

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

**ORDER F2014-R-01
(RECONSIDERATION OF ORDER F2008-021)**

February 28, 2014

EDMONTON POLICE COMMISSION

Case File Number F3782

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (the “Act”), the Criminal Trial Lawyers’ Association (the “Applicant”) asked the Edmonton Police Commission (the “Public Body”) for information relating to its communications with the Edmonton Police Service, in turn relating to complaints made against police members under the *Police Act* that had been dismissed for certain reasons. In a new response, following a decision of the Court of Queen’s Bench that required the Public Body to notify certain individuals and this Office to then reconsider the matter, the Public Body withheld some of the requested information under sections 17, 24 and 27, and later section 20, of the Act. The Public Body also considered some of the information that it had located to be non-responsive to the access request.

The Adjudicator found that some information in the records before him was responsive to the access request. He found that other information was non-responsive and that the Public Body therefore had no obligation to consider granting the Applicant access to it.

The Adjudicator found that section 17(1) applied to some of the responsive information that the Public Body had not released, as its disclosure would be an unreasonable invasion of the personal privacy of third parties. He therefore confirmed the decision of the Public Body to refuse the Applicant access to the information, or required it to refuse access. He found that section 17(1) of the Act did not apply to other information, so he went on to consider whether other exceptions to disclosure were properly applied.

The Adjudicator found that the Public Body had properly applied section 27(1) to some of the remaining responsive information, as the information was subject to solicitor-client privilege, or was information prepared by or for an agent or lawyer of the Minister of Justice and Attorney General in relation to a matter involving the provision of legal services. The Adjudicator found that the Public Body had not properly applied section 27(1) in other instances, as the information was not privileged, was not substantive information prepared by or for an agent or lawyer of the Minister of Justice and Attorney General in relation to a matter involving the provision of legal services, and was not substantive information in correspondence to or from an agent or lawyer of the Minister of Justice and Attorney General in relation to a matter involving the provision of advice or other services.

The Adjudicator found that the Public Body had not properly applied section 20(1) to the remaining responsive information, as disclosure of the information would not harm law enforcement and, in particular, would not reveal any information relating to or used in the exercise of prosecutorial discretion.

The Adjudicator found that none of the remaining responsive information fell within the terms of the section 24(1) of the Act, as it could not reasonably be expected to reveal the substance of advice, proposals, recommendations, analyses or policy options developed by or for a public body, or the substance of consultations or deliberations involving officers or employees of a public body.

As none of sections 17(1), 20(1), 24(1) or 27(1) applied to the remaining responsive information, the Adjudicator required the Public Body to give the Applicant access to it.

The Applicant raised the possibility that section 32(1) of the Act required the remaining information that had been requested to be disclosed in the public interest. The Adjudicator found that the section did not apply in this case.

Statutes and Regulation Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 16, 17, 17(1), 17(2), 17(2)(a), 17(4), 17(4)(b), 17(4)(d), 17(4)(g), 17(5), 17(5)(a), 20, 20(1), 20(1)(g), 24, 24(1), 24(1)(a), 24(1)(b), 27, 27(1), 27(1)(a), 27(1)(b), 27(1)(c), 27(2), 30, 30(4), 32, 32(1), 32(1)(b), 71(1), 71(2), 72, 72(2)(a), 72(2)(b), and 72(2)(c); *Police Act*, R.S.A. 2000, c. P-17, ss. 43, 43(7), 43(10), 43(11) and 43(11)(b); *Police Amendment Act*, S.A. 2010, c. 21, s. 12(d). *Freedom of Information and Protection of Privacy Regulation*, Alta. Reg. 186/2008, s. 7.

Orders Cited: AB: Orders 96-017, 97-020, F2002-011, F2004-024, F2004-026, F2006-010, F2006-014, F2007-013, F2007-021, F2008-020, F2008-021, F2008-025, F2008-031, F2009-018, F2010-001, F2010-007 and F2013-51.

Cases Cited: AB: *Engel v. Edmonton (City) Police Service*, 2008 ABCA 152; *Calgary Police Service v. Alberta (Information and Privacy Commissioner)*, 2010 ABQB 82;

Edmonton Police Commission v. Alberta (Information and Privacy Commissioner), 2011 ABQB 291. CAN: *Solosky v. The Queen* (1979), [1980] 1 S.C.R. 821.

I. BACKGROUND

[para 1] In correspondence dated April 18, 2006, the Criminal Trial Lawyers' Association (the "Applicant") requested the following information from the Edmonton Police Commission (the "Public Body" or "EPC") under the *Freedom of Information and Protection of Privacy Act*:

All records relating to communications to the EPS [Edmonton Police Service] in 2005 and 2006 relating to investigations of complaints about EPS officers by the EPS. Whether the complaints are public complaints, complaints by EPS officers or complaints initiated by the Chief or the EPS.

In correspondence dated April 25, 2006, the Applicant narrowed its access request as follows:

...I understand that my request is very broad. I will limit it to: All records relating to s. 43(11) and 43(7)(10) dismissals.

[para 2] For context, section 43 of the *Police Act* read, in part, as follows at the time of the Applicant's access request:

43(1) All complaints with respect to a police service or a police officer, other than the chief of police, shall be referred to the chief.

...

(7) If, at any time before or during an investigation into a complaint under subsection (1), it appears to the chief of police that the complaint is clearly frivolous, vexatious or made in bad faith, the chief may recommend in writing to the commission that the complaint be dismissed.

(8) On consideration of the recommendation of the chief of police under subsection (7), and after reviewing the written complaint and making any inquiries the commission considers necessary, the commission may dismiss the complaint or direct the chief to deal with the complaint in accordance with this Part.

...

(10) Where a complaint is referred to the commission under section 44(1) and it appears to the commission at any time that the complaint is clearly frivolous, vexatious or made in bad faith, the commission may dismiss the complaint.

...

(11) The chief of police, with respect to a complaint under subsection (1), or the commission, with respect to a complaint under subsection (2) or section 46(1),

shall dismiss any complaint that is made more than one year after the events on which it is based occurred.

...

