

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2015-25

September 14, 2015

CITY OF CALGARY

Case File Number F6617

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) for her personal information to the City of Calgary (the Public Body). She requested all HR personnel files, all private files held by manager supervisors, team leaders and human resources personnel whose names she provided, all electronic records, work reviews, performance reviews, minutes, job competitions for which she had applied, information regarding education and training, records regarding her classification from the area where she had worked, and any other recorded personal information about herself.

The Public Body responded to the Applicant's access request. The Public Body ultimately located 1551 pages of records and included them in its response to the Applicant. It severed information from these records on the basis of sections 16 (disclosure harmful to business interests), 17 (disclosure harmful to personal privacy), 24 (advice from officials), and 25 (disclosure harmful to economic and other interests of a public body) of the FOIP Act. It also decided that some of the records were not actually responsive to the access request, but included them in the response, severing such information as "nonresponsive". The Applicant requested review of the search conducted and the Public Body's decisions to apply exceptions to disclosure.

The Adjudicator found that the Public Body had not established that its search for responsive records was adequate. The Adjudicator found that the Public Body had not properly applied section 16 and she ordered the Public Body to disclose responsive information that it had severed under this provision. The Adjudicator found that the

Public Body's decisions to apply section 17 were appropriate in most instances, although she ordered it to gather evidence in relation to one record. The Adjudicator noted that the Public Body had not included all its decisions to apply sections 24 and 25 in its responses to the Applicant and she ordered it to do so. She also required it to provide a set of records for the inquiry clearly documenting the Public Body's decisions in regard to these provisions, as these decisions were unclear in the evidence it had provided for the inquiry.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 10, 12, 25, 30, 56, 16, 17, 24, 25, 68, 72 *Municipal Government Act*, R.S.A. 2000 c. M-26, s. 307 **BC:** *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, s. 21

Authorities Cited: **AB:** 2000-024, 2001-016, F2011-004 **BC:** F15-19

I. BACKGROUND

[para 1] The Applicant made an access request for her personal information to the Public Body. She requested all HR personnel files, all private files held by manager supervisors, team leaders and human resources, all electronic records, work reviews, performance reviews, minutes, job competitions for which she had applied, information regarding education and training, records regarding her classification from the area where she had worked, and any other recorded personal information about herself.

[para 2] The Public Body responded to the Applicant's access request. The Public Body ultimately located 1551 pages of records and included them in its response to the Applicant. It severed information from these records on the basis of sections 16, 17, 24, and 25 of the FOIP Act. It also decided that some of the records were not actually responsive to the access request, but included them in the response with information severed as "nonresponsive".

[para 3] The Applicant requested review by the Commissioner of the Public Body's response to her access request and its decisions to sever information under sections 16, 17, and 24 of the FOIP Act.

[para 4] The Commissioner authorized mediation under section 68 of the FOIP Act. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

II. RECORDS AT ISSUE

[para 5] The records from which the Public Body severed information under sections 16, 17, and 24 are at issue.

III. ISSUES

Issue A: Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)?

Issue B: Does section 16 of the Act (disclosure harmful to business interests of a third party) apply to the information severed by the Public Body under this provision?

Issue C: Does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the information the Public Body severed from the records under this provision?

Issue D: Does section 24(1) of the Act (advice from officials) apply to the information the Public Body severed under this provision?

IV. DISCUSSION OF ISSUES

Issue A: Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)?

[para 6] Section 10 of the FOIP Act states:

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

(2) The head of a public body must create a record for an applicant if

(a) the record can be created from a record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise, and

(b) creating the record would not unreasonably interfere with the operations of the public body.

[para 7] Prior orders of this office have determined that the duty to make every reasonable effort to assist applicants includes the duty to conduct a reasonable search for responsive records. In Order 2001-016, the Commissioner said:

In Order 97-003, the Commissioner said that a public body must provide sufficient evidence that it has made a reasonable effort to identify and locate records responsive to the request to discharge its obligation under section 9(1) [now 10(1)] of the Act. In Order 97-006, the Commissioner said that the public body has the burden of proving that it has fulfilled its duty under section 9(1) [now 10(1)].

Previous orders ... say that the public body must show that it conducted an adequate search to fulfill its obligation under section 9(1) [now 10(1)] of the Act. An adequate search has two components: (1) every reasonable effort must be made to search for the actual record requested and (2) the applicant must be informed in a timely fashion about what has been done.

[para 8] As discussed in the foregoing excerpt, a public body bears the burden of proving that it conducted a reasonable or adequate search for responsive records.

[para 9] The Applicant questions the adequacy of the search conducted by the Public Body on a number of grounds. These include:

1. Performance reviews have not been provided, with the exception of a performance review from 2004.
2. The return-to-work coordinator told her about an email prepared by a human resources advisor that refers to “chronic work issues”. The union president also referred to this email and its reference to “chronic work issues”. However, the email attributed to the human resources advisor has not been produced.
3. The records of a particular manager created after May 2007 have not been provided.
4. Records regarding an incident taking place on July 24, 2007 have not been provided.

[para 10] In her request for inquiry, the Applicant requested “all documents from Assessment Managers” and also documents from the Return to Work Coordinator, Human Resources, Health and Wellness. She also indicates that she continues to seek emails sent by herself to various managers.¹ She also seeks missing emails and documentation regarding her from the Assessment Business Unit.

[para 11] In an email dated June 26, 2012 to the Public Body’s FOIP Officer, the Applicant clarified that she was also seeking emails containing information about her that she understood the Assessment Review Board had sent to the Assessment Business Unit. The Applicant submitted the email of June 26, 2012 as part of her initial submissions for the inquiry.

[para 12] A FOIP Officer of the Public Body coordinated the Public Body’s search for responsive records. He provided an affidavit describing the steps taken to identify and locate responsive records. He provided details of the search he conducted in various areas of the Public Body. He states:

The Public Body is comprised of a number of Business Units. Each Business Unit is responsible for records that pertain to that Business Unit's operations. When the Public Body receives an access request, the Public Body’s FOIP Officer reviews the access request and determines which Business Units may have records that are relevant to the Applicant's request (“responsive records”).

