

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2019-28

August 21, 2019

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Numbers F6525/F6761

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Summary: Two Applicants each made one access to information request to Alberta Justice and Solicitor General [Public Body] under the *Freedom of Information and Protection of Privacy Act* [FOIP Act]. The First Applicant's access request was for any requests for proposals from, and agreements entered into, by the Public Body regarding external legal services, and without limiting the request, naming three specific law firms, with respect to the recovery of health care costs associated with the use of tobacco under the *Crown's Right of Recovery Act*, S.A. 2009, c. C-35. The Second Applicant's access to information request was for all records related to the awarding of the contingency (fee) contract (agreement) [CFA] between the Public Body and the law firm group retained and the CFA itself. In addition, the request was for records related to the process of awarding the tobacco litigation legal work as to how the firm selected was chosen over its competitors.

During the beginning of the Inquiry in 2014, the First Applicant raised a Preliminary Evidentiary Objection [PEO], which resulted in a phase of the Inquiry taking place regarding the PEO and the release of Decision F2014-D-03/Order F2014-50 [2014 Decision/Order].

Unexpectedly on June 10, 2016 the Public Body provided the External Adjudicator with a small portion of the Records at Issue, the majority of which were part of this Inquiry (though some involved another unrelated access to information request), including Records at Issue over which solicitor client privilege and/or litigation privilege had been claimed. The Public Body provided, and the External Adjudicator accepted, the Records at Issue on a non-waiver basis. The Public Body indicated that this portion of the records had been provided to the External Adjudicator as a result of the fact that the Minister of Justice had instructed the same pages of records to be provided to the Office of the Ethics Commissioner following the release of the independent Iacobucci Review Report. The specific pages of the June 10, 2016 Records at Issue that were provided to the External Adjudicator with their own index did not appear to relate to one another as a cohesive package with respect to the FOIP Inquiry and had to be reviewed in the absence of the rest of pages in the Records at Issue. A phase of the Inquiry took place with respect to these June 10, 2016 Records at Issue ultimately resulting in Order F2017-61 [2017 Order]. The Public Body and the Applicants were advised that the June 10, 2016 Records at Issue would no longer be part of the Inquiry as it continued.

On September 30, 2016 (and on June 15, 2017) while the hearing with respect to the June 10, 2016 Records at Issue was taking place, the Public Body, unexpectedly, released additional pages of Records

at Issue to the Applicants. In addition, the Public Body provided numerous amended indexes for the Records at Issue the scope of which had expanded from 564 pages to 2,570 pages.

On January 19, 2017 (also during the hearing with respect to the June 10, 2016 Records at Issue) the Public Body unexpectedly provided additional Records at Issue to the External Adjudicator (not to the Applicants), considered in partial compliance with the 2014 Decision/Order, none of which included records over which legal privilege had been claimed. The pages of records that were provided, however, included some records disposed of in the 2017 Order (June 10, 2016 Records at Issue) and other records that had already been released in full to the Applicants. This provision of an additional portion of the Records at Issue that had not previously been provided prompted the External Adjudicator to issue the 2017 Notice of Continuation to the parties.

The Inquiry continued with respect to the remaining Records at Issue, a small portion of which, where legal privilege had not been claimed, were provided to the External Adjudicator on January 19, 2017. The Public Body had claimed s. 27(1)(a) for the majority of the Records at Issue and, therefore, they were not available to the External Adjudicator. The Public Body also claimed other discretionary exceptions: s. 21(1)(a), s. 24(1)(b), s. 25(1), s. 27(1)(b) and s. 27(1)(c) and mandatory exceptions: s. 16(1) and s. 17, the majority of which applied to Records at Issue where s. 27(1)(a) had also been claimed so none were available to review.

In addition to relying on its earlier submissions and affidavits from when the Inquiry began in 2014, the Public Body submitted the 2017 Affidavit of Records (in-house counsel) with an Exhibited Index [2017 Exhibited Index] for the Records at Issue, all of which was submitted to meet its evidentiary burden of proof for the exceptions claimed, in particular, its claim to both solicitor client privilege and litigation privilege pursuant to s. 27(1)(a).

As in this Inquiry, where a public body claims legal privilege over records, it may elect not to provide all of the Records at Issue to an adjudicator. In such instances, the onus is on a public body to provide sufficiently clear, convincing, and cogent evidence in order to meet its burden of proof under s. 71(1) of the *FOIP Act*, in accordance with the *Solosky* test for solicitor client privilege or the *Lizotte* criteria for litigation privilege, and the evidentiary requirements as set out in *ShawCor*, the Alberta Rules of Court and the *OIPC Privilege Practice Note (2016)*.

The evidence submitted for some of the Records at Issue over which legal privilege had been claimed, however, did not meet the *Solosky* test for solicitor client privilege or the *Lizotte* criteria for litigation privilege and fell short in meeting the evidentiary requirements as set out in *ShawCor*, the Alberta Rules of Court and the *OIPC Privilege Practice Note (2016)*. For the Records at Issue where the Public Body had failed to discharge its burden of proof, the External Adjudicator issued the 2018 Interim Decision giving the Public Body the opportunity to gather evidence and authority to support its decision to withhold the Records at Issue, subject to the terms of the 2018 Interim Decision. The External Adjudicator reasoned that because of the importance of legal privilege, she was not prepared to issue an Order requiring the Public Body to give the Applicants access to these records, which could potentially place legally privileged information in jeopardy of being revealed, simply because the Public Body had fallen short in meeting its duty to provide sufficiently clear, convincing, and cogent evidence to meet its burden of proof. Details of the significant gaps in the evidence were provided in the 2018 Interim Decision/Order.

On November 22, 2018, the External Adjudicator issued Interim Decision F2018-D-04/Order F2018-70 [2018 Interim Decision/Order]. The 2018 Interim Decision/Order confirmed the Public Body's decision to deny the Applicants access to those Records at Issue where it had met its burden of proof, pursuant to s. 71(1) of the *FOIP Act*, that it had properly relied on s. 27(1)(a) of the *FOIP Act*. The 2018 Interim Decision/Order also held that the Public Body failed to meet its burden of proof, pursuant to s. 71(1) of the *FOIP Act*, for other Records at Issue where it had claimed legal privilege.

Because of the fundamental importance of solicitor client privilege and litigation privilege, rather than order the immediate release of the records where the burden of proof had not been met, the External Adjudicator gave the Public Body the opportunity to provide additional evidence. This opportunity came

as part of the 2018 Interim Decision/Order [the interim decision part referred to throughout as the 2018 Interim Decision], rather than a demand letter, as the External Adjudicator had consistently made requests for further evidence and the Public Body had been given many opportunities to respond. The 2018 Interim Decision applied to the Records at Issue over which the Public Body had claimed legal privilege pursuant to s. 27(1)(a) where it had failed to meet its burden of proof pursuant to s. 71(1) of the *FOIP Act*, and for some of the Records at Issue, where the Public Body also claimed that the mandatory exception in s. 16 applied. The Public Body provided one submission in response to the 2018 Interim Decision, in which it submitted the 2019 Revised Index that included new descriptions for the Records at Issue in the Additional Information Column. The Public Body made it clear this was to be added to form part of its submissions in the Inquiry.