[para 3] By way of a letter dated June 19, 2006, the Public Body identified information about its File IA2003-0190 and its File IA2005-0575 (which it combined into a File H for the purpose of responding to the access request) as being responsive to the Applicant's access request. It noted that the responsive information related to decisions under section 43(11) of the *Police Act*, and that there were no responsive records relating to decisions under sections 43(7) or 43(10). The Public Body withheld most of the information requested by the Applicant in reliance on section 17, 20, 24 and 27 of the Act.

[para 4] The Applicant requested a review by this Office in a fax dated August 4, 2006, and requested an inquiry in a letter dated April 16, 2007. A written inquiry was conducted, resulting in Order F2008-021, which was issued on July 15, 2009.

[para 5] On April 29, 2011, in *Edmonton Police Commission v. Alberta (Information and Privacy Commissioner)*, 2011 ABQB 291, the Court of Queen's Bench quashed Order F2008-021. The Court ordered the Commissioner to decide whether the contents of File IA2003-0190 fell within the scope of the Applicant's access request, and if so, to determine whether the information should be disclosed, having regard to the guidance contained in various sections of the Act, effectively being those that had been applied by the Public Body. The Court also quashed Order F2008-021 as it related to the contents of File IA2005-0575, meaning that the Commissioner was to reconsider whether the Public Body had properly withheld that information.

[para 6] The Court further ordered the Commissioner to direct the Public Body to give notice to two individuals in accordance with section 30(4) of the Act. These individuals were Officers A and B, to whom the Applicant's access request related and whose interests were affected under section 17 on the basis that disclosure of the requested information might be an unreasonable invasion of their personal privacy. The Commissioner directed the Public Body to give the required notice on May 9, 2011. The Public Body then gave notice to Officers A and B, as well as to two other individuals and the Edmonton Police Service (the "EPS"), in June 2011. The other two individuals were a member of the public who had complained about the conduct of Officer A in 2003, and Officer A's lawyer. The Edmonton Police Service and all of the individuals except the complainant made representations to the Public Body, which were conveyed to the Public Body through this Office, as to whether the information requested by the Applicant should be disclosed.

[para 7] By letter dated September 22, 2011, the Public Body made a new decision on whether to release information to the Applicant. It considered some information, which it had previously considered to be responsive to the Applicant's access request at the time of its response of June 19, 2006, to now be non-responsive. With respect to the information that it considered to be responsive, it released some to the Applicant, withholding the remainder in reliance on sections 17, 24 and 27 of the Act. Having said

this, the Public Body withheld far less information than it had at the time of its previous response. The Public Body subsequently also applied section 20 to the information to which it had already applied section 27, in accordance with a position taken by the EPS.

[para 8] In e-mail correspondence dated October 4, 2011, the Applicant indicated that it was not satisfied with the Public Body's new response.

[para 9] In *Edmonton Police Commission v. Alberta (Information and Privacy Commissioner)*, the Court ordered the Public Body's response to the Applicant's access request to be reconsidered by a different Adjudicator from the one who had issued Order F2008-021. The Commissioner delegated the reconsideration to me, and a written hearing was set down. The Notice of Reconsideration was issued on October 17, 2011. The Applicant, the Public Body and the five parties who had been notified by the Public Body were all given an opportunity to make submissions for the purpose of the reconsideration. The Public Body, the EPS and Officers A and B did so, while the other parties did not.

II. RECORDS AT ISSUE

[para 10] The records at issue consist of information about File IA2003-0190, if I find the information to be responsive to the Applicant's access request, and all information about File IA2005-0575. I will refer to these files as dealing with the "2003 matter" or "2003 complaint", and with the "2005 matter" or "2005 complaint", respectively. The information taken from the two files is contained in a package of records that the Public Body numbered pages H-1 to H-30.

[para 11] I note that the information about both matters or complaints appearing on page H-11, which consists of handwritten notes, was released to the Applicant at the time of the Public Body's previous response in June 2006. The page is attached to the Applicant's original request for review and request for inquiry, as well as included in the Public Body's open submissions in the original inquiry. Although the Public Body has now decided to withhold a few lines on page H-11, on the basis that the information in them is non-responsive, there is no point deciding whether the Applicant is entitled to information that it has already received from the Public Body in response to the access request. Page H-11 is therefore not at issue in this reconsideration.

[para 12] Conversely, although the Public Body withheld page H-6 at the time of its original response to the Applicant, it disclosed all of the information on that page at the time of its revised response. Page H-6 is therefore also not at issue.

III. ISSUES

[para 13] The Notice of Reconsideration, dated October 17, 2011, set out the issues as follows:

Does the information relating to File IA2003-0190 fall within the scope of the Applicant's access request?

With respect to the information relating to File IA2005-0575, and the information relating to File IA2003-0190 if it falls within the scope of the Applicant's access request:

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

Did the Public Body properly apply section 20(1) of the Act (disclosure harmful to law enforcement) to the records/information?

Did the Public Body properly apply section 24(1) of the Act (advice, etc.) to the records/information?

Did the Public Body properly apply section 27(1) (privileged information, etc.) to the records/information?

Does section 32(1) of the Act require the records/information to be disclosed in the public interest?

[para 14] The Public Body did not apply section 20(1) to the records at issue when it made its new response to the Applicant's access request in September 2011. However, the EPS argues that the section applies, and the EPC effectively adopts those submissions. The application of section 32(1) was identified as an issue in the reconsideration because it had been briefly raised by some of the parties in their submissions in the original inquiry, and addressed in Order F2008-021.

[para 15] I review the issues in this reconsideration in a slightly different order than that set out above.

IV. DISCUSSION OF ISSUES

A. Does the information relating to File IA2003-0190 fall within the scope of the Applicant's access request?

[para 16] The Applicant's access request, as initially set out in its correspondence of April 18, 2006 and narrowed in its correspondence of April 25, 2006, was for the following:

All records [narrowed to be those relating to s. 43(11) and 43(7)(10) dismissals only] relating to communications to the EPS in 2005 and 2006 relating to investigations of complaints about EPS officers by the EPS. Whether the complaints are public complaints, complaint by EPS officers or complaints initiated by the Chief or the EPS.