A FOIP Business Unit Records Request Form is then sent to the relevant Business Units. It is through this process that the relevant Business Units are advised of the nature of the records requested in the access request.

Each Business Unit has a FOIP Program Administrator. The role of the FOIP Program Administrator is to direct the search for responsive records within the Business Unit.

¹ The Applicant provided the names of these managers at point 4 of her request for inquiry.

[...]

The Applicant had listed a total of 6 Business Units where the Applicant was previously, or is currently, employed: City Clerk's (Division: Assessment Review Board); Calgary Transit; Finance; Information Technology; Human Resources (Division: TESA); and Assessment. I sent a FOIP Business Unit request form to these Business Units. Attached and labeled as Exhibit "B" is a copy of the FOIP Business Unit request form.

[para 13] The FOIP Officer also provided information he received from the business units regarding the searches they conducted for responsive records. The Public Body also provided its human resources records retention schedule and its transitory records policy for the inquiry.

[para 14] The Public Body did not provide affidavit evidence of those who conducted the search for responsive records. It provided the affidavit of the FOIP Officer, who directed others to perform searches. However, the affidavit did not provide specific details of its search in the Assessment Business Unit or explain which of the employees whose records the Applicant specifically requested have produced records, and which have not. In the case of handwritten records, the Public Body did not explain who created them or explain where they were found. As a result, the Public Body's evidence as to the search it conducted is vague and I am unable to determine from it the extent of the Public Body's search in the Assessment Business Unit from the records themselves.

[para 15] With regard to business units other than the Assessment Business Unit, I am able to determine the extent of the Public Body's search and its reasons for deciding that it cannot provide responsive records from these areas. I also note that the Applicant does not take issue with the search conducted in these areas.

[para 16] However, the Applicant does challenge the Public Body's search for records in the Assessment Business Unit on a number of grounds. As discussed below, I am unable to find that the Public Body met its duty to assist the Applicant or that it conducted an adequate search for responsive records in relation to a number of categories of records located at the Assessment Business Unit.

Records from the Assessment Business Unit

[para 17] The FOIP Officer did not perform the search for responsive records in the Assessment Business Unit, but an employee of this unit did. The FOIP Officer states of the search of the Assessment Business Unit:

I am advised by the FOIP program administrator for the Assessment Business Unit, and do verily believe, that the areas searched in the Assessment Business Unit included Livelink database, Shared drives, Microsoft Outlook, H drives of the persons specified in the FOIP request, black notebooks and the records of the Human Resources representative for the Assessment Business Unit.

The search terms used to conduct the search was the Applicant's name and her employee ID. An employee ID is a unique identifier used by the Public Body and is associated with an individual employee.

As the Applicant had been employed with the Assessment Business Unit since 2002, I requested that the Assessment Business Unit conduct additional searches for records.

Additional records such as a 2011 Employee Development Plan and a Permanency Review record were located by the Assessment Business Unit and these records were provided to the Applicant on October 11, 2012.

Additional email records were provided to the Applicant at this time as an employee (manager) who had created the records had been away.

I am advised by the FOIP program administrator and do verily believe that ten minute interviews are informal meetings between a manager and an employee, and as such, notes are rarely taken during these meetings.

I am advised by the FOIP program administrator that records relating to ten minute interviews conducted within the Assessment Business Unit are considered transitory records and are not retained.

The Public Body has an Administration Policy for Transitory Records which I reviewed.

The Assessment Business Unit provided a number of records to the FOIP Office.

[para 18] The FOIP Officer did not provide the names of the managers / supervisors whose records were searched or the results of each search. I note that no records originating from the computer of the Manager, Assessments – North Region appear among the records located by the Public Body. I note that many of the emails in the records produced by the Public Body are copied to this Manager, and some records that were produced from the email accounts of other employees were sent by this Manager, but it appears that no records originating from this Manager's computer have been produced. However, the Applicant specifically requested records and files originating from this Manager in her access request and her request for review.

[para 19] Of the supervisors / managers from the Assessment Business Unit whose records the Applicant specifically requested, I am able to identify records originating from the computers or files of the Team Leader, NW Region, two Human Resources Advisors and the Business Process Analyst – Training. However I was unable to identify records originating from the computers or files of the other supervisors / managers whose records the Applicant requested specifically.

[para 20] The records the Public Body provided for the inquiry indicate that the supervisors / managers whose records do not appear to have been produced were sent emails and copies of emails regarding the Applicant, and that they themselves sent such emails. The fact that these supervisors / managers sent and received emails suggests that they may have responsive records that have not been produced.

[para 21] I note too that while the Applicant was particularly interested in obtaining the records of supervisors and managers whom she named, she did not restrict her access

request to records in the immediate possession of supervisors and managers. Rather, her access request included “all records from the [Assessment Business Unit] detailing why not moved from Intern to Associate” and “any other personal information on record, including but not limited to those named previously.” The terms of the Applicant’s access request establish that her request was for all her personal information. It was not restricted to those records created by or in the possession of supervisors or managers.

[para 22] The Public Body has provided evidence that it asked the Assessment Business Unit to search for responsive paper or electronic records, but it has not detailed the search conducted in that Business Unit, or the results of its search. It has not explained whether the records it has not produced were the subject of its search, and if so, why it cannot produce them. Moreover, what it has provided regarding its search indicates that the Assessment Business Unit was told to look through the files of specific individuals, rather than all areas. Again, while the Applicant did refer to these individuals in her access request, her access request was not restricted to only the records in their possession.

[para 23] The Public Body’s transitory records policy and records retention schedule do not explain the absence of these records, given that copies of these records were located on the computers of other employees of the Public Body who are presumably bound by the same policies and schedules, (unless those who located records were not in compliance with the policies). Moreover, while the FOIP Officer states that he was told by the FOIP program administrator for the Assessment Business Unit that a search of Microsoft Outlook, shared drives, and the “H drives” of all the persons specified in the Applicant’s access request was conducted, I have not been told what the result of the search was, or that these supervisors / managers did, in fact, destroy records.

[para 24] Possibly, all records originating from these supervisors / managers are duplicates of what has already been produced and the Public Body did not produce them for that reason; however, I cannot make this determination unless the Public Body provides evidence to that effect.