Based on the “*Additional Information*” provided by the Public Body, the External Adjudicator was able to decide that the Public Body had met its burden of proof that it had properly *relied* on s. 27(1)(a) of the *FOIP Act* for some of the Records at Issue described in the Order as “*Properly withheld as privileged.*” On this basis, the External Adjudicator confirmed the decision of the Public Body to refuse the Applicants access to these Records at Issue. Where the Public Body has met its burden of proof that it has properly relied on s. 27(1)(a), the External Adjudicator decided it was unnecessary to consider the exercise of its discretion as that issue had been decided in the 2018 Interim Decision/Order where she indicated the ruling with respect to discretion would apply to the Records at Issue to be considered under the terms of the 2018 Interim Decision: that is, the Public Body properly applied the s. 27(1)(a) exception by exercising its discretion to refuse access to legally privileged information.

In the Order, where the Public Body had failed, on a balance of probabilities, to meet its burden of proof that it had properly relied on s. 27(1)(a) of the *FOIP Act*, the External Adjudicator ordered the Public Body to give the Applicants access to those Records at Issue in their entirety, described in the Order as “*Producible.*” For other Records at Issue described in the Order as “*Producible [possible redactions]*”, the External Adjudicator ordered the Public Body to reconsider its decisions and provide the Applicants access to the Records at Issue in redacted form, thereby providing access to the Applicants of any information not protected by legal privilege, in accordance with s. 6(2) of the *FOIP Act*.

The External Adjudicator discussed the fact that the Public Body submitted the “*Additional Information*” evidence in a new Column of the 2019 Revised Index, which it provided without a supporting new Affidavit of Records or an amended 2017 Affidavit of Records. The new evidence in the Additional Information Column of the 2019 Revised Index amended, corrected and added new evidence that in effect replaces or displaces evidence in the previously submitted 2017 Exhibited Index. She considered that the more reasonable approach for the Public Body to have taken would have been to provide a correcting or supplementary affidavit because the 2019 Revised Index had been upgraded with new evidence by way of the “*Additional Information.*” In this case, however, the External Adjudicator did not consider it reasonable to totally discount the unsworn evidence because the Public Body had failed to provide the new evidence in the form of a new or amended Affidavit of Records but rather she stated it was a question of the weight to be given to the new evidence. The External Adjudicator also commented on the fact that the evidence in the “*Additional Information*” could have been provided earlier in the Inquiry as it was evidence available to the Public Body since the outset of the Inquiry, was not information protected by legal privilege, and by doing so may have avoided some of the delay in the proceedings, including the necessity for the 2018 Interim Decision. The External Adjudicator stated her opinion that the preferred approach would be for the Public Body to bring the same vigour with which it claims to be protecting legally privileged records to producing sufficiently clear, convincing, and cogent evidence to support that claim in a timely fashion.

The External Adjudicator considered the Public Body’s reliance on the s. 16 exemption for the Records at Issue where it had failed to discharge its burden of proof in relation to s. 27(1)(a) under the terms of the 2018 Interim Decision. For every Record at Issue where it had claimed s. 16, the Public Body also relied on s. 27(1)(a) and, therefore, these records were not available to the External Adjudicator for review so it was not possible to identify any affected third parties. In its response to the 2018 Interim Decision, the Public Body failed to provide any submissions or evidence in the “*Additional Information*” with respect to

the mandatory exception in s. 16 of the *FOIP Act*, where it was required to do so under the terms of the 2018 Interim Decision, particularly with respect to the expanded scope of the Records at Issue.

The External Adjudicator referred to the history regarding the Public Body's claim to the s. 16 mandatory exception. In the course of that discussion, the External Adjudicator acknowledged that the Public Body had submitted evidence from some affected third parties as exhibits to the 2017 Affidavit of Records but noted that this evidence was generated in 2012 when the third parties were given notice of the access to information requests by the FOIP Manager. The Affiant of the 2017 Affidavit of Records stated the affected third parties were given notice of the Inquiry but there was no evidence notice of the Inquiry had been given. When it gave notice of the access to information requests for records containing business information in 2012, the Public Body indicated the affected third parties were provided with copies of the Records at Issue containing their business information: this was when the Records at Issue numbered pages 1-564 [Doc Counts 1-179]. The Public Body did not submit any evidence or submissions in response to the 2018 Interim Decision for the expanded scope of the Records at Issue [Doc Counts 181-850] with respect to its claim for s. 16 of the *FOIP Act*. For the Records at Issue falling under the 2018 Interim Decision where the Public Body had met its burden of proof pursuant to s. 27(1)(a) by providing "Additional Information", s. 16 need not be considered for those Records at Issue. For those Records at Issue where it has not met its burden of proof with respect to s. 27(1)(a) and s. 16 has also been claimed, the External Adjudicator held that the evidence from the affected third parties received from the Public Body was only relevant to the initial 564 pages of Records at Issue [Doc Counts 1-179] for which the Public Body had met its burden of proof under s. 71(1) of the *FOIP Act* by providing sufficiently clear, convincing, and cogent evidence with respect to its claim that the mandatory exception in s. 16 of the *FOIP Act* applied to some of the information in those Records at Issue where it failed to meet its burden with respect to its claim of legal privilege. For the remaining expanded complement of Records at Issue to which s. 16 had been claimed [Doc Counts 181-850], the Public Body had failed to discharge its burden of proof and was ordered to give the Applicants access to those Records at Issue, subject to possible redactions.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 2(a), 6(2), 16, 16(1), 17, 21(1)(a), 24(1)(b), 25(1), 27(1)(a), 27(1)(b), 27(1)(c), 71(1), 72, 72(2)(a), 72(2)(b); *Crown's Right of Recovery Act*, S.A. 2009, c. C-35.

Authorities Cited: **AB:** Decision F2014-D-03/Order F2014-50; Interim Decision F2018-D-04/Order F2018-70; Order F2017-61.

Cases Cited: *Canadian Natural Resources Ltd. v. ShawCor Ltd.*, 2014 ABCA 289; *Solosky v. The Queen*, [1980] 1 SCR 821; *Lizotte v. Aviva Insurance Company of Canada*, 2016 SCC 52; *Calgary (Police Service) v. Alberta (Information and Privacy Commissioner)*, 2019 ABQB 109; *Alberta v. Suncor Inc.*, 2017 ABCA 221; *Alberta (Municipal Affairs) v. Alberta (Information and Privacy Commissioner)*, 2019 ABQB 436.

Other Sources Cited: Alberta Rules of Court, Part 5: ss. 5.7, 5.8, 5.10, 5.27; Part 10: ss. 10.7-10.8; *OIPC Privilege Practice Note (2016)*.

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I. BACKGROUND

[para 1] On November 22, 2018, I issued Interim Decision F2018-D-04/Order F2018-70 [2018 Interim Decision/Order]. Included as part of the 2018 Interim Decision/Order was an interim decision [which is referred to *infra* as the 2018 Interim Decision] that gave rise to the last phase of the Inquiry. The 2018 Interim Decision read as follows:

VII. INTERIM DECISION

...