The access request is effectively for all records relating to communications from the Public Body to the EPS in 2005 and 2006, in turn relating to complaints made against members of the EPS but dismissed as a result of section 43(7), 43(10) or 43(11) of the *Police Act*.

[para 17] The 2003 matter arose out of the complaint made to the EPS by the member of the public who had complained about the conduct of Officer A. The 2003 complaint was not dismissed as a result of section 43(7), 43(10) or 43(11) of the *Police Act*, which deal with complaints that appear to be clearly frivolous, vexatious or made in bad faith, and complaints made more than one year after the events on which they are based occurred. Rather, the various concerns that formed the complaint made by the member of the public were dismissed on other grounds.

[para 18] The 2005 matter arose out of what the EPS characterizes as its own complaint about the conduct of Officers A and B. Unlike the 2003 complaint, the 2005 complaint was dismissed under section 43(11) of the *Police Act* because it was made more than one year after the underlying events.

[para 19] The Public Body submits that information about the 2003 matter is not responsive to the Applicant's access request because, while "there is a connection" between the 2003 and 2005 files, the 2003 matter has "nothing to do with" sections 43(7), 43(10) or 43(11) of the *Police Act*. The EPS says that it supports the position of the Public Body regarding whether information in the records at issue is responsive or not. The Applicant makes no submissions on the extent to which the 2003 matter relates to the 2005 matter, as it might have done, for instance, by explaining the intent behind its access request in terms of the nature of the records sought. In fact, the Applicant made no submission at all in the course of this reconsideration.

[para 20] Previous Orders of this Office have said that a record is responsive if it is reasonably related to an applicant's access request and that, in determining responsiveness, a public body is determining what records are relevant to the request (Order 97-020 at para. 33; Order F2010-001 at para. 26). I further note Orders of this Office saying that a broad rather than narrow view should be taken by a public body when determining what is responsive to an access request (Order F2004-024 at para. 12, citing Order F2002-011 at para. 18).

[para 21] Even without resort to the foregoing principles regarding the proper interpretation of the scope of an access request, the access request here – although narrowed by reference to complaints dismissed under section 43(7), 43(10) or 43(11) of the *Police Act* – was broad in that it sought records "relating" to those particular kinds of complaints. Even further, the Applicant sought records "relating" to communications to the EPS in 2005 and 2006 about the particular kinds of dismissed complaints.

[para 22] The information that the Public Body considers to be non-responsive to the Applicant's access request includes portions of a letter of April 4, 2006 (on page H-1), an e-mail of March 24, 2006 (on page H-3 and repeated on page H-5), an e-mail of

March 23, 2006 (on page H-4 and repeated on pages H-5 and H-10), a memorandum of February 28, 2006 (appearing within an e-mail on page H-8), a letter of March 3, 2006 (on page H-12), a computer summary about the 2005 matter (on page H-24), a memorandum of February 10, 2006 (on page H-26), and another memorandum of February 28, 2006 (on page H-29). Where information is repeated, the Public Body is not always consistent in its indications of what portions, such as certain words or lines, are non-responsive. In any event, all of the foregoing records were taken from the file dealing with the 2005 matter, but they excerpt, summarize or otherwise contain information about the 2003 matter.

[para 23] I find that the information about the 2003 matter appearing in the above-mentioned records is responsive to the Applicant's access request. In two of the memoranda, an Acting Staff Sergeant and a Staff Sergeant informed Officers A and B, respectively, that the 2005 complaints against them were time-barred under section 43(11) of the *Police Act*, and that the EPS's investigations into the complaints were therefore concluded. In the third memorandum, the Detective who investigated the 2005 complaints against Officers A and B reported his findings to the Staff Sergeant. In the two letters to which I refer above, the Chief of Police informed the Chair of the Public Body that the 2005 complaints against the two Officers must be dismissed as a result of section 43(11).

[para 24] In each of the foregoing communications, the writers set out background to the 2005 matter, and the background includes information about the 2003 matter. The Chief of Police, Staff Sergeant, Acting Sergeant and Detective each apparently considered it necessary to provide the information about the 2003 matter for context, and I take it that they accordingly considered the information that they conveyed about the 2003 matter to relate to the 2005 matter, and to the fact that the 2005 complaints had to be dismissed. While the Detective provided slightly more detailed information about the 2003 matter than did the writers of the other communications, the information is nonetheless conveyed as necessary background to the 2005 matter.

[para 25] Similarly, I find that the information about the 2003 matter appearing in the e-mail correspondence and computer summary noted above is responsive to the Applicant's access request. In these records, information about the 2003 matter is included in discussions about, or synopses of, the 2005 matter. Again, the information about the 2003 matter is conveyed as necessary background or context to the 2005 matter, and therefore relates to the dismissal of the 2005 complaint under section 43(11) of the *Police Act*.

[para 26] Given the foregoing, I find that the information about the 2003 matter appearing in the file dealing with the 2005 matter more than reasonably relates to the Applicant's access request and therefore falls within its scope. In short, I find it somewhat odd that the Public Body would consider any of the information in the file dealing with the complaint that was dismissed in reference to section 43(11) of the *Police Act* to be non-responsive. If the information appears in the file, it can almost certainly be expected to relate to the complaint that was dismissed, as well as relate to

communications about that particular dismissed complaint. To summarize, while the 2003 complaint *was not* dismissed as a result of section 43(7), 43(10) or 43(11) of the *Police Act*, the information about the 2003 complaint appearing in the communications discussed above sufficiently relates to the 2005 complaint, which *was* dismissed under section 43(11). The result is that the information falls within the scope of the Applicant's access request and is responsive to it.

[para 27] I now turn to pages H-14 to H-22. These pages deal exclusively with the 2003 complaint, without any reference to the 2005 complaint. The records in question are a computer summary of the 2003 matter, a memorandum from an Acting Staff Sergeant to Officer A, and a letter from the Acting Chief of Police to the 2003 complainant, which sets out the results of the EPS's investigation into her complaint. Because these records deal *solely* with the 2003 complaint, and that complaint was not dismissed as a result of section 43(7), 43(10) or 43(11) of the *Police Act*, I find that the records do not fall within the scope of the Applicant's access request.