Human Resources Advisor Records

[para 25] From my review of the records the Public Body produced, I am able to identify records produced by the Human Resources Advisor for the Assessment Business Unit. The Applicant questions whether *all* the Human Resources Advisor’s records were produced, because an email she was told he created on February 9 (year not provided), which she states was read to her by a union representative and the Return to Work Coordinator, does not appear to have been produced.

[para 26] The Public Body has not explained the extent of its search of the Human Resources Advisor’s records, or detailed its search for the email to which the Applicant refers. I note that records 217 and 218 indicate that the Human Resources Advisor maintained employee files, which he provided to another Human Resources Advisor. Record 217 indicates that the Human Resources Advisor assembled a file relating to the

Applicant. It is possible that the records the Public Body has produced include the contents of this file. However, unless the Public Body states that this is so, and provides details of the extent of the search it conducted for the Human Resources Advisor's records and the results of its search, I am unable to find that it included this file in its search or that it conducted a reasonable search for responsive records created by this employee.

Transitory Records / Record Retention Policies

[para 27] The date of the "Human Resources Record Retention Schedule" the Public Body submitted for the inquiry is November 2014. The Applicant's access request predates this schedule by over two years. Possibly another, similar schedule was in place prior to the access request; however, such a schedule, or its terms, has not been submitted as evidence for the inquiry. In any event, the terms of a 2014 record retention schedule do not explain why human resources records created and requested prior to 2014 have not been produced.

Human Resources Records

[para 28] The Public Body's FOIP Officer described in his affidavit the search he was told was conducted by the by the FOIP Program Administrator. From the details of this search, it is unclear to me to what extent the Public Body searched for the records of the Return to Work Coordinator. The Applicant specifically requested records from the Return to Work Coordinator; emails sent to her and sent by her and received by others appear among the records, but it does not appear that records located on her computer have been produced. It may be that she did not maintain copies of her records; however, that cannot be determined in the absence of evidence regarding the search conducted for her records.

The Applicant's other concerns

[para 29] The Applicant also states that she is seeking records regarding an incident that happened at a workplace other than the Public Body. The Applicant has not provided sufficient evidence to establish the likelihood that the Public Body has records containing information about this incident that it has not produced.

Conclusion

[para 30] For the reasons above, I am unable to find on the evidence before me that the Public Body conducted a reasonable search for responsive records that would be located in the Assessment Business Unit and in Human Resources. In addition, I am unable to find that its reasons for not providing additional records are satisfactory. I must therefore ask the Public Body to conduct new searches for responsive records in these two areas. If it is unable to locate additional records, I must ask it to provide reasons from someone with direct knowledge of the search conducted, as to why the Public Body believes no further records can be produced.

Issue B: Does section 16 of the Act (disclosure harmful to business interests of a third party) apply to the information severed by the Public Body under this provision?

[para 31] The Public Body applied section 16(1) to withhold information from records 289 and 1199 and 16(2) to withhold information from records 35, 219 – 229, 232 – 234, 246 – 247, 253 – 258, 275, 282 – 284, 287, 290, 292, 294, 296, 299, 309, 322, 325, 328, 338 – 339, 342, 350 – 351, 500 – 502, 514 – 515, 519, 552, 558 – 563, 575 – 577, 591, 600, 602, 604, 611, 616, 618, 620, 623 – 625, 630, 632 – 634, 635 – 637, 638 – 645, 646 – 647, 650, 656, 658 – 661, 664 – 667, 684, 744 – 746, 750, 752 – 753, 766, 784, 799, 825 – 826, 829, 837 – 838, 844, 847, 857 – 859, 867, 872 – 873, 876, 880 – 881, 894 – 896, 898 – 899, 901 – 903, 907, 909, 921 – 922, and 955.

[para 32] Section 16 requires a public body to withhold particular kinds of information originating from third parties. This provision states, in part:

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

- (a) that would reveal
 - (i) trade secrets of a third party, or*
 - (ii) commercial, financial, labour relations, scientific or technical information of a third party,**
- (b) that is supplied, explicitly or implicitly, in confidence, and*
- (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,*
 - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,*
 - (iii) result in undue financial loss or gain to any person or organization, or*
 - (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.**

(2) The head of a public body must refuse to disclose to an applicant information about a third party that was collected on a tax return or collected for the purpose of determining tax liability or collecting a tax.

- (3) Subsections (1) and (2) do not apply if*
- (a) the third party consents to the disclosure,*

- (b) an enactment of Alberta or Canada authorizes or requires the information to be disclosed,*
- (c) the information relates to a non-arm's length transaction between a public body and another party, or*
- (d) the information is in a record that is in the custody or under the control of the Provincial Archives of Alberta or the archives of a public body and has been in existence for 50 years or more.*

[para 33] The Public Body argues:

Section 16 of the Act sets out a mandatory exception to the principle that an individual has a right to access records in the custody or control of a Public Body.

The Public Body applied Section 16(2) of the Act to Records that revealed information about a third party that was collected for the purpose of determining tax liability or for collecting the tax. Section 16(2) is a mandatory exception to disclosure.

The Public Body submits that exceptions set out in Section 16(3) of the Act do not apply to the information.

Records depicting the name and address of property owners, where their assessment roll number is present, has been found to be information collected for the purpose of determining property tax liability (Tab 4 Order 2000-024).

Record 350 – 351 is a condominium assessment sales comparable chart used in preparing/defending property assessments. The Records reveal information collected for property assessment information. The Records do not contain personal information about the Applicant. The Records reveal information that was collected for the purposes of determining tax liability.

Records 600, 602, 604, 611, 616, 635 – 637, 646, 659, 665 – 667, reveal tax changes for businesses and the percentage of assessment changes for the third parties from one year to the next. Records 635 – 637, 665 – 667 also reveal property roll numbers. The Public Body submits this information properly falls within Section 16(2).

The Public Body applied Section 16(1) to Records 289 [and] 1199 (duplicate). Record 289 was provided to an elected official by a third party. The Record reveals the property taxes of a third party business. The Public Body determined that the Record contained commercial information of a business owner and that disclosure of the information contained in the Record (potential bankruptcy) would cause harm to the business as potential customers may not wish to do business with the third party business.

