilege, then section 27(1)(a) will apply to not only the substantive information, but also the information at the bottom of the page (to which I found that section 24(1) does not apply). I will therefore consider whether section 27(1)(a) applies to the responsive portion of page 12.

[para 78] The test to establish whether communications are subject to solicitor-client privilege is set out by the Supreme Court of Canada in *Canada v. Solosky* [1980] 1 S.C.R. 821. The Court said:

... privilege can only be claimed document by document, with each document being required to meet the criteria for the privilege--(i) a communication between solicitor and client; (ii) which entails the seeking or giving of legal advice; and (iii) which is intended to be confidential by the parties.

The requirements of this privilege are met if information is a communication between a solicitor and a client, which was made for the purpose of seeking or giving of legal advice and intended to be kept confidential by the parties.

[para 79] The Public Body's submissions regarding the application of section 27(1)(a) stated that "the privilege[d] information was prepared by/for a lawyer of the Minister of Justice and Solicitor General in relation to a matter involving the provision of legal services."

[para 80] By letter dated February 19, 2014, I asked the Public Body to address the difference between legal advice and policy advice with respect to the records to which section 27(1)(a) was applied. I stated:

Solicitor-client privilege may arise when in-house public body lawyers provide legal advice to their client, a public body (see *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 (CanLII), [2004] 1 SCR 809, at para. 19). However, not all advice from a public body lawyer is necessarily protected by solicitor-client privilege. In Order F10-18, the Acting BC Information and Privacy Commissioner said (at paras. 25-26):

Many cases have considered whether the privilege extends to communications to or from a lawyer when he or she is acting in a different professional capacity. It is well understood that, to the extent that a lawyer provides advice other than legal advice, those communications are not caught by the privilege. So, for example, where an in-house lawyer provides business advice or a government lawyer provides general policy advice, it is not captured by the privilege. Similarly, if a lawyer is acting as an employee in a position which could be filled by non-lawyers and doing tasks which would not necessarily have to be done by a lawyer, the communications to and from the lawyer are not covered by the privilege.

In *R. v. Campbell*, the Supreme Court of Canada had this to say about whether or not privilege attaches to all types of advice a lawyer gives:

50 It is, of course, not everything done by a government (or other) lawyer that attracts solicitor-client privilege. ... Advice given by lawyers on matters outside the solicitor-client relationship is not protected. ... No solicitor-client privilege attaches to advice on purely business matters even where it is provided by a lawyer. As Lord Hanworth, M.R., stated in *Minter v. Priest*, [1929] 1 K.B. 655 (C.A.), at pp. 668-69:

[I]t is not sufficient for the witness to say, "I went to a solicitor's office." ... Questions are admissible to reveal and determine for what purpose and under what circumstances the intending client went to the office.

Whether or not solicitor-client privilege attaches in any of these situations depends on the nature of the relationship, the subject matter of the advice and the circumstances in which it is sought and rendered.

...

If the Public Body is to meet its burden, it must provide further information regarding the application of the above principles to the records for which solicitor-client privilege is claimed. Specifically, the context of the records at issue may indicate that the advice therein is policy advice, rather than legal advice subject to solicitor-client privilege. For example, section 27(1)(a) has been applied to page 12 of the records for file F6184 (along with section 24(1)); however, it is not clear to me what information in that page would be legal advice that could be subject to solicitor-client privilege.

[para 81] The Public Body did not address this request for information. Instead, the Public Body provided me with an affidavit sworn by a lawyer employed by the Public Body. In this affidavit, the lawyer stated the test for solicitor-client privilege, and said:

It is my opinion that all of the records enumerated in paragraph 6 [of the affidavit] are properly subject to the Minister's claim of solicitor-client privilege, as each one of those records has all three of the necessary characteristics as outlined in paragraph 4.

[para 82] By letter dated April 8, 2014, I informed the reasons for which I found this affidavit evidence to be insufficient. I said:

The information on [page 12] appears to identify policy issues regarding certain programs; from the face of the document, it is not apparent that a legal issue with legal implications is being addressed, or what aspect of the information is legal advice and/or a recommended course of action based on legal considerations.