[para 28] I conclude that all of the information in relation to File IA2003-0190, being the one that dealt with the 2003 matter, falls within the scope of the Applicant's access request, with the exception of the information on pages H-14 to H-22. The Public Body had no obligation to consider granting the Applicant access to the information on these pages. I will decide below whether exceptions to disclosure apply to the information that the Public Body incorrectly considered to be non-responsive on pages H-1 to H-5, H-7 to H-10, H-12, H-13 and H-23 to H-30.

[para 29] In its reconsideration submissions, the Public Body says that it is "reserving its right" to make further submissions relative to File IA2003-0190 in the event that I determine that parts of it are responsive to the Applicant's access request. I have indeed found that information about the 2003 matter, as excerpted or summarized in File IA2005-0575 dealing with the 2005 matter, is responsive.

[para 30] The Notice of Reconsideration expressly stated that the issues regarding the application of sections 17(1), 20(1), 24(1) and 27(1) of the Act were engaged "[w]ith respect to the information relating to File IA2005-0575, *and the information relating to File IA2003-0190 if it falls within the scope of the Applicant's access request*" [my emphasis]. The Public Body was therefore already given the opportunity to make the submissions that it now suggests it might want to make.

[para 31] Because this is a reconsideration, the Notice of Reconsideration further stated that "the Adjudicator intends to reconsider all of the previous submissions that the parties provided to the Commissioner's Office [during the original inquiry], to the extent that they remain relevant." Given that the Public Body previously considered all of the information on pages H-1 to H-30 to be responsive to the Applicant's access request, it previously applied exceptions to disclosure to the information that it now submits to be non-responsive, and it made submissions during the original inquiry regarding the application of those exceptions to disclosure, I can extrapolate from the earlier inquiry submissions for the purpose of this reconsideration. Indeed, the Public Body refers to its

reconsideration submissions as “supplemental” and writes that they are “intended to add to the previous submissions made by the EPC to the IPC.”

[para 32] To put the point differently, it can readily be presumed that the Public Body would have applied, or would apply, sections 17(1), 20(1), 24(1) and/or 27(1) to all or part of the information that it incorrectly believed to be non-responsive to the Applicant’s access request. I accordingly consider, in the remainder of this Order, the extent to which the exceptions to disclosure set out in the foregoing sections apply to the information in question. In my view, this approach strikes the proper balance between my sending the non-responsive information back to the Public Body for yet a third decision in response to the Applicant’s access request, and my ordering the information disclosed to the Applicant – subject to the submissions of the other parties – because the Public Body, despite clear notice in this reconsideration, failed to make any submissions regarding the application of exceptions to disclosure in the event that I found information to be responsive.

[para 33] In the end, I conclude that section 17(1) applies to some of the information that the Public Body incorrectly believed to be non-responsive to the Applicant’s access request, and I require the Public Body to refuse access given that section 17(1) sets out a mandatory exception to disclosure. As for the application of sections 20(1), 24(1), and 27(1), I conclude below that none of the remaining information that the Public Body incorrectly considered to be non-responsive falls within the terms of any of those sections, meaning that the Public Body could not have properly applied them.

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

[para 34] 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,

...

(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,

...

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

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

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

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

[para 35] In the context of section 17, the Public Body must establish that the information that it has withheld 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. 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.

[para 36] As explained at the outset of this Order, the Court of Queen's Bench ordered that notice be given to Officers A and B in accordance with section 30(4) of the Act, which notice was to include providing a copy of the requested information relating to

them. In their subsequent representations to the Public Body, Officers A and B referred to certain provisions of the Act, but added very little, if anything, to what had already been conveyed by the parties or otherwise considered in the course of the original inquiry.

[para 37] Following the Court decision, the Public Body also notified Officer A's lawyer, who briefly responded that he did not wish to have his personal information disclosed to the Applicant on the basis of certain provisions of section 17. The member of the public who had complained about the conduct of Officer A was also given an opportunity to make representations under section 30, but she did not.

[para 38] The Public Body also took it upon itself to notify the EPS in response to the Court decision, despite the fact that section 30 contemplates notice where a party's interests may be affected by virtue of the mandatory exception to disclosure set out in section 16 or 17, not under other sections of the Act. Nonetheless, it would appear that the Public Body wanted to take the opportunity to consult with the EPS regarding the application of certain discretionary exceptions to disclosure, which it was free to do, although this effort was not required or warranted in the context of section 30.

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

[para 39] Section 1(n) of the Act reads, in part, as follows:

1(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,

...

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

...

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

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

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

[para 40] With the exception noted below, I find that the records that are responsive to the Applicant's access request consist of the personal information of identifiable individuals, as defined above. These individuals include Officers A and B, Officer A's

lawyer and the member of the public who complained about the conduct of Officer A. The personal information includes the names of the foregoing third parties, as well as file numbers assigned in a manner that would identify some of them. The records also contain information about the complainant's personal activities and about the allegedly wrongful work-related activities of Officers A and B. In the latter case, the records consist of information about the Officers' employment history, their views and opinions about the events that gave rise to the complaints against them, and the views and opinions of others about their alleged misconduct, such as the nature of that misconduct and whether or not it warrants any form of action.

[para 41] I considered whether Officers A and B would be non-identifiable if their names and other identifying information, such as file numbers associated with them, were severed from the records at issue. This might have allowed some of the remaining information in the records to be disclosed on the basis that it no longer identifies an individual and is therefore not personal information to which section 17(1) can apply. I concluded otherwise.

[para 42] 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). 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).

[para 43] In this reconsideration, the member of the public who complained to the Public Body in 2003 is represented by the same lawyer as the Applicant. In my view, there is a serious possibility that, if the Applicant obtained any of the records, its lawyer would provide copies of all or some of them to the complainant. Even if those records were themselves devoid of information that would identify Officers A and B, I find that the complainant would be able to identify the Officers through other means. Both interacted with her in person at the time of the events that took place in 2003, resulting in her complaint against Officer A followed by a disposition letter sent to her by the EPS in which that Officer is named. In respect of both Officers A and B, their names were also disclosed to the Applicant in the package of records that the Public Body provided to her when inviting her to make representations under section 30 of the Act.