*I have found that I am unable to decide whether the Public Body has properly relied on s. 27(1)(a) of the FOIP Act to claim solicitor client privilege and/or litigation privilege for the Records at Issue described at para. 9.B.i supra. The Public Body has not established that the information it withheld is legally privileged and, therefore, that it properly fits under the s. 27(1)(a) exception; though it remains possible that the information may be subject to legal privilege. Because of the fundamental importance of safeguarding against the erosion of privileged information, rather than order the disclosure of these records to the Applicants, pursuant to s. 72(2)(b) of the FOIP Act, I have decided to provide the Public Body with the opportunity to gather evidence and authority, presently absent from the 2017 Affidavit of Records, the Exhibited Index and other exhibits, with respect to its application of s. 27(1)(a) for both solicitor client privilege and litigation privilege for the Records at Issue described at para. 9.B.i supra [with the exception of Doc Count 179 which falls under the Order *infra*], and, thereafter, to make a decision in a manner that complies with the evidentiary requirements as set out in *ShawCor*, the Alberta Rules of Court and the OIPC Privilege Practice Note to meet its burden of proof to satisfy the test set out in *Solosky* and other case law referred to *supra*. Specifically, but not limited to, the Public Body should consider providing the following kinds of evidence: direct evidence from in-house counsel that is not general in nature but that addresses legal privilege for each specific Record at Issue, direct evidence from senior government officials attesting to those specific Records at Issue where they were providing legal advice versus policy advice, direct evidence from senior government officials attesting to those specific Records at Issue where they were acting in the role as a representative of a client public body versus when acting in the capacity as a solicitor in a 'solicitor client' relationship, where a Record at Issue involves conversations by non-solicitor representatives of a public body that may be part of a continuum discussing legal advice, an unredacted copy of the Exhibited Index of Records in camera (details of the Records at Issue that have been REDACTED described at para. 9.B.ii) and complete descriptors for the professional title or role for individuals named in the Records at Issue described at paras. 9.D.i and 9.D.ii supra where the Public Body continues to rely on s. 27(1)(a) or has populated the Privilege Column. For further details refer to the descriptors listed under Findings at para. 9 supra. The Interim Decision applies to all of the Records at Issue described at para. 9.B.i, except where the Public Body has met its burden of proof with respect to s. 16(1), discussed *infra*, as described at para. 9.C.ii.*

*In complying with this Interim Decision, there are some Records at Issue where I have found the Public Body has met its burden of proof for s. 27(1)(a) and in some instances met its burden for s. 16(1), described at para. 9.C.i. (marked with an asterisk). For other records, the Public Body has failed to meet its burden of proof for s. 27(1)(a) but has met its burden with respect to s. 16(1), described at para. 9.C.ii. To be clear, these Records at Issue will not fall under the Interim Decision as the application of either or both s. 27(1)(a) and/or s. 16(1) exceptions has been established (Refer to Order *infra*).*

There are other Records at Issue where the Public Body has failed to meet its burden of proof for either s. 27(1)(a) or s. 16(1), described at para. 9.C.iii, which Records at Issue will fall under the Interim Decision. The Public Body will be required to gather evidence and authority, specifically evidence sufficient to meet its burden of proof for s. 27(1)(a) if it continues to claim legal privilege (all of the Records at Issue described at para. 9.C.iii are included within para. 9.B.i) and/or to

meet the three-part test that the s. 16(1) mandatory exception requires. The latter evidence can be similar in kind to the evidence from the affected third parties provided regarding the first 564 pages of the records.

I reserve jurisdiction over this Inquiry with respect to the Interim Decision only. Following the 60 days, the Inquiry will resume, if necessary, to dispose of any outstanding issues in relation to the Public Body's compliance with the Interim Decision, specifically, its disposition regarding the Records at Issue, with respect to s. 27(1)(a) and/or s. 16, described supra at:

- para. 9.B.i (that includes Records at Issue described at para. 9.B.ii)
- para. 9.C.iii

In addition, the Public Body has failed to claim any exception(s) with regard to the Record at Issue [Doc Count 479], described at para. 9.E supra. This record was not available to the External Adjudicator. Under the Interim Decision, the Public Body will indicate the exception(s) it has relied on and applied to this Record at Issue and make a decision with respect to access. If the Public Body decides to release the record to the Applicants, that will end the matter.

In addition, where the Public Body has continued to claim the s. 17 mandatory exception [Doc Counts 60, 61, 794], described in the Table at para. 9.G supra, the Records at Issue will fall under the Interim Decision. The Public Body must withhold the redacted personal information pursuant to s. 17, unless that information is now public, as was the case for the personal information in the Records at Issue where it had removed its reliance on s. 17, which records (20 pages) were released with its 2017 PBSS, as described in the Table at para. 9.G, supra.

Because of the cautious approach I have taken with respect to legal privilege, the following Records at Issue will also fall under the Interim Decision:

- para. 9.B.iii (Public Body has claimed s. 24(1)(a) or s. 24(1)(b) and s. 27(1)(c)(ii) and not s. 27(1)(a) but has populated the Privilege Column)
- para. 9.B.iv (Public Body has claimed s. 24(1)(a) and s. 27(1)(c)(ii) and not s. 27(1)(a) but has populated the Privilege Column)
- para. 9.B.v (Public Body has shown them as RELEASED but the Privilege Column has been populated; for these records, in its response to the Interim Decision, the Public Body needs to simply confirm these records were intentionally released and that the claim of privilege in the Privilege Column was in error or is no longer being claimed.)

In complying with the Interim Decision, for those Records at Issue where it has already claimed other discretionary exceptions listed in the Exhibited Index in conjunction with s. 27(1)(a) (Records at Issue which of course have not been made available for review) and where it determines s. 27(1)(a) does not apply in whole or in part to some of the Records at Issue, the Public Body may elect to rely on other exceptions it has applied (as the s. 32 public interest override is not applicable). Where it chooses to do so, the Public Body will gather evidence and authority to support its claim for the other discretionary exceptions, such as s. 24(1), s. 25, s. 27(1)(b) and s. 27(1)(c). If the Public Body decides it cannot meet its burden of proof for any of the discretionary exceptions and decides to release some or all of these Records at Issue that will end the matter. If it decides to refuse to disclose some or all of these the Records at Issue, the Public Body will provide the Applicants with its decision with reasons, taking into account only the relevant considerations, a copy of which is also to be provided to the External Adjudicator.

The Public Body will have 90 days from the date it receives this Interim Decision to gather evidence and authority to support its claim of the mandatory and discretionary exceptions (and whatever exception it decides to apply to Doc Count 479) for the Records at Issue that fall under the Interim Decision. In complying with this Interim Decision, in addition to any other evidence it determines it needs to provide, the Public Body is to provide the additional evidence required to

meet the evidentiary standards detailed supra, by upgrading the (Exhibited) Index provided on January 17, 2018, which is to be accompanied by an Affidavit of Records. The Index provided to comply with this Interim Decision must retain all existing Columns that provide an accounting for the complete set of the Records at Issue. On or before the expiry of the 90 days, the Public Body will provide a decision to the Applicants, copied to me, explaining whether it is withholding the Records at Issue and the basis for that claim.

I reserve jurisdiction over this Inquiry with respect to the Interim Decision only. If the Records at Issue, which are the subject of this Interim Decision, are disclosed to the Applicants because the Public Body decides that the exceptions do not apply or it exercises its discretion to disclose, that will end the matter. Following the 90 days, the Inquiry will resume to decide if, based on the evidence proffered, the Public Body has satisfied its burden of proof for the Records at Issue identified supra that the discretionary exceptions have been properly relied on and properly applied and the mandatory exceptions require the Public Body to refuse access. Thereafter, I will make a final Order for Case Files #F6525 and #F6761.

The final disposition of those issues I am able to decide is set out in the Order that follows in Part VIII infra.

[2018 Interim Decision/Order, at paras. 190-200]

[para 2] The Public Body was given an extended period of time [90 days] in which to provide its response to the 2018 Interim Decision to reflect the size of the responsive Records at Issue and the anticipated time required to comply. To my knowledge (as no copy was received), the Public Body did not provide a decision to the Applicants where it had decided to withdraw its reliance on previously claimed exceptions, in particular s. 27(1), in order to comply with the terms of the 2018 Interim Decision. It is unnecessary for present purposes to review the most recent Order in this Inquiry, which is fully laid out in the 2018 Interim Decision/Order, at paras. 201-209. This Inquiry has had a complex history with three previous Orders: Decision 2014-D-03/Order F2014-50, Order F2017-61 and Decision F2018-D-04/Order F2018-70.