As this document is already in my possession, it was open for the Public Body to provide more detail as to what it regarded the legal issue to be and what the recommended course of action based on legal considerations was. Instead, as set out above, the Public Body merely asserted that the information in question meets the elements of the test.

If I were to accept the assessment of the lawyer who provided the affidavit about this question, rather than making the assessment myself, particularly in this case where the information at issue does not on its face appear to meet the test, I would be abdicating my duty to ensure the criteria for privilege have been met.

[para 83] I asked the Public Body again to provide further information about the information for which solicitor-client privilege was being claimed. By letter dated May 6, 2014, the Public Body responded that it would be relying on its previously submitted arguments for the inquiry, rather than providing a response to my questions (or a rebuttal submission).

[para 84] Having reviewed the information in page 12, it is not clear to me what information in this page consists of legal advice. As noted in my letters to the Public

Body, the information on this page appears to be more accurately characterized as policy advice, rather than legal advice. I find that I do not have sufficient evidence to conclude that the information contained in page 12 of F6184 is subject to solicitor-client privilege as claimed by the Public Body.

Application of section 27(1)(b) to page 12 of F6184

[para 85] As I have found that section 24(1)(a) applies to most of the responsive information on page 12, I will consider the application of section 27(1)(b)(ii) to the remaining information only (the heading, date, names and contact information at the bottom of the page).

[para 86] In Order F2008-021, the adjudicator discussed the scope of section 27(1)(b)(ii). She said:

It follows, then, that the person contemplated by the provision who is preparing the information, is doing so for the purpose of providing legal services, and therefore must be either the person providing the legal service or a person who is preparing the information on behalf of, or, at a minimum, for the use of, the provider of legal services, who is, in this case, an Alberta Justice lawyer.

[para 87] In Order F2009-024 she stated:

Information “prepared for an agent or lawyer of the Minister of Justice and Attorney General” then, is information prepared on behalf of an agent or lawyer so that the agent or lawyer may provide legal services.

[para 88] The Public Body did not provide specific arguments regarding the application of section 27(1)(b)(ii) to the information in the records at issue generally, or page 12 specifically. As I discussed above, it is not clear to me that the briefing note was created in relation to a legal service, as opposed to being created for the purpose of providing policy advice. Further, section 27(1)(b) applies only to substantive information, and not to information such as dates, letter head, names and business contact information (see Orders F2008-028 and F2013-51). For these reasons, the Public Body has not met its burden to show that section 27(1)(b)(ii) applies to the information on page 12. I will therefore order the Public Body to disclose the information on page 12 that I have found is responsive, and to which section 24(1)(a) does not apply.

Records not provided by the Public Body

[para 89] With respect to the remaining information in both F6184 and F6244 to which the Public Body has applied section 27(1)(a), in accordance with this Office’s *Solicitor-Client Privilege Adjudication Protocol*, the Public Body chose not to submit an unredacted copy of those records to me. As contemplated by the *Protocol*, on February 19, 2014, I requested additional argument and evidence from the Public Body regarding its claim of solicitor-client privilege, so that I could decide whether it properly applied section 27(1)(a) to the records in question. The Public Body provided a minimal amount

of additional information, by letter dated March 21, 2014, but its argument and evidence, up to that point, were insufficient for me to decide the issue. By letter dated April 8, 2014, I again asked the Public Body for additional argument and evidence regarding its application of section 27(1)(a). By letter dated May 6, 2014, the Public Body informed me that it would not make any more submissions to the inquiry, nor respond to the questions posed in my letter of April 8, 2014.

[para 90] Therefore, on May 8, 2014, I sent the Public Body a notice under section 56(2) of the Act to produce the records over which it is claiming solicitor-client privilege, so that I could properly decide whether the Public Body had the authority to withhold those records under the Act.

[para 91] Sections 27(1)(b) and/or (c) have been applied to information to which section 27(1)(a) has also been applied. As the Public Body has not provided the relevant records (or relevant parts of the records) pursuant to the solicitor-client privilege protocol (with the exception of page 12), I cannot make any determinations regarding the application of sections 27(1)(b) and/or (c) to the information in those pages.