[para 44] At the same time, I do find that some of the information that the Public Body withheld under section 17(1), along with some of the information that it incorrectly believed to be non-responsive to the Applicant's access request, is not personal information. This information, to which section 17(1) cannot apply, consists of information reflecting the activities of the Public Body, the EPS, the Crown Prosecutors' Office, and various members or employees of these entities acting in a work-related capacity, including Officers A and B where their activities are not associated with any allegations of wrongdoing (Order F2008-020 at paras. 27 and 28).

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

[para 45] 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 situations. One of these situations, under section 17(2)(a), is where the third party has, in the prescribed manner, consented to or requested the disclosure. Under section 7 of the *Freedom of Information and Protection of Privacy Regulation*, the prescribed manner is written, electronic or oral.

[para 46] As noted in the preceding section of this Order, the member of the public who complained to the EPS in 2003 is represented by the same lawyer as the Applicant. I therefore considered whether disclosure of her personal information to the Applicant would not be an unreasonable invasion of her personal privacy, on the basis that she may be presumed to consent to that disclosure. I concluded otherwise. Consent under section 17(2)(a) must be in one of the prescribed forms, and cannot be presumed. Had either the complainant, or the common lawyer of the complainant and the Applicant, considered it appropriate for the complainant's personal information to be disclosed to the Applicant, consent could easily have been provided to the Public Body or this Office.

[para 47] I find that none of the other situations set out in section 17(2) exist in this matter.

(a) *Presumptions against disclosure*

[para 48] Under section 17(4) of the Act, a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy in certain circumstances. In this case, the Public Body, Officers A and B and Officer A's lawyer submit that there is a presumption against disclosure of the personal information of third parties under section 17(4)(b), on the basis that the information is an identifiable part of a law enforcement record. I agree that this presumption arises here. The Public Body and Officers A and B also submit that there is a presumption against disclosure of the personal information of Officers A and B under section 17(4)(d), on the basis that the information relates to their employment history. I agree. Finally, the Public Body submits that there is a presumption against disclosure of the personal information of third parties appearing in the records at issue under section 17(4)(g), on the basis that the information consists of names appearing with other personal information about the third parties, or disclosure of the names would reveal personal information about the third parties. Again, I agree.

[para 49] Even where presumptions against disclosure arise 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.

(b) *Relevant circumstance possibly weighing in favour of disclosure*

[para 50] Under section 17(5)(a) of the Act, a relevant circumstance weighing in favour of the disclosure of personal information is that the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny.

[para 51] As noted earlier, the Applicant made no submissions in the course of this reconsideration. In its submissions at the time of the original inquiry, it wrote:

File H engages very important issues involving the way in which the Edmonton Police Service investigates complaints against itself and also contains very important information that the Solicitor General should be aware of in relation to his ongoing review of the *Police Act* and, especially, the operation of s. 43(11) of the *Police Act* (one year limitation).

The Applicant added that “in matters concerning the oversight of police, the public has a significant interest and transparency is paramount”. The Applicant submitted little else by way of elaboration, apart from excerpting or attaching certain court decisions, a factum prepared on an appeal to the Supreme Court in one of those matters, an order of this Office, parts of the *Police Act* and print-outs from the Public Body’s website. The Applicant appears to have expected recipients, such as myself, to analyze and apply the foregoing information on its behalf, in so far as it relates to the issues in the original inquiry and now this reconsideration. Indeed, as noted by the Public Body in its submissions during the original inquiry, the Applicant does not even expressly cite section 17(5)(a). As noted by me earlier in this Order, the Applicant made no additional submissions in the course of this reconsideration.

[para 52] Having said this, the Applicant did refer, in its original submissions, to the limitation period in section 43(11) of the *Police Act*. It also excerpted a paragraph from *Engel v. Edmonton (City) Police Service*, 2008 ABCA 152, a decision that noted the limitation period’s effect on police oversight and the ability of complainants to complain about police misconduct. This may be taken as the Applicant’s argument that section 43(11) inappropriately operates to preclude recourse in relation to alleged police misconduct where the underlying events occur more than one year before being discovered. As summarized by Officers A and B in their own reconsideration submissions, a complaint was received by the EPS in 2005 with respect to an alleged incident that may have occurred in 2003. The Chief of Police did not investigate the allegations because the complaint was made more than one year after the events had occurred, and the Chief was therefore statutorily barred from investigating, by virtue of section 43(11) of the *Police Act*.

[para 53] In short, the Applicant previously questioned the appropriateness of the limitation period in section 43(11) of the *Police Act*, thereby suggesting that the activities of the Public Body and the EPS required public scrutiny in so far as they are required to adhere to the limitation period such that certain allegations of police misconduct end up being dismissed. As effectively noted by the Court of Appeal in *Engel v. Edmonton*

(City) Police Service, section 43(11) is mandatory, and the Public Body and EPS must apply it.

[para 54] However, section 43(11) of the *Police Act* was amended in 2010, by virtue of section 12(d) of the *Police Amendment Act*. The Public Body's new response to the Applicant's access request post-dated this amendment. The current version of section 43(11), which Officers A and B attached to their submissions, reads as follows:

43(11) The chief of police, with respect to a complaint referred under subsection (1), or the commission, with respect to a complaint referred under subsection (2) or section 46(1), shall dismiss any complaint that is made more than one year after

(a) the conduct complained of occurred, or

(b) the complainant first knew or ought to have known that the conduct complained of had occurred,

whichever occurs later.

[para 55] In my view, the amendment to section 43(11), found in section 43(11)(b) just reproduced, has resolved the Applicant's apparent concerns about the limitation period that previously existed. The result is that disclosure of the personal information of Officer A, Officer B and the other third parties, as contained in the responsive records, is not required in order to illustrate the allegedly unfair effect of the provision as it formerly existed and why it should be changed. Its shortcomings have been acknowledged by the Legislature and the limitation period has been amended. Therefore, the effect of section 43(11) of the *Police Act* and the activities of the Public Body and the EPS in relation to its existence, which may have once required public scrutiny, no longer require public scrutiny. If there is some other aspect of the legislation, or the Public Body's or EPS's activities in relation to it, that still arguably requires public scrutiny, the Applicant, in making no submissions in this reconsideration, has not explained what that might be.