[para 3] The rationale for my decision to issue an interim decision was discussed in the 2018 Interim Decision/Order in the opening paragraph of the 2018 Interim Decision, as follows:

One preliminary point regarding the Interim Decision that follows. I am unwilling to issue an Order in this Inquiry requiring the disclosure of Records at Issue thereby placing potentially legally privileged information in jeopardy because the Public Body has failed to discharge its burden of proof to provide sufficiently clear, convincing, and cogent evidence that the information in any specific Record at Issue is subject to legal privilege. Therefore, I have made a decision to give the Public Body the opportunity to make a decision for specific Records at Issue pursuant to the Interim Decision where it has fallen short in satisfying its burden of proof. In some circumstances, other adjudicators have addressed this type of evidentiary gap through correspondence with the Public Body in advance of completing an inquiry. In this Inquiry, however, the 2017 Notice of Continuation and subsequent correspondence, detailed supra, already put the Public Body on notice of what evidence was required and, therefore, this Interim Decision is the next logical step in this Inquiry. [Refer to Order F2014-38/Decision F2014-D-02]

[2018 Interim Decision/Order, at para. 189]

[para 4] On February 1, 2019 the Public Body provided its response to the 2018 Interim Decision, within the time allotted, a copy of which it provided to the Applicants. The cover letter read as follows:

RE: Inquiry F6525/F6761: Public Body Response to Interim Decision F2018-D-04

We write with reference to your Interim Decision F2018-D-04, Order F2018-70 (the "Interim Decision") which was delivered November 22, 2018.

As part of the Interim Decision, you have extended the option to the Public Body to provide Additional Information and evidence where, in your view, it has fallen short of satisfying its burden of proof with respect to the claims of privilege over certain records.

Accordingly, please find enclosed a **PDF searchable copy of the Index of Records in this Inquiry, which has been revised to provide Additional Information with respect to the privilege claims made by the Public Body in the Inquiry (the "Revised Index")**.

Please note that other than the column called "Additional Information", the body of the Revised Index has not been substantively changed from the Index attached to the Affidavit of [in-house counsel] sworn November 15, 2017, or the updated Index provided to you on January 17, 2018. Please note that the order of the columns "People or Organizations To" and "People or Organizations From" have been switched in the Revised Index (from what was provided to you on January 17, 2018), as this occurred when the document was regenerated by our paralegal. This is simply a function of the software, and none of the substantive information in either column was altered by our office or our paralegal. We further confirm that the Revised Index forms part of the submissions of the Public Body in this Inquiry.

Please note that other than the Revised Index, no further evidence will be forthcoming from the Public Body, as we take the position that the information provided in the Revised Index is more than sufficient to support the claims of privilege over the Records at Issue in the Inquiry.

We understand that after reviewing this additional information you will then be in a position to provide a Final Decision with respect to the Inquiry and look forward to receipt of the Final Decision in due course.

Should you have any issues accessing the Revised Index please do not hesitate to contact our office directly.

[Emphasis added]

[para 5] On February 8, 2019 I issued an Extension Letter for the anticipated completion date of the Inquiry to October 31, 2019 to the Minister for the Public Body, copied to the parties.

II. RECORDS AT ISSUE

[para 6] The 2019 Revised Index provided by the Public Body in response to the 2018 Interim Decision on February 1, 2019 has been examined with respect to the Records at Issue that were the subject of the 2018 Interim Decision (plus some records not at issue for which the Public Body provided a submission, discussed *infra*). The Records at Issue that fall under the terms of the 2018 Interim Decision, described at paras. 9.B.i, 9.B.v, 9.C.iii and 9.E the 2018 Interim Decision/Order, are as follows:

I make the following findings in this Inquiry for Case Files #F6525 and #F6761:

...

9. *The 2017 Affidavit of Records together with its Exhibited Index of the Records at Issue (Exhibit A) and the other exhibits attached made up of the correspondence from the affected third parties (Exhibits B-F) have been carefully examined with respect to the descriptors for evidence for each Record at Issue for the following factors in relation to the claim of legal privilege:*

- *who are the parties to the communication*
- *are the professional roles of the correspondents specified*
- *is the Record at Issue dated and are Records at Issue listed and described to demonstrate a continuum of correspondence on sequenced dates*

- *is the exception(s) listed in the Exhibited Index the same as the exception(s) applied by the FOIP Director, Manager or Advisor when processing the access requests*
- *is affidavit evidence from the FOIP person who processed the access to information request available*
- *how is the Record at Issue described: do the descriptors include the grounds for the claim of privilege*
- *is any Record at Issue that has been released where s. 27(1)(a) has not been claimed described in the same manner*
- *does the descriptor refer to seeking legal advice or discussion of pending or ongoing litigation (without citing the legally privileged information or information that would reveal legally privileged information)*
- *is a person identified as a lawyer who is a party to the exchange described as acting in the capacity as a solicitor or as a policy advisor*
- *where identified as being a lawyer is information provided as to whether the person is acting as a 'solicitor' versus as a representative of the 'client' public body*
- *have any columns been REDACTED, and if yes, what information remains to describe the record*
- *does the descriptor in the Exhibited Index reveal that the specific Record at Issue is marked as privileged, confidential or private*
- *is there any other evidence that the Record at Issue was intended to be confidential*
- *do the descriptors include the function, role and status of the receiver and sender or any of the named individuals*
- *does the information provided make it clear when in-house counsel or senior government officials are providing legal advice (s. 27(1)(a)) versus policy advice (s. 24(1))*
- *has solicitor client privilege and/or litigation privilege been referred to in the Record at Issue (without citing the legally privileged information)*
- *has the Privilege Column been populated and, if so, by solicitor client privilege, litigation privilege or both*
- *have pleadings or Court documents been referred to or described that are part of pending or ongoing litigation*
- *is the information for one record in the Exhibited Index where the record has been withheld identical to information in another record that has been fully released and are the exceptions claimed the same*
- *does the 2017 Affidavit of Records support the evidence for each specific Record at Issue in the Exhibited Index*
- *what other evidence is submitted that may be relevant to the issue of legal privilege, for example in this Inquiry, the information provided in Exhibits B-F of the 2017 Affidavit of Records from the affected third parties that assists to identify parties to a communicate and to establish the exceptions claimed.*

When the 2017 Affidavit of Records and its Exhibited Index and other exhibits are read and reviewed together and these are measured against the backdrop of the legal requirements discussed supra, I make the following findings with respect to each specific Record at Issue as to whether, on a balance of probabilities, the Public Body is sufficiently clear, convincing, and cogent to meet its burden of proof under s. 71(1) of the FOIP Act.

...