When information in a Record was used to evaluate the Applicant's performance, that information was provided to the Applicant.

Section 16(1)

[para 34] The Public Body severed information from records 289 and 1199, which are duplicates of one another.

[para 35] Cited above, the Public Body argues that disclosure of the information in these records, which can be construed as the financial information of a third party, will

disclose the fact that the third party could potentially enter bankruptcy. The Public Body reasons that disclosing this information would be damaging to the business.

[para 36] I am not convinced that records 289 and 1199 necessarily meet the requirements of section 16(1) as it is unclear that the letter was intended to be confidential and the letter does not in fact state that the third party is entering bankruptcy. This is a point made by the Public Body in argument, but the source of the Public Body's information has not been provided. As a result, the harm that might result from disclosure is unclear.

[para 37] However, unless this letter was reviewed for the purpose of evaluating the Applicant's performance, it does not appear to be responsive to the Applicant's access request in any way.

[para 38] I note that records 289 and 1199 refer to the Applicant only in the sense that she was the representative of the Public Body with whom the third party spoke about its taxes. The Applicant made a request for her personal information, as opposed to information about third party businesses or examples of her work product.

[para 39] The Public Body states that records containing information about third parties were provided to the Applicant in cases where they were used to evaluate the Applicant's performance. Records 289 and 1199 were severed in their entirety, which suggests they were *not* used to evaluate the Applicant's performance. If they do not contain her personal information and were not used to evaluate her performance, then they are not responsive to her access request.

[para 40] If these records were not used to evaluate the Applicant's performance, then they need not be provided to her, given that they do not contain her personal information. If portions of these records were used to evaluate the Applicant's performance, then those portions should be provided to the Applicant and any information in these records that was not used to evaluate her performance, such as the name of the company and any other information that would identify it, need not be disclosed.

Section 16(2)

[para 41] In Order 2000-024, on which the Public Body relies, former Commissioner Clark decided that section 16(2) applied to the names and mailing addresses of property owners. He said:

First, I find that the names and mailing addresses of property owners are information about third parties.

Second, the names and mailing addresses of property owners are clearly "information collected for the purpose of determining tax liability and/or collecting a tax". The names and mailing addresses of the property owners are required in order to prepare the Assessment Roll, mail out assessments and collect the municipal property taxes.

My decision is similar to British Columbia Order No. 248-1998, in which the Applicant requested names and mailing addresses of owners of properties to be forfeited to the province of British Columbia for non-payment of taxes. The Commissioner found that the information requested was gathered for the purpose of determining tax liability and/or collecting a tax. He thus upheld the Ministry's decision to withhold the names and mailing addresses of property owners.

Third, I do not find that section 15(3) [now 16(3)] applies. I agree with the Public Body that section 307 of the *Municipal Government Act* is the only applicable provision relevant to a determination under section 15(3)(b).

Section 307 of the *Municipal Government Act* reads:

307 Any person may inspect the assessment roll during regular business hours on payment of the fee set by the council.

Blacks' Law Dictionary 5th edition, (St. Paul: West Publishing Co., 1983) defines "inspection" as

To examine; scrutinize; investigate; look into; check over; or view for the purpose of ascertaining the quality, authenticity or conditions of an item, product, document, residence, business, etc.

The Applicant requested disclosure of the names and mailing addresses in a CD-ROM or other electronic format. Section 307 of the *Municipal Government Act* does not authorize disclosure in the manner the Applicant requested. Section 307 authorizes inspection limited by the conditions of the regular business hours and the specified fees. I do not accept that this includes a wholesale disclosure in a CD-ROM or in another electronic format. Therefore, I find that section 15(3)(b) [now section 16(3)(b)] of the Act does not apply in this case.

Moreover, I agree with British Columbia Order No. 248-1998, which stated "that information which is gathered for the purpose of determining tax liability or collecting a tax, and which may be listed on a public roll for the primary purpose of assisting the public in assessing taxation equity, should not be searched, manipulated and reconfigured to achieve secondary purposes which are unrelated to the purpose for which the information was gathered and intended to be used".

[para 42] Former Commissioner Clark concluded that the names and addresses of property owners in circumstances where the names and addresses have been collected "for the purpose of determining tax liability and/or collecting a tax" fall within the terms of section 16(2).

[para 43] In Order F15-19, an order of the Office of the Information and Privacy Commissioner of British Columbia, the Adjudicator reviewed past orders of that office addressing section 21(2) of British Columbia's *Freedom of Information and Protection of Privacy Act*, a provision equivalent to Alberta's section 16(2). She said:

BC Orders 00-10 and F05-29 provide guidance about the meaning of the phrase "gathered for the purpose of determining tax liability or collecting a tax" in s. 21(2). In Order 00-10, Pacific Western Brewing Company asked the Liquor Distribution Branch ("LDB") for several years' worth of Labatt Breweries' annual BC sales amounts and the equivalent information for Molson Breweries. The amounts requested were generated from data (including container deposits and sales tax) compiled by the LDB from its operations. The information in dispute was clearly not obtained on a tax return. However, Molson and Labatt argued that one of the reasons LDB

collected the information was to determine the amount of tax LDB must remit to the provincial and federal governments for liquor sales. Thus, the s. 21(2) issue in Order 00-10 was whether the information was gathered for the purpose of determining tax liability or collecting a tax. Former Commissioner Loukidelis found that information needs to be collected for the sole or primary purpose of determining tax in order for s. 21(2) to apply. He said:

The material before me establishes that the data provided to the LDB by its suppliers – and the data generated by the LDB and in dispute here – are supplied for a whole host of reasons. Judged on that material, I cannot agree that the disputed information was gathered for the purpose of determining tax liability or collecting a tax.

...The records sought by Pacific Western were created in response to its request; the lump sum figures found in the records were created by the LDB from underlying data (including, in part, data provided by Molson and Labatt). Strictly speaking, however, the information sought by Pacific Western was not, directly, “gathered” by the LDB. On that basis alone, the information is not covered by s. 21(2).