[para 56] I see that, in its original inquiry submissions, the Applicant wrote:

...the names of the officers involved may be very important. What if the officer in question has been promoted, or is a frequent offender, or is in a training position? The public needs to know the name because the officer is involved in law enforcement and his/her character is an issue. What if the officer committed similar misconduct in other cases? Public revelation of the name could result in more complainants coming forward which is in the interests of justice.

The foregoing may be intended as an argument that public scrutiny of the conduct of Officers A and B is necessary, in and of itself, and not just public scrutiny of the activities of the Public Body and the EPS due to the former effect of the limitation period in section 43(11) of the *Police Act*. With respect to complaints of police misconduct generally, the Public Body cites, in this reconsideration, *Calgary Police Service v. Alberta (Information and Privacy Commissioner)*, 2010 ABQB 82, for the proposition

that the overall scheme of the *Police Act* already allows for adequate public scrutiny in relation to complaints of alleged police misconduct.

[para 57] The Applicant's submission in the excerpt reproduced above does not persuade me that public scrutiny of the activities of Officers A and B, as members of the EPS, is required. The submission is merely speculative in raising the possibility that Officers A and B have been promoted, train other police officers, or have engaged in other alleged misconduct. The mere fact that they are involved in law enforcement is an insufficient basis for publicly scrutinizing their conduct.

[para 58] I conclude that the relevant circumstance set out in section 17(5)(a) does not exist in this reconsideration. Disclosure of the third party personal information in the records at issue is not desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny. The Applicant does not raise, and I do not see, any other relevant circumstances that might weigh in favour of disclosure of the third party personal information in the records at issue.

(c) *Conclusion regarding the application of section 17(1)*

[para 59] At various points in the original inquiry submissions, in the representations made under section 30 of the Act, and in the submissions in this reconsideration, the Public Body, the EPS, Officers A and B and Officer A's lawyer raise certain circumstances that they say militate against disclosure of the personal information of third parties under section 17(5). They cite the other subsections of 17(5) reproduced above. It is not necessary for me to consider any of them, given that I have found above that there are no relevant circumstances weighing in favour of disclosure of this information, and only presumptions against disclosure under section 17(4) remain.

[para 60] I conclude that section 17(1) of the Act applies to some of the information that the Public Body did not release in the records, including the records that it incorrectly considered to be non-responsive to the Applicant's access request. The Public Body must therefore withhold this information.

C. Did the Public Body properly apply section 27(1) (privileged information, etc.) to the records/information?

[para 61] Section 27 of the Act reads, in part, as follows:

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 Solicitor General,

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

(ii) an agent or lawyer of the Minister of Justice and Solicitor 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 Solicitor General or by the agent or lawyer.

(2) The head of a public body must refuse to disclose information described in subsection (1)(a) that relates to a person other than a public body.

...

[para 62] Under section 71(1) of the Act, the Public Body has the burden of proving that the Applicant has no right of access to the information that it withheld under section 27(1). The Public Body essentially defers to the submissions of the EPS in this reconsideration.

1. Does the information at issue fall within the terms of section 27(1)?

[para 63] The Public Body applied section 27(1) of the Act to various portions of the records at issue. The EPS asserts that some of this information is subject to solicitor-client privilege under section 27(1)(a).

[para 64] To correctly apply section 27(1)(a) in respect of solicitor-client privilege, a public body must meet the criteria for that privilege set out in *Solosky v. The Queen* (1979), [1980] 1 S.C.R. 821 at p. 837, in that the record must (i) be a communication between a solicitor and client; (ii) entail the seeking or giving of legal advice; and (iii) be intended to be confidential by the parties (Order 96-017 at para. 22; Order F2007-013 at para. 72).

[para 65] I find that the information that the Public Body noted as “PRIV” on pages H-2, H-4 and H-24 is subject to solicitor-client privilege. While the Public Body did not apply section 27(1) to any of the information on these pages at the time of its original response to the Applicant’s access request in June 2006, it did so in September 2011. The information appears by way of summaries in an e-mail, a memorandum and a

computer print-out. Solicitor-client privilege can attach to notes in which legal advice is discussed, including information reflecting a question that was asked of a lawyer, as that is part of the seeking of legal advice (Order F2008-31 at para. 74). I find that the information that the Public Body withheld under section 27(1) on pages H-2, H-4 and H-24 meets the three *Solosky* criteria above.

[para 66] The information noted as “PI, PRIV ADV” on each of pages H-8, H-12, H-13, H-27 and H-30 reproduces a quotation from a Crown prosecutor. The EPS submits that the information was properly withheld under sections 27(1)(b) and 27(1)(c). I find that it falls within the terms of section 27(1)(b), on the basis that it is information prepared by a lawyer of the Minister of Justice and Attorney General in relation to a matter involving the provision of legal services.

[para 67] Having found that some of the remaining information at issue falls within the terms of sections 27(1)(a) and 27(1)(b), I will consider below whether the Public Body properly exercised its discretion to withhold this information. I now turn to the remaining information to which the Public Body applied section 27(1), as well as the remaining responsive information that it incorrectly believed to be non-responsive.

[para 68] I found earlier in this Order that some of the information that the Public Body did not release to the Applicant falls within the terms of section 17(1) on the basis that disclosure would be an unreasonable invasion of the personal privacy of third parties. This includes some of the information to which the Public Body applied section 27(1), as well as some of the information that it incorrectly believed to be non-responsive. In respect of the remaining information at issue, I find that it does not fall within the terms of section 27(1). Once the information that falls under section 17(1) is severed, nothing remains that reveals privileged information under section 27(1)(a), even assuming that there is information that, as a whole, is privileged. Likewise, nothing remains that constitutes information prepared by or for an agent or lawyer of the Minister of Justice and Attorney General in relation to a matter involving the provision of legal services, within the terms of section 27(1)(b). Finally, nothing remains that constitutes information in correspondence to or from an agent or lawyer of the Minister of Justice in relation to a matter involving the provision of advice or other services, within the terms of section 27(1)(c). I will now explain.