B. Section 27(1)(a) (Insufficient Evidence of either Solicitor Client Privilege and/or Litigation Privilege)

[NOTE: Records at Issue over which solicitor client privilege and litigation privilege have been claimed where the Public Body has failed to meet its burden of proof with sufficiently clear, convincing, and cogent evidence that either legal privilege applies to meet the ShawCor evidentiary test to demonstrate the Solosky test for solicitor client privilege and/or part of a continuum of communications that fall within solicitor client and/or litigation privileges. Some of

the Records at Issue in this category include those showing REDACTED in one or more Columns. For all of these records because the space for document type or title is REDACTED, it is impossible to make a determination with respect to s. 27(1)(a). These Records at Issue will fall under the Interim Decision. In addition, the Title Column describes information that would not fall within legal privilege. In the case of one record marked with an asterisk, the Public Body has claimed only Litigation Privilege in the Privilege Column with no explanation. It appears that the senior government officials involved in the process of the selection of a law firm to pursue the CRRRA Litigation, who have been identified as lawyers, were acting in their senior administrative capacity and not as legal counsel to the Public Body. The affiant of the 2017 Affidavit of Records, at paras. 5-10, claimed these individuals were at all times acting as legal counsel but the affiant did not refer to any specific Records at Issue in making that claim. The Public Body did not submit any other evidence to support that claim, such as affidavits from the three senior government officials. In making determinations regarding the records under para. 9.B, I have taken the factors referred to supra into account. This section also provides details to assist the Public Body under the Interim Decision]

Referring to the Records at Issue by Doc Count number (Column 1) and where shown as more than one Record at Issue, the numbers are inclusive:

i. *Insufficient evidence of either solicitor client privilege and/or litigation privilege*

3-6, 9-10, 13-16, 19-20, 23, 40-42, 45-54, 57-59, 73-76, 80-81, 90-92, 97, 99-100, 105-107, 111-121, 150-151, 153, 155, 158-160, 162-164, 169-179, 184-194, 200, 205-206, 209-210, 217, 220-224, 229, 231, 233-234, 240, 243, 245-246, 249, 251-252, 256, 266, 276, 278-279, 294, 297, 299, 301, 303, 305, 311, 314, 319, 325, 330, 335-337, 341, 344, 346-347, 353, 355-356, 359, 361, 363-364, 367, 369-370, 379, 381, 383, 385, 387-389, 391, 393, 397, 399, 401, 404-411, 413-414, 418, 423, 426, 428, 430-431, 433-439, 441-442, 446-447, 449-453, 458-459, 461-473, 475-476, 478-480, 482-483, 487-494, 500-501, 505, 508, 511, 514, 517, 520, 522, 525-527, 529-531, 535, 537, 540-541, 543, 545-546, 550, 556, 559-560, 562-563, 565, 567-568, 570-571, 573, 575-576, 578, 582-583, 586, 589-592, 594, 597, 599, 602, 604, 606-607, 609-610, 612, 614, 616, 619-620, 623, 625, 627, 629, 631, 634, 637, 660, 662, 677, 696, 701, 724-725, 731, 736, 746-749, 751, 753-755, 758, 765, 769-775, 781, 791, 797-798, 805

ii. *Of the Records at Issue at para. 9.B.i supra, the following 54 records have information REDACTED in one or more Columns in the Exhibited Index:*

206, 221, 224, 229, 249, 266, 336-337, 359, 411, 413, 418, 433-434, 436-439, 441-442, 446-447, 449-453, 458-459, 461-472, 475, 505, 559, 575, 594, 610, 637, 696, 724-725, 736, 749, 754

iii. *Records at Issue where Privilege Column populated but Public Body has claimed s. 24(1)(a) or s. 24(1)(b) and s. 27(1)(c)(ii) but not s. 27(1)(a) (Records not available to External Adjudicator):*

181-182

iv. *Records at Issue where Privilege Column populated but Public Body has claimed s. 24(1)(a) or NR but not s. 27(1)(a) (Records available to External Adjudicator):*

502, 532

v. *The following Records at Issue shown as RELEASED in 2017 Affidavit of Records Exhibited Index but where the Privilege Column populated with Litigation Privilege/Solicitor Client Privilege (excluding June 10, 2016 Records at Issue shown as released):*

152, 154, 212, 219, 230, 232, 239, 244, 248, 250, 254, 277, 280, 296, 298, 304, 312, 315, 320, 327, 342, 345, 348, 354, 357, 362, 365, 368, 371, 380, 382, 386, 390, 392, 398, 400, 415, 427, 499, 515, 521, 523, 528, 536, 542, 557, 566, 569, 572, 574, 577, 587, 598, 600, 613, 615, 624, 628, 630, 738, 764

C. Section 27(1)(a) (Legal Privilege) and s. 16(1) (Disclosure harmful to Third Party Business Interest) claimed

[NOTE: This section deals with Records at Issue where the Public Body has relied on and applied both s. 27(1)(a) discretionary exception and the s. 16(1) mandatory exception. For all the Records at Issue where the Public Body claimed s. 16(1), it also claimed legal privilege pursuant to s. 27(1)(a). This section is divided into three parts. The first subsection lists the Records at Issue where the Public Body has applied both s. 27(1)(a) and s. 16(1), has met its burden of proof under s. 27(1)(a) and, in some cases s. 16(1), and, therefore, the Records at Issue do not fall under the Interim Decision. The second subsection lists the Records at Issue where the Public Body has failed to meet its burden of proof under s. 27(1)(a) but has met its burden of proof under s. 16(1) based on exhibited evidence from the affected third parties. These Records at Issue also do not fall under the Interim Decision. The third subsection is where the Public Body has failed to meet its burden of proof for both s. 27(1)(a) and s. 16(1) and, therefore all these Records at Issue will fall under the Interim Decision. It is important to remember that at the time the evidence was prepared by the affected third parties in August 2012, the range of the pages for the Records at Issue was 1-564 pages [Doc Counts 1-179].]

Referring to the Records at Issue by Doc Count number (Column 1) and where shown as more than one Record at Issue, the numbers are inclusive:

...

- iii. Records where the application of s. 27(1)(a) has not been established and the Public Body has failed to meet its burden of proof under s. 16(1). Note that for these Records at Issue where the Public Body has claimed s. 16(1), some of the records could not have been provided to the affected third parties as they did not form part of the Records at Issue in August 2012 [In 2012 Records at Issue did not include Doc Counts 180-805]. For the remainder, the burden of proof has not been met based on the evidence of the descriptors in the 2017 Affidavit of Records Exhibited Index and in the exhibited letters from the affected third parties. These Records at Issue will fall under the Interim Decision:*

80, 118-121, 158-160, 178, 184-194, 205, 210, 217, 223, 231, 234, 243, 246, 249, 252, 256, 266, 276, 279, 294, 297, 301, 311, 314, 319, 325, 341, 344, 347, 353, 356, 361, 364, 367, 370, 379, 381, 383, 385, 389, 391, 397, 399, 414, 426, 430, 434, 436-439, 441, 447, 449, 451, 453, 459, 462, 466, 468, 475, 520, 522, 527, 535, 541, 545, 550, 556, 560, 562-563, 565, 568, 571, 576, 586, 597, 599, 612, 614, 627, 629, 701, 731, 749

...

E. Records at Issue where the Public Body has failed to claim any exception(s) for the Record at Issue

[NOTE: This Record at Issue has not been provided to the External Adjudicator. The Public Body has failed to claim any exception in the 2017 Affidavit of Records Exhibited Index, including in either the Section(s) of the Act Column or in the Privilege Column, both of which are blank. This Record at Issue will fall under the Interim Decision. There are no redactions for this record and the descriptors match those of many other Records at Issue where legal privilege has been claimed.]

Referring to the Record at Issue by Doc Count number (Column 1):

479

[2018 Interim Decision/Order, at para. 185]

[para 7] The Doc Counts at para. 9.C.i and 9.C.ii at para. 185 of the 2018 Interim Decision/Order have not been reproduced here as they are not Records at Issue. The Public Body has provided “*Additional Information*” for some of these records, which will be discussed under the Table *infra*. I turn now to the issues.