In F05-29, the Hudson’s Bay Company (“HBC”) asked BC Assessment Authority (“BCA”) to provide BCA’s calculation of the gross leasable area, fair market rent, vacancy allowances, expense allowances and the capitalization rates regarding shopping malls where HBC was a tenant. BCA refused disclosure under ss. 21(1) and 21(2). As was the case in Order 00-10, the information was clearly not obtained on a tax return, so the question under s. 21(2) was whether the information was gathered for the purpose of determining tax liability or collecting a tax. Former Commissioner Loukidelis found that s. 21(2) did not apply because the request was not for the underlying information “gathered” by BCA; rather the request was for information that was “generated” by BCA. He said:

Having regard to the context in which the word “gathered” appears, and the overall scheme and purpose of the Act, the word “gathered” does not cover information that is generated, or created, by a public body by applying skills, techniques and professional judgement to information that it has gathered (even where underlying information that is analyzed to create the disputed information has been gathered directly from a taxpayer).

[para 44] From these cases, I conclude that for the purposes of British Columbia’s section 21(2), information must be about a third party, be gathered by a public body from a tax return, or alternatively, be gathered or collected for the purpose of collecting a tax or determining tax liability, before section 16(2) will attach to it. I agree with the analysis in the British Columbia decisions, cited above. In my view, Alberta’s section 16(2) operates in a similar way and is not intended to apply to information that was generated by a public body or that was obtained for purposes other than collecting a tax or determining tax liability.

[para 45] I note that the Adjudicator in Order F2011-004 took a similar view of section 16(2), where she stated:

As well, section 16(2) of the Act (which I will discuss in greater detail below) does state that information must have been collected on a tax return or for the purpose of determining tax liability or collecting a tax in order for it to be exempt from disclosure under section 16(2) of the Act. Therefore, a public body must show that the records fit these criteria in order to apply section 16(2) of the Act.

In that case, the Adjudicator found that information on tax returns submitted to the Canada Revenue Agency, which was subsequently submitted to the Natural Resources Conservation Board, fell within the terms of section 16(2).

[para 46] Section 16(2) appears intended to address income tax schemes, in which a business must provide the government financial and commercial information so that the government may assess income tax, or alternatively, where the government investigates a third party's financial and commercial information. Property taxation schemes, which do not require a third party to file a tax return, and which are not based on a third party's income or other business information, do not appear to be the subject of section 16(2), although that is not to say that it is *impossible* for information collected under such schemes to meet the requirements of section 16(2). As set out in Order 2000-024 and subsequently in Order F2011-004, if information about a third party has been collected in order to assess taxes or to collect taxes, the information will meet section 16(2).

[para 47] The Public Body applied section 16(2) to sever information identifying third parties who made complaints about tax assessment, assessment roll numbers, the amounts assessed, the addresses of assessed properties, and questions and answers regarding assessment methodology (records 664 – 665).

[para 48] I am unable to agree with the Public Body where it states: “The Public Body applied Section 16(2) of the Act to Records that revealed information about a third party that was collected for the purpose of determining tax liability or for collecting the tax.” None of the information to which the Public Body has applied section 16(2) meets this description.

[para 49] While former Commissioner Clark found in Order 2000-024 that the names of third parties and their mailing addresses had been collected for the purpose of determining tax liability and/or collecting a tax, I do not interpret the former Commissioner as suggesting that whenever the name of a business or its property address appears in correspondence, even in correspondence addressed to the Assessment Business Unit, this information can be said to have been collected or gathered for the purpose of determining tax liability or assessing a tax.

[para 50] The information of third parties who made complaints regarding their assessments appears to have been collected from them and recorded for the purpose of returning their calls and discussing their complaints. Neither purpose falls within section 16(2).

[para 51] Assessment roll numbers are generated and assigned by the Public Body, as opposed to being pre-existing information about a third party that could be said to have been “collected” within the terms of section 16(2). For the same reason, I disagree that the amounts of assessments, or changes to assessed amounts, can be said to be information that the Public Body has “collected”. Rather, this amount is determined by the Public Body after reviewing the assessed property and similar properties.

[para 52] The Public Body argues that records 350 – 351 contain information collected for property assessment purposes. The Public Body argues that this information was collected for the purposes of determining tax liability. From my review of these records, I am unable to say that the information is “about a third party” within the terms of section 16(2). Rather, the information relates solely to addresses and sales and contains no indication as to who owned or purchased the property.

[para 53] Records 664 – 665 contain emails with questions and answers regarding a property assessment created by the Applicant. With regard to the questions and answers appearing on records 664 – 665, the questions appear to have been generated by the Public Body and are asked any time a property of the kind referred to in the emails is assessed, while the answers contain information describing a property and its past assessed value. As with records 350 – 351, I am unable to say that the information in the email referring to the assessed property is “information about a third party”, as it does not refer to a third party or its business, but is limited to describing basic attributes of a property. With regard to the amounts previously assessed, I have already found that such information is generated by the Public Body, as opposed to being collected.

Conclusion

[para 54] I find that none of the information to which the Public Body applied section 16 falls within the scope of this provision and I intend to order it to produce this information to the Applicant, but for records 289 and 1199. With regard to records 289 and 1199, it is unclear whether these records are responsive. I must therefore ask the Public Body to determine whether portions of these records are responsive. If they are, I must ask it to provide the responsive information in the records to the Applicant with nonresponsive portions severed. If they are not, then it need not provide these records to the Applicant. In the event that the entire record is responsive, then the Public Body must obtain the views and evidence of the third party under section 30 prior to making a decision regarding the application of section 16.

Issue C: Does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the information the Public Body severed from the records under this provision?

[para 55] Section 17 requires a public body to withhold personal information when it would be an unreasonable invasion of a third party’s personal privacy to disclose the information. This provision 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,

[...]

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

(e) the personal information was collected on a tax return or gathered for the purpose of collecting a tax,

(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,

(b) the disclosure is likely to promote public health and safety or the protection of the environment,

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

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,

(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

(i) *the personal information was originally provided by the applicant.*

[para 56] Section 17 does not say that a public body is *never* allowed to disclose third party personal information. It is only when the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy that a public body must refuse to disclose the information to an applicant (such as the Applicant in this case) under section 17(1). Section 17(2) (not reproduced) establishes that disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.