[para 69] Information “prepared by or for an agent or lawyer of a public body” within the terms of section 27(1)(b) is *substantive* information, and the section does not apply to information that merely refers to or describes legal services without revealing their *substance* (Order F2013-51 at para. 85). Similarly, the purpose of section 27(1)(c) is to protect the *substance* of advice and services by an agent or lawyer of a public body, and the section does not extend to such information as dates or the names of the senders and recipients of correspondence (Order F2009-018 at paras. 45 to 47). In this particular case, once the personal information of Officers A and B that I have found to be subject to section 17(1) is severed from the particular parts of the records, only the fact that agents or lawyers were engaged, and the dates that they were engaged or responded, is revealed. The nature of the advice, legal services or other services is not revealed.

[para 70] As for the application of section 27(1)(a) to the remaining information at issue, it similarly does not apply. Again, once the information subject to section 17(1) is severed, all that is revealed is the fact that legal advice was sought or obtained, the name or position of the solicitor and/or the date that the legal advice was sought or obtained. While such information can sometimes reveal the substance of legal advice, neither the Public Body nor the EPS argues this to be so in this reconsideration. The fact that legal advice was sought or obtained is already revealed by the EPS's very argument that the information is privileged, and the names, positions and dates were already disclosed to the Applicant, at the time of the Public Body's new response in September 2011, elsewhere in the records. Even if these items of information were not already disclosed, I would find that they do not reveal the nature of any privileged information, even assuming that there is additional privileged information in the records in the first place.

2. Did the Public Body properly exercise its discretion not to disclose?

[para 71] I have found that some of the information in the records at issue falls within the terms of section 27(1)(a) and 27(1)(b) of the Act. The Public Body therefore had the discretion to withhold it in reliance on those provisions. In order to properly exercise discretion relative to a particular provision of the Act, a public body should consider the 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 72] With respect to the Public Body's exercise of discretion to withhold the information that I have found to be subject to solicitor-client privilege under section 27(1)(a), the fact that this type of privilege is as close to absolute as possible is sufficient to demonstrate that discretion has been exercised appropriately (Order F2010-007 at paras. 31 and 32).

[para 73] The Public Body explains that it exercised its discretion to withhold information under section 27(1)(b) because it emanated from discussions between the EPS and Crown prosecutors, the EPS has explicitly asked that the information not be disclosed, disclosure of the information may expose the EPS to legal consequences, and disclosure may inhibit similar exchanges between the EPS and the Crown.

[para 74] I find that the Public Body has adequately explained the exercise of its discretion to withhold information under section 27(1). If information falling within the terms of that section relates to the activities of another public body, and disclosure may affect the other public body's ability to carry out those activities, it is acceptable to consider the other public body's views regarding disclosure of the information in question. The other public body's views are not determinative, given that it is not the public body applying the exception to disclosure, but the substance of the views may be relevant to the decision of the public body deciding to apply the exception. Here, the indication by the EPS that disclosure of the information will harm its activities – such as by inhibiting important exchanges between the EPS and the Crown – was a relevant

consideration of the Public Body and satisfies me that it properly exercised its discretion to apply section 27(1)(b) to the information falling within the scope of that section.

[para 75] The EPS and the EPC submit that the mandatory exception to disclosure set out in section 27(2) applies in this matter because there is privileged information relating to a person other than a public body, namely Officers A and B. Given my conclusions in this Order, to the effect that some information in the records was properly withheld on the basis of privilege in any event, and that the remaining responsive information is not privileged, I do not need to decide what it means for privileged information to “relate” to a person other than a public body.

D. Did the Public Body properly apply section 20(1) of the Act (disclosure harmful to law enforcement) to the records/information?

[para 76] Section 20 of the Act reads, in part, as follows:

20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

(g) reveal any information relating to or used in the exercise of prosecutorial discretion,

...

[para 77] Under section 71(1) of the Act, the Public Body has the burden of proving that the Applicant has no right of access to the information that it withheld under section 20(1). In this reconsideration, the Public Body essentially adopts the submissions of the EPS, which argues that section 20(1)(g) of the Act applies to all of the same information to which section 27(1) arguably applies. The Public Body applied two other subsections of section 20(1) at the time of its original response to the Applicant’s access request in June 2006, but it no longer relies on either of them.

[para 78] I have already found that some of the information in the records was properly withheld under sections 17(1) and 27(1). I find that section 20(1)(g) of the Act does not apply to any of the remaining responsive information at issue in this reconsideration, including information that the Public Body incorrectly believed to be non-responsive. Once the information subject to sections 17(1) and 27(1) is severed, nothing remains that reveals any information relating to or used in the exercise of prosecutorial discretion.

[para 79] Even assuming that there is information that, as a whole, falls within the terms of section 20(1)(g), the information is about Officers A and B. Once their personal information that is subject to section 17(1) is removed, only the fact that a prosecutor was consulted, his name and certain dates already disclosed by the Public Body are left. The issues considered, and the Crown’s opinions, determinations, reasoning and strategies – being the items that the EPS says fall within the terms of section 20(1)(g) – must already be withheld under section 17(1) because these items consist of the personal information

about the Officers, and disclosure would be an unreasonable invasion of their personal privacy. No substantive information remains, and the question of whether information relates to or was used in the exercise of prosecutorial discretion, and therefore falls within the terms of section 20(1)(g), must be determined by reviewing the information's *substance* (Order F2007-021 at para. 51).

E. Did the Public Body properly apply section 24(1) of the Act (advice, etc.) to the records/information?

[para 80] Section 24 of the Act reads, in part, as follows:

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

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

(b) consultations or deliberations involving

(i) officers or employees of a public body,

...

[para 81] Under section 71(1) of the Act, the Public Body has the burden of proving that the Applicant has no right of access to the information that it withheld under section 24(1).