[para 92] As noted above, the Public Body's letter of March 21, 2014 indicates that the Public Body is no longer claiming solicitor-client privilege over information withheld on pages 15, 36-39 and 40 of F6184. The Public Body's index of records indicates that it has also applied sections 24(1)(a) and/or (b) and sections 27(1)(b) and/or (c) to information in some of these pages; however, the Public Body did not respond to my request for unredacted versions of these records. In the notice to produce records sent to the Public Body on May 8, 2014, I asked the Public Body to produce these records, to which section 27(1)(a) had initially been applied.

[para 93] On June 19, 2014, the Public Body brought an application for judicial review of my decision to require it to produce the records in question. I am therefore unable, at this time, to proceed with to the issue regarding the application of section 27. I reserve my decision on the issue, pending the outcome of the application for judicial review.

6. Does section 32 of the Act (information must be disclosed if in the public interest) require the Public Body to disclose the information in the records?

[para 94] Section 32 reads, in part, as follows:

32(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people, to any person or to an applicant

(a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant, or

(b) information the disclosure of which is, for any other reason, clearly in the public interest.

Adding section 32 as an issue in the inquiry

[para 95] The Public Body states that the Applicant did not raise the issue of disclosure under section 32 with the Public Body during the FOIP request process. It points to Order 96-011, which states that an applicant seeking the disclosure of information under section 32 ought to go to the head of the public body first. It also cites Order F2008-020, in which the adjudicator said:

The former Commissioner expressed concern that applications to review section 32 decisions could be used as a way of circumventing the usual review processes set out in the Act, and stated that any member of the public seeking an investigation of a section 32 decision ought to go to the head of the public body first (Order 96-011 at p. 18 or para. 54). These comments provide some guidance as to when and how issues under section 32 should be raised and dealt with. While public bodies must, in appropriate circumstances, consider the application of section 32 in any event, I believe that if an applicant making an access request specifically takes the position that a public body has a duty to release information in accordance with the section, the applicant should draw this to the public body's attention at the time of the access request, or otherwise as early as possible.

Alerting a public body to the arguable application of section 32 at the earliest time would be in keeping with the objective of section 32, which is to bring about the disclosure of the information that it contemplates "without delay". In other words, raising the application of section 32 as an issue late in the process prevents what could have been an earlier resolution of that particular issue, and delays disclosure of information that is potentially clearly in the public interest. Having said this, it is important to add that section 32 may obviously be found by this Office to apply regardless of any previous steps taken by an applicant, such as where there is a clear risk to someone's health or safety. What is important to bear in mind is that each individual case should be dealt with in whatever manner the type of information involved suggests, and fairness to the interested parties requires (Order 96-011 at p. 14 or para. 40).

[para 96] I agree with the adjudicator's comments in Order F2008-020 that an applicant ought to raise the application of section 32 with the Public Body as soon as possible. The Applicant argues that "just because the applicant didn't specifically cite Sec. 32 in his written request – an understandable oversight given the applicant is a self-taught layperson and not a lawyer with expertise in the FOIP process – doesn't mean it wasn't made on Sec. 32 grounds" and notes that his access requests indicated that he was seeking information as a member of the media. He further states "what possible reason, other than public interest, would a member of the news media have when making a FOIP request of this nature?"

[para 97] The fact that the Applicant is a member of the media and therefore presumably seeks information in which the public has an interest, does not mean that the information sought is a matter of *compelling* public interest under section 32. That said, I accept the Applicant's point that he may not have been aware of the process for requesting disclosure under section 32 (or possibly was not aware of this provision at the

time he made his request). Further, the Applicant did argue the application of section 32 in both his Request for Review and Request for Inquiry, which is why section 32 was added to the issues for the inquiry.

Does section 32 apply to information in the records at issue?

[para 98] The Applicant bears the burden of establishing that section 32 applies in this inquiry, in that he must show that the public interest in disclosure of the requested information overrides the public interest that the Act has recognized by way of the applicable exceptions to disclosure (Order F2006-010 at para. 31). The Applicant argues that both section 32(1)(a) and (b) apply.