III. ISSUES IN THE INQUIRY

[para 8] There are three issues to consider at this stage of the Inquiry with respect to the Public Body’s submission in response to the 2018 Interim Decision, which are as follows:

Issue #1

- *Whether the Public Body met its burden of proof under s. 71(1) of the FOIP Act by providing sufficiently clear, convincing, and cogent evidence to comply with the legal and evidentiary terms set out in the 2018 Interim Decision with respect to its reliance on s. 27(1)(a) of the FOIP Act;*

Issue #2

- *Whether the Public Body’s decision to submit the “Additional Information” in the newly added Column of the 2019 Revised Index without providing a supplementary/correcting Affidavit of Records impacts on the weight to be given to the new evidence; and*

Issue #3

- *Whether the Public Body has met its burden of proof by providing sufficiently clear, convincing, and cogent evidence to comply with the legal and evidentiary terms set out in the 2018 Interim Decision with respect to its claim that the mandatory exception in s. 16 of the FOIP Act applied to some of the Records at Issue.*

IV. DISCUSSION OF ISSUES

- A. Issue #1: Whether the Public Body met its burden of proof under s. 71(1) of the FOIP Act by providing sufficiently clear, convincing, and cogent evidence to comply with the legal and evidentiary terms set out in the 2018 Interim Decision with respect to its reliance on s. 27(1)(a) of the FOIP Act.**

[para 9] The Public Body provided one submission in response to the terms of the 2018 Interim Decision, reproduced *supra*. The submission included the 2019 Revised Index to which the Public Body added a whole new Column entitled “*Additional Information*.” The Public Body indicated that other than the addition of the Additional Information Column, the 2019 Revised Index did not substantively change the content of the body of the 2017 Exhibited Index attached to the 2017 Affidavit of Records and/or the updated Index provided on January 17, 2018. It states the reversal in the order of other columns was simply a function of the software, did not affect their content and occurred when the 2019 Revised Index was regenerated by its paralegal.

[para 10] The following describes the kinds of information submitted by the Public Body in the new Additional Information Column added to the 2019 Revised Index:

- supplementary evidence to provide a more detailed description for specific Records at Issue including descriptors of parties to the record (including names and professional titles) and more detail about the nature of the communication for each;
- new information for the affected Record at Issue where the descriptions had previously been REDACTED in one or more Columns in the 2017 Exhibited Index to the 2017 Affidavit of Records; and

- corrections of errors for records (not at issue) and for Records at Issue where the Public Body removed and/or replaced exceptions on which it was relying for records (not at issue) and for specific Records at Issue.

[para 11] The first issue is with respect to the Public Body's reliance on s. 27(1)(a) in claiming legal privilege over the Records at Issue as set out in the 2018 Interim Decision. Section 27(1)(a) of the *FOIP Act* reads as follows:

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,

[para 12] In reviewing the Public Body's submission, I have been cognizant of a recent decision in the Court of Queen's Bench of Alberta, which laid out a useful list of questions to consider with respect to the issue of legal privilege. On February 19, 2019, Mr. Justice Hall released a decision in *Calgary (Police Service) v. Alberta (Information and Privacy Commissioner)*, in which he outlined a series of questions to be asked to test for legal privilege for each disputed Record at Issue, in the case before him, as follows:

Having heard counsel's submissions and reviewed relevant case law, I have determined, in this case, that the appropriate test for privilege in respect of each of the disputed records, is as follows:

- 1) *Is there a communication between a solicitor and a client?*
- 2) *Does the communication entail the seeking, giving or receiving of legal advice?*
- 3) *Is the communication intended by the parties to be confidential?*
- 4) *Is the lawyer acting as a lawyer?*
- 5) *What was the purpose for which the record came into existence?*
- 6) *Is the particular communication part of a continuum in which legal advice is given?*
- 7) *Does the particular communication reveal that legal advice has been sought or given?*
- 8) *If there is any privileged information, can it be reasonably severed from the rest of the record, without revealing the privilege?*

[*Calgary (Police Service) v. Alberta (Information and Privacy Commissioner)*, 2019 ABQB 109, at para. 6]

[para 13] I have found Justice Hall's list of questions instructive in reviewing the evidence submitted by the Public Body in response to the 2018 Interim Decision. I have emulated the format adopted by Mr. Justice Hall to lay out my Findings *infra* for each Record at Issue: identify the Record at Issue (by page number or Doc Count) and make a Finding. In this case, in addition, I have added an Order for each Record at Issue incorporating all three into the Table *infra*. In making a Finding with respect to whether the Public Body has met its burden of proof that it properly *relied* on legal privilege for each specific Record at Issue where it has been claimed under s. 27(1)(a) of the *FOIP Act*, I have also taken into account the Discussion regarding legal privilege set out in the 2018 Interim Decision/Order [Refer to paras. 59-100]. For many of the Records at Issue that fall under the terms of the 2018 Interim Decision, I find the Public Body has met its burden of proof under s. 71(1) of the *FOIP Act* by providing sufficiently clear, convincing, and cogent evidence to comply with the terms set out in the 2018 Interim Decision with respect to its reliance on s. 27(1)(a). The Order for these Doc Counts reads "*Properly withheld as privileged*" in the Table *infra*. Where the Public Body has met its burden of proof that it has properly relied on s. 27(1)(a), it is unnecessary to consider the exercise of its discretion as that was decided in the 2018 Interim Decision/Order [Refer to paras. 101-108]. As I stated in the 2018 Interim Decision/Order:

As discussed *supra*, the first step is whether proper reliance has been placed on s. 27(1)(a). In turning to the second step, review of discretion, the Public Body cited Order F2010-007, which reads, in part, as follows:

Section 27(1)(a) states that the head of a public body may refuse to disclose any information that is subject to any legal privilege, including solicitor-client privilege. As a result, section 27(1)(a) is discretionary, given that the head is not required by the FOIP Act to withhold information subject to legal privilege.

In *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, the Supreme Court of Canada commented on the authority of the Ontario Information and Privacy Commissioner to review the way in which the head of a public body exercises discretion to withhold information in response to an access request.

We view the records falling under the s. 19 solicitor-client exemption differently. Under the established rules on solicitor-client privilege, and based on the facts and interests at stake before us, it is difficult to see how these records could have been disclosed. Indeed, Major J., speaking for this Court in *McClure*, stressed the categorical nature of the privilege:

... solicitor-client privilege must be as close to absolute as possible to ensure public confidence and retain relevance. As such, it will only yield in certain clearly defined circumstances, and does not involve a balancing of interests on a case-by-case basis. [Emphasis in original]

Accordingly, we would uphold the Commissioner's decision on the s. 19 claim.

...

No case-by-case analysis or balancing of interests or rights is necessary or appropriate with respect to s. 27(1)(a) where proper reliance has been demonstrated. For those Records at Issue where, based on the evidence submitted, I am able to decide, on a balance of probabilities, that the Public Body has properly relied on solicitor client privilege and/or litigation privilege, detailed under Findings at para. 9.A *infra*, I find the Public Body has properly applied the s. 27(1)(a) exception by exercising its discretion to refuse to [give] access to the Applicants as to do so is in the public interest. **This will apply equally for those Records at Issue that fall under the Interim Decision if the Public Body successfully meets its burden of proof to demonstrate that s. 27(1)(a) applies for those Records at Issue where it has failed to do so.**

[2018 Interim Decision/Order, at paras. 104 and 108]

[Emphasis added]

[para 14] Where the Public Body has failed to meet its burden of proof with respect to its reliance on s. 27(1)(a), the Order for these Doc Counts reads "*Producible*" or "*Producible [possible redactions]*" in the Table *infra*. In making a Finding that the Public Body has or has not met its burden of proof with respect to its claim to legal privilege for some of the Records at Issue, it is important to discuss some of the evidentiary issues that arose.