[para 57] When the specific types of personal information set out in section 17(4) are involved, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. To determine whether disclosure of personal information would be an unreasonable invasion of the personal privacy of a third party, a public body must consider and weigh all relevant circumstances under section 17(5), (unless section 17(3), which is restricted in its application, applies). Section 17(5) is not an exhaustive list and any other relevant circumstances must be considered.

[para 58] However, before section 17 can be said to apply to information, it must first be established that the information in question is personal information. For example if information refers to employee acting on behalf of an organization or a public body, it may not be accurate to describe this information as the personal information of the employee.

[para 59] In Order F2013-51, the Director of Adjudication reviewed cases of this office addressing when information referring to employees of a public body is the employees' personal information, and when it is not. She said:

From the severing conducted by the Public Body, it appears that it may have relied on section 17 to withhold information about its employees or those of University of Calgary employees acting in the course of their duties. For example, the Public Body withheld records such as the University of Calgary's representative's first name and the business phone and fax number at which she could be contacted, contained in records 3-1, 3-2, and 3-3.

As well, the Public Body has severed information, partly in reliance on section 17, that may be properly characterized as 'work product'. For example, it has severed the questions asked by an investigator, in addition to the answers of those interviewed. It has also withheld what is possibly a line of inquiry which the investigator means to follow (the note severed from record 1-151). While some of the questions and notes may reveal the personal information of witnesses, it does not appear that it is always the case that they do, and it appears possible that the Public Body withheld information on the basis that it may reveal something about the investigator performing duties on its behalf, rather than personal information about third parties.

The Public Body has also withheld notes of an interview by the Public Body's investigator of the University of Calgary's legal counsel, in part in reliance on section 17. Information about the legal counsel's participation in the events surrounding the Applicant's complaint to the University is not her personal information unless it has a personal aspect, which was not shown.

As well, it may be that some of the information of persons interviewed in the third volume relating to the Applicant's 'retaliation' complaint, which was withheld in reliance on section 17,

may be information about events in which these persons participated in a representative rather than a personal capacity. Again, to be personal in such a context, information must be shown to have a personal dimension.

In Order F2009-026, the Adjudicator said:

If information is about employees of a public body acting in a representative capacity the information is not personal information, as the employee is acting as an agent of a public body. As noted above, the definition of “third party” under the Act excludes a public body. In Order 99-032, the former Commissioner noted:

The Act applies to public bodies. However, public bodies are comprised of members, employees or officers, who act on behalf of public bodies. A public body can act only through those persons.

In other words, the actions of employees acting as employees are the actions of a public body. Consequently, information about an employee acting on behalf of a public body is not information to which section 17 applies, as it is not the personal information of a third party. If, however, there is information of a personal character about an employee of a public body, then the provisions of section 17 may apply to the information. I must therefore consider whether the information about employees in the records at issue is about them acting on behalf of the Public Body, or is information conveying something personal about the employees.

In that case, the Adjudicator found that information solely about an employee acting as a representative of a public body was information about the public body, and not information about the employee as an identifiable individual. In *Mount Royal University v. Carter*, 2011 ABQB 28, Wilson J. denied judicial review of Order F2009-026.

In Order F2011-014, the Adjudicator concluded that the name and signature of a Commissioner for Oaths acting in that capacity was not personal information, as it was not information about the Commissioner for Oaths acting in her personal capacity. She said:

Personal information under the FOIP Act is information about an identifiable individual that is recorded in some form.

However, individuals do not always act on their own behalf. Sometimes individuals may act on behalf of others, as an employee does when carrying out work duties for an employer. In other cases, an individual may hold a statutory office, and the actions of the individual may fulfill the functions of that statutory office. In such circumstances, information generated in performance of these roles may not necessarily be about the individual who performs them, but about the public body for whom the individual acts, or about the fulfillment of a statutory function.

I find that the names and other information about employees of the Public Body and the University of Calgary acting in the course of their duties, as representatives of their employers, cannot be withheld as personal information, unless the information is at the same time that of an individual acting in the individual’s personal capacity.

[para 60] From the foregoing, I conclude that information about employees acting in a representative capacity is not personal information within the terms of the FOIP Act, unless the information has a personal dimension.

[para 61] The Public Body relied on section 17 to withhold assessment roll numbers and the names of individuals who contacted the Public Body to complain about, or discuss, their property assessments. The Public Body has also withheld the name of an employee from records 22 and 217 (these records contain the same emails) and the name of the union representative apparently calling on the Applicant's behalf from record 197. The Public Body also withheld the business contact information of some employees and a comment made by another from record 218, as well as employee names where they appear on "sign-up sheets" for courses on the same basis.

[para 62] The Public Body argues:

Section 17(1) involves the application of two criteria:

- a) personal information of a third party; and,
- b) whether the disclosure of the personal information would be an unreasonable invasion of the third party's personal privacy

Section [1(n)] of the Act sets out a non-exhaustive list of types of information which is considered to be personal information.

The Applicant has been employed as an assessor with the Assessment Business Unit since 2002. The Applicant's employment duties within the Assessment Business included developing and preparing property and business assessments, preparing assessments involved analyzing physical inventory and market information, modeling values and conducting quality reviews. An assessor also communicates with citizens in order to respond to inquiries and review issues and information provided by citizens.

As part of the Applicant's employment duties, personal information such as names, email addresses were obtained from Calgary citizens (third parties).

The Public Body applied Section 17 to Records which revealed personal information about the third party. The Public Body submits that the personal information was supplied in confidence as the third parties reasonably expected it would only be used within the Public Body and for the purpose for which it was provided /collected, that being to prepare an assessment.

The Public Body applied Section 17(1) where the information contained in the Records revealed an employee's home or personal telephone number or address (Records 42 & 119). Providing a personal telephone number to a specific individual for a limited purpose does not render the information available to the public at large. The phone number is not the Applicant's personal information and is not responsive to the Applicants request for information.

The Public Body applied Section 17(1) when the information revealed the training/educational courses taken by other employees during their employment. The Public Body maintains that this is third party personal information as it reveals how other individuals choose to improve their performance in order to advance in the workplace. The courses taken by employees form part of that employee's employment and educational history. The choice of which courses an employee may take is considered their own personal information. The records reveal the names of the employees and the courses they have taken.