[para 82] I found earlier in this Order that some of the information to which the Public Body withheld under section 24(1) was properly withheld under section 27(1). I also found that some of the information that the Public Body did not release to the Applicant falls within the terms of section 17(1) on the basis that disclosure would be an unreasonable invasion of the personal privacy of third parties. The foregoing includes all of the information to which the Public Body applied section 24(1) as well as some of the information that it incorrectly believed to be non-responsive. As for the remaining information that the Public Body incorrectly believed to be non-responsive, I find that it does not fall within the terms of section 24(1)(a) or 24(1)(b). These sections protect *the substance* of advice, etc. and the *substance* of consultations or deliberations (Order F2004-026 at paras. 71 and 75). As explained in previous parts of this Order, there is nothing substantive in the records that the Public Body incorrectly believed to be non-responsive once the information that falls under section 17(1) is severed.

F. Does section 32(1) of the Act require the records/information to be disclosed in the public interest?

[para 83] Section 32 of the Act 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

....

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

(2) Subsection (1) applies despite any other provision of this Act.

...

[para 84] The Applicant bears the burden of establishing that section 32(1) applies in this matter, in that it 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).

[para 85] The possible application of section 32(1) was briefly addressed by the Applicant and the Public Body in their submissions in the original inquiry. The Notice of Reconsideration stated that the parties needed to address the issue in relation to section 32(1) only to the extent that it remained relevant. As noted earlier, the Applicant made no submissions in the course of this reconsideration. It may therefore be assumed that the Applicant no longer believes that section 32(1) is engaged in this matter.

[para 86] Regardless, 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 merely be of interest to the public (Order F2004-024 at para. 57). My review of the information at issue does not lead me to conclude that any of it should be released on the basis that there is a clear or compelling public interest in disclosure.

V. ORDER

[para 87] I make this Order under section 72 of the Act.

[para 88] I find that the information relating to File IA2003-0190 appearing on pages H-14 to H-22 of the records is not responsive to the Applicant's access request. The Public Body therefore had no obligation to consider granting access to that information. I find that the remaining information relating to File IA2003-0190 is responsive.

[para 89] I find that section 17(1) of the Act applies to some of the responsive information that the Public Body withheld, as its disclosure would be an unreasonable invasion of the personal privacy of third parties. Under section 72(2)(b), I confirm the decision of the Public Body to refuse the Applicant access to this information where it applied section 17(1). Under section 72(2)(c), I require it to refuse access where it incorrectly believed that the information was non-responsive but I have found that it is subject to section 17(1).

[para 90] I find that the Public Body properly applied section 27(1) of the Act to some of the remaining responsive information that it withheld, as the information noted as “PRIV” on pages H-2, H-4 and H-24 is subject to solicitor-client privilege under section 27(1)(a), and the information noted as “PI, PRIV, ADV” on pages H-8, H-12, H-13, H-27 and H-30 is substantive information prepared by a lawyer of the Minister of Justice and Attorney General in relation to a matter involving the provision of legal services under section 27(1)(b). Under section 72(2)(b), I confirm the decision of the Public Body to refuse the Applicant access to the foregoing information.

[para 91] I find that the Public Body did not properly apply section 27(1) of the Act to the remaining responsive information that it withheld, and that the remaining information at issue that it incorrectly believed to be non-responsive does not fall within the terms of that section, as the information is not privileged under section 27(1)(a), is not substantive information prepared by or for an agent or lawyer of the Minister of Justice and Attorney General in relation to a matter involving the provision of legal services under section 27(1)(b), and is not substantive information in correspondence to or from an agent or lawyer of the Minister of Justice and Attorney General in relation to a matter involving the provision of advice or other services.

[para 92] I find that the Public Body did not properly apply section 20(1) of the Act to the remaining responsive information that it withheld, and that the remaining information at issue that it incorrectly believed to be non-responsive does not fall within the terms of that section, as disclosure of the information would not harm law enforcement and, in particular, would not reveal any information relating to or used in the exercise of prosecutorial discretion under section 20(1)(g).

[para 93] I find that the remaining information at issue, consisting of information that the Public Body incorrectly believed to be non-responsive, does not fall within the terms of section 24(1) of the Act, as the information cannot reasonably be expected to reveal the substance of any advice, proposals, recommendations, analyses or policy options developed by or for a public body under section 24(1)(a), or the substance of any consultations or deliberations involving officers or employees of a public body under section 24(1)(b).

[para 94] As the following responsive information does not fall within the terms of section 17(1), 20(1), 24(1) or 27(1) of the Act, I require, under section 72(2)(a), that the Public Body give the Applicant access to it:

- the information noted as “not responsive” on page H-1, with the exception of the name, the six words after “whether or not” and the four words after “recommended that”;
- the information noted as “not responsive” on page H-3, with the exception of the three words after “the officers” and the two words before “entirely unrelated”;
- the information noted as “not responsive” on page H-4, with the exception of the name and the two words before “was completed”;

- the information noted as “not responsive” on the upper half of page H-5, with the exception of the three words after “the officers”, the two words before “entirely unrelated”, the four words after “whether or not” and the two words before “was discovered”;
- the information noted as “not responsive” on the lower half of page H-5, with the exception of the name, the file number and the two words before “was completed”;
- the information noted as “not responsive” on page H-8, with the exception of the names, the address, the three words before “The investigation” and the five words after “concluded that”;
- the information noted as “not responsive” on page H-10, with the exception of the name, the file number and the two words before “was completed”;
- the information noted as “not responsive” on page H-12, with the exception of the names, the address, the three words before “The investigation” and the five words after “concluded that”;
- the information noted as “not responsive” on page H-26, with the exception of the names (except that of the investigating Detective), the identification number, the address, the three words after “investigated under”, and everything in the last two paragraphs;
- the information noted as “not responsive” on page H-29, with the exception of the names, the address, the three words before “The investigation” and the five words after “concluded that”; and
- the information noted as “PI, PRIV” on page H-29, with the exception of the eight words after “whether the” and the eleven words after “concluded that”.

[para 95] I find that section 32(1) of the Act does not require any information in the records to be disclosed in the public interest.

[para 96] I require 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 Raaflaub
 Adjudicator