[para 15] I begin with examples of where new evidence has been added to the 2019 Revised Index. In this Inquiry, there are a total of 54 Records at Issue, where information had been REDACTED in the 2017 Exhibited Index attached to the 2017 Affidavit of Records. The Public Body relied on s. 27(1)(a) for all of these Records at Issue and, therefore, they were not made available to review. These Records at Issue are all subject to the terms of the 2018 Interim Decision, at para. 190:

206, 221, 224, 229, 249, 266, 336, 337, 359, 411, 413, 418, 433, 434, 436, 437, 438, 439, 441, 442, 446, 447, 449, 450, 451, 452, 453, 458, 459, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 475, 505, 559, 575, 594, 610, 637, 696, 724, 725, 736, 749, 754

[2018 Interim Decision/Order, at para. 185, at 9.B.ii]

[para 16] For all but one of these Records at Issue [Doc Count: 475], I have found that the “*Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.*” This relates to a question I raised in the 2018 Interim Decision/Order: has the REDACTED information not been made available to me because it would reveal legally privileged information? In its 2017 PBSS when referring to the 2017 Affidavit of Records, the Public Body submitted that certain information had been REDACTED from the 2017 Exhibited Index because it would allow a party to ascertain the content of the privileged information [Refer to the 2018 Interim Decision/Order, at para. 49]. I find that on a review of the “*Additional Information*” provided for the REDACTED Records at Issue, the answer to the question is ‘no’ in all cases: it does not reveal privileged information. I appreciate that the “*Additional Information*” in the 2019 Revised Index may not, in all instances, be the exact text that was REDACTED. Without the records available, I have no way of determining that. But this raises a follow-up question: why was the text put in the 2017 Exhibited Index and then REDACTED in the first place? In lieu of redacting the Index of the Records at Issue, the Public Body could have provided the “*Additional Information*” it submitted in response to the 2018 Interim Decision in order to establish that the Applicants have no right of access to each specific Record at Issue by meeting its burden of proof pursuant to s. 71(1) of the *FOIP Act* at some point earlier in this Inquiry.

[para 17] The Additional Information Column has been populated with new information, which may or may not quote, paraphrase or summarize what has been REDACTED. What the new information in the Additional Information Column appears to do is describe relevant details about the communication in the specific record without disclosing any legally privileged information. It is important to recall what was said in the Discussion in the 2018 Interim Decision/Order: there was not one example where the Affiant of the 2017 Affidavit of Records attested to a *specific* record or provided information as to why information for a specific Record at Issue had been REDACTED. This highlights the fact that some of the “*Additional Information*” amounts to unsworn evidence as there is no way for me to confirm how the evidence in the Additional Information Column relates to what has been REDACTED: what did the Affiant of the 2017 Affidavit of Records actually attest to? It is acknowledged that evidence in quasi-judicial hearings need not be in affidavit form. In this case, however, it is the index exhibited to the 2017 Affidavit of Records that has been revised, which when submitted as the 2017 Exhibited Index, was sworn evidence. The issue regarding information that had been REDACTED in the 2017 Exhibited Index provided by the Public Body was fully discussed in my 2018 Interim Decision/Order [Refer to paras. 70-83].

[para 18] Who may have prepared the Records at Issue and the Index for the Records at Issue may have changed over time: the FOIP Director [2014 PBIS at Tab 3], the Affiant of the 2017 Affidavit of Records [in-house counsel] and/or a paralegal. This observation is not a criticism as it is up to a public body as to who manages its records and prepares its documentation. What bears attention, however, is the weight to be given to the “*Additional Information*” in the 2019 Revised Index. The Public Body did not indicate who prepared, revised and/or amended the 2019 Revised Index and simply indicated it was regenerated by its paralegal. It is, in my opinion, important to keep in mind, given the significance of legal privilege, that the Affidavit of Records and its accompanying Index form the foundation of the evidence the Public Body must provide in order to meet its burden of proof to establish, on a balance of probabilities, it has properly relied on s. 27(1)(a) of the *FOIP Act* with respect to its claim of legal privilege for specific Records at Issue.

[para 19] The Public Body submits that, other than adding in the Additional Information Column, the 2019 Revised Index has not substantively changed the 2017 Exhibited Index attached to the 2017 Affidavit of Records and/or the updated Index provided on January 17, 2018, a submission I do not find persuasive. The fact is that the evidence in the Additional Information Column, in addition to providing new information, also amends/changes information in columns in the previously submitted 2017 Exhibited Index. In addition to the discussion *supra* regarding new evidence to replace the REDACTED parts of the 2019 Revised Index, the fact is that the Public Body has acknowledged its errors with respect to s. 27(1)(a): by adding in a new claim to s. 27(1)(a) or withdrawing its reliance on s. 27(1)(a) for specific Records at Issue, details of which are discussed here and outlined in the Table *infra*. All of these Records at Issue fell under the terms of the 2018 Interim Decision [Refer to the 2018 Interim Decision, at paras. 189-200], the Doc Counts for which are reproduced at para. 6 *supra*. Of particular importance is

how the 2019 Revised Index has been changed with respect to the Public Body's reliance on s. 27(1)(a) in claiming legal privilege for specific Records at Issue. The following provides an overview of relevant examples:

A. Public Body has *added* its reliance on s. 27(1)(a):

Doc Counts: 181, 182, 479

[NOTE: The Additional Information for Doc Counts 181 and 182 both indicate "*the Public Body is also relying on FOIP exceptions s. 27(i)(a) for this record.*" Because there is no such exception, I have treated this as a typographical error meant to read s. 27(1)(a).]

B. Public Body has *withdrawn* its reliance on s. 27(1)(a):

Doc Counts: 152, 154, 183, 212, 219, 230, 232, 239, 244, 248, 250, 254, 277, 280, 296, 298, 304, 312, 315, 320, 327, 342, 345, 348, 354, 357, 362, 365, 368, 371, 380, 382, 386, 390, 392, 398, 400, 415, 427, 499, 515, 521, 523, 528, 536, 542, 557, 566, 569, 572, 574, 577, 587, 598, 600, 613, 615, 624, 628, 630, 738, 764

[para 20] The 2019 Revised Index submitted in response to the 2018 Interim Decision also contained errors or omissions including:

A. Public Body failed to provide *any* Additional Information for Records at Issue subject to the terms of the 2018 Interim Decision

There are a total of 72 Records at Issue subject to the terms of the 2018 Interim Decision where the Public Body failed to submit *any* Additional Information in the 2019 Revised Index. By doing so, with two exceptions, the Public Body has, as a result, failed to meet its burden of proof that it properly relied on s. 27(1)(a) of the *FOIP Act*:

Doc Counts: 5, 9, 10, 14, 15, 16, 179, 205, 210, 217, 222, 223, 231, 243, 246, 252, 256, 276, 279, 297, 301, 311, 314, 319, 325, 341, 344, 347, 353, 356, 361, 364, 367, 370, 379, 381, 385, 387, 388, 389, 391, 397, 399, 414, 423, 426, 428, 430, 520, 522, 527, 530, 541, 550, 556, 562, 565, 568, 571, 576, 586, 597, 599, 604, 612, 614, 627, 629, 751, 753, 754, 755
[NOTE: There are two exceptions: Doc Counts: 423 and 754 discussed in Findings *infra*.]