The Public Body applied Section 17(1) to third party employee information which revealed other employees vacation balances/plans, retirement, professional association membership, sickness and long term disability work attendance (payroll), employee IDs, manager notes about other employees and when employees were involved in internal

investigations as a complainant or witness (Records 22, 217). The Public Body submits that this is another individual's personal information and should not be provided to the Applicant.

The Public Body considered Section 17(2) of the Act and determined that none of the exceptions applied to the information contained in the Records.

The Public Body submits that disclosure of the third party personal information would be an unreasonable invasion of an individual's personal privacy. The Public Body submits that the information to which it applied Section 17(4)(a) and (d) reveal an employees' medical or educational history.

[para 63] I will first address the question of whether the information the Public Body severed from the records is the personal information of individuals acting in a personal capacity, or is information about them acting in a representative capacity and lacking a personal dimension. If I find that the information is personal information, I will address the question of whether the Public Body properly determined that its disclosure would be an unreasonable invasion of personal privacy.

Is the information to which the Public Body applied section 17(1) personal information?

Information about private individuals

[para 64] The Public Body severed the names of individuals who contacted the Public Body to complain about or discuss property assessments. The Public Body also severed the assessment roll number associated with the property in relation to which the complaint was being made.

[para 65] The names of complainants in conjunction with the substance of their complaints is personal information falling within the terms of section 17(4)(g). As the assessment roll number would allow an individual to determine both the name of a property owner and the assessed value of their property from the assessment roll, it too may be classified as personal information falling with the terms of this provision.

Information about employees

[para 66] The Public Body states that it applied section 17(1) to the personal phone numbers and addresses of employees where these appear on records 42 and 119. I agree with the Public Body that this information has a personal dimension and is personal information falling within the terms of section 17(4)(g), reproduced above.

[para 67] The Public Body also severed the names of employees where they appear on lists of employees who attended the same educational courses as the Applicant. The Public Body argues that the fact of their attendance in the training is personal to them. I agree. While the employees attended the training as part of their employment responsibilities, any certification or knowledge gained from the training would be personal to them.

[para 68] The Public Body severed the name of an employee from records 22 and 217 (these records contain the same email). The Public Body argues that the information it severed was that of an employee involved in an “internal investigation” as a complainant or witness.

[para 69] Having reviewed the email in question, I am unable to say that the employee whose name was severed from the email was a witness or a complainant, or acted as such in relation to an “internal investigation”. No evidence has been provided to suggest that there was an internal investigation in which this employee was a participant or that the information he apparently provided played a part in a decision made by the Public Body. Even assuming that the employee was a witness or complainant in such an investigation, there is nothing in the record to suggest that the employee acted other than as a representative of the Public Body when imparting knowledge apparently obtained in the course of the employee’s duties. The email does not document what was said by the employee, but only the Human Resources Advisor’s views of it. Essentially, the employee is referred to as a source of information, but the substance of the information is not reproduced.

[para 70] I am unable to say that the information about the employee which the Public Body severed from records 22 and 217 has a personal dimension, and is anything other than information about an employee acting as a representative of the Public Body.

[para 71] I note that the Public Body states in its submissions that it did not notify the individuals in this case as it had decided to withhold information about them from the Applicant. From this I conclude that the Public Body has not spoken with the employee whose name appears on records 22 and 217 to determine the circumstances in which he spoke with the Human Resources Advisor and in what capacity.

[para 72] As this information is essential in determining whether information about this employee is personal information to which section 17 applies, I have decided that I must ask the Public Body to obtain this information and provide it for my review, before making a final decision regarding its application of section 17 to records 22 and 217.

[para 73] The Public Body also severed the name of a union representative apparently calling on the Applicant’s behalf from record 197. In my view, the only capacity in which the union representative would contact the Public Body on the Applicant’s behalf would be in the union representative’s capacity as a union representative. I find that the information severed from record 197 lacks a personal dimension and that section 17(1) cannot apply to it.

[para 74] Finally, the Public Body severed a statement in an email from record 218. The statement appears in an email sent by a Human Resources Advisor. The Public Body did not sever any other information in the email, or the name of the Human Resources Advisor. It is unclear why the Public Body considered section 17(1) requires doing so, and it has not made arguments regarding this severing decision. If the personal information of the Human Resources Advisor was a concern, one would normally expect

the name of the Human Resources Advisor to be severed and the content of the email provided in accordance with section 6 of the FOIP Act. Possibly, the Public Body does not agree with the statement it severed. However, there is nothing in the email to suggest that the Human Resources Advisor stepped out of her capacity as a Human Resources Advisor when she made it or that she ceased to represent the Public Body in this portion of the email. I am unable to find that this email has a personal dimension and I find that section 17 cannot apply to it.

[para 75] However, I also note, as discussed below, that the Public Body's index of records indicates that it is relying on section 24(1)(b) to sever information from this record, even though it did not indicate this in its response to the Applicant, or in the records it provided for the inquiry. As I have decided to require the Public Body to provide notice of its severing decisions in relation to section 24 and to clearly indicate which information is being severed under this provision, I will not order disclosure of the information in record 218 at this time but will wait for the Public Body to comply with my instructions regarding section 24.

Did the Public Body properly apply section 17(1) to the personal information of third parties?

[para 76] I have found that the personally identifying information of third parties who contacted the Public Body to discuss assessments of their property is personal information to which the presumption in section 17(4)(g) applies. I have also determined that the personal contact information of employees and information regarding their training is subject to this provision.

[para 77] I am unable to identify any factors weighing in favor of disclosure of this information for the purposes of section 17(5). Moreover, it is unclear that this information is the kind of information the Applicant was seeking, given that her access request does not include this information. As I find that there are no factors weighing in favor of disclosure, I find that section 17(1) requires the Public Body to withhold this information. I will therefore confirm the Public Body's decision to sever the personally identifying information of individuals who contacted the Public Body to discuss their assessments, and the personally identifying information of employees as discussed above.