[para 99] With respect to section 32(1)(a), the Applicant must provide some evidence that there is an *actual* risk of harm, and that the harm is significant (Order 97-009). The Applicant provided evidence in the way of articles and public statements from correctional and medical experts expressing concern about overpopulation in prison facilities which is a possible result of Bill C-10. These experts refer to a significant risk of harm to the federal prison population and possibly the public at large.

[para 100] In my view, while the risk of harm posed by these experts is possible (even highly possible), it is a risk of harm that is more remote than the risk contemplated under section 32(1)(a). I find that section 32(1)(a) does not apply to the information in the records at issue.

[para 101] For section 32(1)(b) to apply, there must be circumstances *compelling* disclosure, or disclosure *clearly* in the public interest, as opposed to a matter that may be of interest to the public (Order F2004-024 at para. 57). The Public Body argues that the Applicant has not provided sufficient evidence of a compelling public interest in disclosure as required by section 32.

[para 102] The Applicant argues that

... seeking information on the costs and impacts of the federal Bill C-10 (known popularly as the federal omnibus crime legislation) strikes right at the heart of public interest.

Notwithstanding the vigorous public and political debate around the issue, this legislation has the potential to fundamentally alter the administration of justice in this country.

If ensuring society is, in fact, protected from the dangerous criminals Bill C-10 is [sic] claims to target isn't a matter of public interest, I'm not sure what is.

Likewise, if ensuring legislative changes brought about by C-10 doesn't significantly increase trial wait times – a potential violation of an accused's Charter rights – isn't a matter of public interest, I'm not sure what is.

These matters are not simply interesting fodder for public discourse. This information can provide the public with the tools to make an informed assessment whether society is being protected from dangerous criminals and if

Bill C-10 is consistent with the values of the Charter. These things are fundamental to our democracy and most definitely in the public interest.

[para 103] The Applicant also states that “Albertans are entitled to know if their provincial government has considered what effect the federal measures will have on their liberty and/or their Charter right to a speedy trial...”

[para 104] My review of the information at issue (that has been provided to me by the Public Body) does not lead me to the conclusion that there is a clear or compelling public interest in its disclosure. While the information may be of importance to a public debate on the issue, the Applicant’s submissions indicate that there is significant information about Bill C-10 in the public domain already. Further, the information in the records does not address whether society is protected from dangerous criminals, as the Applicant seems to suggest in his argument cited above. As to the Applicant’s argument regarding whether the Alberta Government has considered the Charter implications of Bill C-10, I do not agree that this issue compels the disclosure of the information at issue.

[para 105] I conclude that section 32 of the FOIP Act does not require the Public Body to disclose further information in the records at issue.

V. ORDER

[para 106] I make this Order under section 72 of the Act.

[para 107] I find that the Public Body properly applied section 17 to the information in the records, with the exception of the name withheld on page 53 of the records relating to F6184, and the information described at paragraph 14.

[para 108] I find that the Public Body properly applied section 21(1) to the information on pages 54 and 55, but not the information on pages 1-20, of F6244.

[para 109] I find that section 24(1) applies to some of the information on page 12 of F6184; however, it does not apply to the information at the bottom of that page (as described at paragraph 51). I also find that section 27(1) does not apply to that information; therefore, I order the Public Body to disclose the information on page 12 as described in paragraph 51.

[para 110] I find that the Public Body properly applied section 24(1) to some, but not all, information in the records relating to F6244. I order the Public Body to disclose the information in pages 1-20 of F6244, and the information described in paragraphs 52-54, 56, 57, 60, 62, and 63.

[para 111] I make no findings or order, at this time, regarding the Public Body’s application of section 24 of the Act to the information withheld under that section that was not provided to me pursuant to the solicitor-client privilege protocol. I reserve jurisdiction to deal with this information should circumstances permit this in the future.

[para 112] I make no findings or order, at this time, regarding the Public Body's application of section 27 of the Act to the information withheld under that section that was not provided to me pursuant to the solicitor-client privilege protocol. I reserve jurisdiction to deal with this information should circumstances permit this in the future.

[para 113] I further order the Public Body to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Amanda Swanek
Adjudicator