Conclusion

[para 78] I find that the information the Public Body severed under section 17(1) from record 197 is not personal information and that section 17(1) cannot be applied to it. I will therefore order the Public Body to disclose it. However, I will confirm the decision of the Public Body to sever the remaining information to which it applied section 17(1).

[para 79] With regard to records 22 and 217, I have decided to require the Public Body to gather evidence regarding the circumstances in which the employee whose name is severed from these records provided information to the Human Resources Advisor.

The Public Body may submit this evidence once the inquiry resumes, as detailed in the decision portion of this order, below.

[para 80] With regard to record 218, I will not order disclosure despite my finding that the information severed is not personal information. This is because it appears that the Public Body may have applied section 24(1)(b) to this record, and I require its clarification that this is so, as detailed in the decision portion of this order, below.

Issue D: Does section 24(1) of the Act (advice from officials) apply to the information the Public Body severed under this provision?

[para 81] The Public Body's index of records indicates that it severed information from records 98, 100, and 105 under section 24(1)(a), and information from records 39 – 40, 91, 93, 95, 98, 100, 102 – 104, 106 – 108, 111, 113 – 114, 126, 216, 218, and 242 under section 24(1)(b). However, record 218 indicates that information was severed from it under section 17 only. Record 102 indicates that information was severed from it under section 24(1)(a), rather than section 24(1)(b). The Public Body's response of August 16, 2012 does not refer to record 218 being withheld at all.

[para 82] From the records the Public Body provided for my review, I note that there are some records from which the Public Body indicates it has severed information under provisions of section 24, which it has not listed in its index of records for the inquiry. Record 835 is an example of such a record.

[para 83] I also note conflicts between records 835 and 1237. (Record 1237 is a duplicate of record 835). While the index does not refer to record 835 being withheld, its response to the Applicant refers to this record as being withheld under section 24(1)(b) and the record provided for the inquiry appears to be severed under this provision. The FOIP Officer's affidavit indicates that record 835 has now been released, despite the fact that the record provided to me indicates severing. Record 1237 is a duplicate of this record, but the Public Body's response to the Applicant indicates that this record was withheld from the Applicant on the basis of non-responsiveness. The records provided for the inquiry suggest record 1237 may not have been withheld at all.

[para 84] Finally, I note that the Public Body's response of August 16, 2012 makes no reference to section 24(1)(a); the first indication that it decided to rely on this provision appears to be in its submissions for the inquiry.

[para 85] I am not confident that the records I have been provided, the index of records, the contents of the Public Body's response, or the Public Body's submissions accurately reflect its severing decisions in relation to the provisions of section 24(1).

[para 86] In addition, there is no evidence before me to indicate that the Public Body communicated its decisions regarding severing under section 24 to the Applicant as required by section 12 of the FOIP Act.

[para 87] To avoid making decisions regarding records that are not in issue, or inadvertently ordering disclosure of records that are, and to avoid any potential unfairness to the Applicant arising from lack of notice, I have decided that I must require the Public Body to prepare a response to the Applicant that details its severing decisions in relation to section 24 of the FOIP Act and to provide a copy of the response to this office.

[para 88] As I note that the Public Body has also apparently severed information under section 25 without referring to doing so in its response to the Applicant, I must also ask that it provide notice of its decisions under section 25 as well.

[para 89] Once the Public Body has communicated its decisions to the Applicant, it must provide one set of those records to which it has applied the provisions of section 24 and 25 (and only those records) to this office. The single set of records it will provide must also indicate what has been severed from them and under what provision (or provisions) of the FOIP Act. Once the Public Body has performed these steps, the inquiry will resume for the purpose of determining whether the Public Body properly applied these provisions.

V. DECISION

[para 90] I have decided to require the Public Body to gather and produce evidence regarding its application of section 17 to record 217. Specifically, I require it to obtain evidence as to the capacity under which the employee referred to in this email provided evidence to the Human Resources Advisor. The Public Body must provide the evidence it has obtained within fifty days of receiving this decision. The authority for this decision is section 56 of the FOIP Act.

[para 91] I have decided that the Public Body must review records 289 and 1199 to determine whether they are responsive to the Applicant's access request. If portions of these records are responsive and those portions can be provided to the Applicant without disclosing the information the Public Body considers should not be disclosed, then the Public Body should sever the nonresponsive information and provide it to the Applicant. If the Public Body determines the entire record is responsive, then it should provide notice to the third party regarding the access request and obtain the views of the third party regarding disclosure. Alternatively, if entirety of the record is not responsive, then the Public Body need not provide it to the Applicant.

[para 92] I have decided that the Public Body must, once it has provided a response to the Applicant that includes its severing decisions under section 24, provide for my review one set of those records to which it has applied the provisions of section 24 and 25 (and only those records). The single set of records it will provide must also indicate what has been severed from them and under what provision (or provisions) of the FOIP Act. The authority for this decision is section 56 of the FOIP Act.

[para 93] In fifty days following receipt of this order, the inquiry will resume in relation to the issues of whether the Public Body has properly applied sections 24 and 25

of the FOIP Act, and section 16 to records 289 and 1199, and section 17 to record 217, if necessary.

VI. ORDER

[para 94] I make this Order under section 72 of the Act.

[para 95] I order the Public Body to provide a new response to the Applicant detailing the decisions it has made to sever information under sections 24 and 25. The new response must comply with the terms of section 12 of the FOIP Act.

[para 96] I order the Public Body to conduct a new search for responsive records in the Assessment Business Unit and in Human Resources. Once the Public Body has conducted the new search, if it is not able to locate all the records the Applicant has requested, it must prepare a new response to the Applicant that contains an explanation of the new search it conducted by someone with direct knowledge of the search and the Public Body's reasons for believing that no additional records exist. If the Applicant remains dissatisfied with the search, she may request review by the Commissioner and the issue may be addressed when the inquiry resumes.

[para 97] I confirm the decision of the Public Body to sever information under section 17, but for records 22, 197, 217, and 218. I order the Public Body to disclose record 197 in its entirety.

[para 98] I order the Public Body to give the Applicant access to the information it severed under provisions of section 16, with the exception of records 289 and 1199.

[para 99] I order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Teresa Cunningham
Adjudicator