B. Public Body has provided Additional Information for records not subject to the terms of the 2018 Interim Decision: Not Records at Issue

There is a total of 2 records *not* at issue under the 2018 Interim Decision for which the Public Body has provided "*Additional Information.*"

Doc Counts: 79, 183

[para 21] Without considering it necessary to make a specific finding in this regard, I make the following observation: there is evidence to suggest that the Public Body may have adopted the "*blanket*" approach in claiming reliance on s. 27(1)(a) of the *FOIP Act* and/or populating the Privilege Column in its 2017 Exhibited Index in this Inquiry. Some of the deficiencies discussed *supra* support this observation and, therefore, it is important to note that this approach is contrary to the purpose set out in s. 2(a) of the *FOIP Act*: "*to allow any persons a right of access to the records ... subject to limited and specific exceptions as set out in this Act*" and to what the case law has held to be required. As I stated in the 2018 Interim Decision/Order:

The Public Body submitted that for all the Records at Issue where it claimed legal privilege, it intended to claim both solicitor client privilege and litigation privilege. At para. 9 of its 2017 PBSS, the Public Body explains this as follows:

In the case at hand almost all of the information that has been withheld by the Public Body in this inquiry has been done so on the basis of section 27(1)(a) of the Act - "information that is subject to any type of legal privilege, including solicitor client privilege." As set out in the affidavit of [name of in-house counsel], which includes an updated Index of Records (discussed further below), all of the records that have been withheld on the basis of legal privilege include both solicitor client and litigation privilege. This is because the records relate to communications between solicitor and client that entail the seeking or giving of legal advice that are intended to be confidential by the parties, and, all of which were prepared for the dominant purpose of prosecuting the CRRA Litigation.
[Emphasis added]

Where it has claimed s. 27(1)(a), the Public Body has applied both solicitor client privilege and litigation privilege to all of those Records at Issue in the Privilege Column of the Exhibited Index except for one Record at Issue where only litigation privilege was claimed [Doc Count 517]. In fact, the Public Body has claimed both legal privileges in the Privilege Column for Records at Issue where s. 27(1)(a) has not been claimed in the Section(s) of the Act Column of the Exhibited Index, as described under the Findings at paras. 9.B.iii, 9.B.iv, 9.B.v, and 9.D.ii infra.

Suncor cannot, merely by having legal counsel declare that an investigation has commenced, throw a blanket over all materials "created and/or collected during the internal investigation" or "derived from" the internal investigation, and thereby extend solicitor-client privilege or litigation privilege over them. This Court stated in ShawCor, at para 84, that "[b]ecause the question is the purpose for which the record was originally brought into existence, the mere fact that a lawyer became involved is not automatically controlling." And further, at para 87, the Court stated that "the purpose behind the creation of a record does not change simply because the record is forwarded to, or through, in-house counsel, or because in-house counsel directs that all further investigation records should come to him or her."

[Suncor, at para. 34]
[Emphasis added]

[2018 Interim Decision/Order, at paras. 92-93; Refer also to para. 50 and/or Tab A of the 2017 PBSS]
[Emphasis added]

[para 22] I fully understand that not all evidence submitted in quasi-judicial hearings needs to be in affidavit form. In this case, however, the 2017 Affidavit of Records and its 2017 Exhibited Index were submitted as sworn evidence from in-house counsel. The 2019 Revised Index submitted in response to the 2018 Interim Decision provided a significant amount of new evidence, which has been added to the 2019 Revised Index that in effect replaces or displaces evidence in the 2017 Exhibited Index attached to the 2017 Affidavit of Records, long after the latter was sworn. The new "Additional Information" evidence has been added into what has been submitted as the 2019 Revised Index, which has not been provided with an affidavit. I find that adding the "Additional Information" to the 2019 Revised Index amounts to the Public Body submitting new evidence in the Inquiry, which constitutes a substantive change to the foundational index exhibited to the Affidavit of Records. Based on that Finding, what requires discussion is the weight to be given to the "Additional Information" in the 2019 Revised Index when the Public Body has failed to provide that evidence in affidavit form: either by submitting a re-affirmed 2017 Affidavit of Records, with an amended exhibited 2019 Revised Index, to acknowledge and attest to the substantive additions/corrections to its 2017 Exhibited Index or by submitting a newly sworn Affidavit of Records to accompany the 2019 Revised Index. I find that the "Additional Information" is unsworn evidence submitted by the Public Body in the substantively 2019 Revised Index. This leads to a discussion of the next issue, to which I now turn.

B. Issue #2: Whether the Public Body’s decision to submit the Additional Information in the newly added Column of the 2019 Revised Index without providing a supplementary/correcting Affidavit of Records impacts on the weight to be given to the new evidence.

[para 23] It is, in my opinion, important to keep in mind that an exhibited index that is attached to an affidavit of records forms the foundation of the evidence provided by a public body to meet its burden of proof under s. 71(1) of the *FOIP Act* as to whether it has properly relied on legal privilege for each specific Record at Issue. This is particularly the case when the Records at Issue claimed to be legally privileged are not made available to an adjudicator for review. In its February 1, 2019 submission, the Public Body made it clear that *“the Index of Records in this Inquiry, ... has been revised to provide Additional Information with respect to the privilege claims made by the Public Body in the Inquiry.”* The new evidence, in the Additional Information Column that has been added to the 2019 Revised Index, has not been provided with a supporting affidavit. I find that adding the *“Additional Information”* to the 2019 Revised Index amounts to the Public Body submitting new unsworn evidence in the Inquiry, which evidence makes substantive changes *both* by providing new information in the Additional Information Column *and* by that information amending, correcting or changing information in *other* columns of the 2017 Exhibited Index and the 2019 Revised Index. Based on that Finding, what requires discussion is the weight to be given to the *“Additional Information”* in the 2019 Revised Index.

[para 24] I found it inexplicable as to why the Public Body failed to provide the new evidence with a supporting affidavit; such as, a supplementary or correcting Affidavit of Records with the *“Additional Information.”* It remains unclear why this step was not taken. No explanation was provided other than what the Public Body stated in its letter dated February 1, 2019, which correspondence is reproduced at para. 4 *supra*. In this case, the 2019 Revised Index with the Additional Information Column was submitted long after the sworn evidence in the 2017 Affidavit of Records from the in-house counsel Affiant. That means, by way of example, that the Affiant of the 2017 Affidavit of Records swore certain records were or were not subject to legal privilege, which claim has now been amended or substantively changed by the new evidence submitted. In my opinion, this demonstrates the need for a supplementary or correcting Affidavit of Records or, at the very least, sworn confirmation from the Affiant with respect to the *“Additional Information”* added to the 2019 Revised Index, which index prior to the revisions was exhibited to his/her 2017 Affidavit of Records [Refer to the discussion in the 2018 Interim Decision/Order, at para. 50, where the details of the evidence of the Affiant of the 2017 Affidavit of Records and its 2017 Exhibited Index reports that s/he attested to having reviewed all of the Records at Issue in the 2017 Exhibited Index and submits that the Public Body objects to produce the Records listed as subject to solicitor client privilege, litigation privilege or both].

[para 25] It is well understood that adjudicators delegated under the *FOIP Act* are not obliged to strictly adhere to the practice rules governing Court proceedings. But in response to the recent Supreme Court of Canada decisions about records over which legal privilege has been claimed not being producible, the Alberta Information and Privacy Commissioner [OIPC Commissioner], relying on the Alberta Rules of Court as adopted in the *ShawCor* decision, issued the *OIPC Privilege Practice Note (2016)*, which reads in part as follows:

*In Alberta (Information and Privacy Commissioner) v. University of Calgary, 2016 SCC 53 (CanLII), the Supreme Court of Canada (SCC) suggested that **the rules applicable to claims of solicitor-client privilege in the context of civil litigation apply to privilege claims in the context of access requests.** The SCC also cited Canadian Natural Resources Ltd. v. ShawCor Ltd., 2014 ABCA 289 (CanLII), 580 A.R. 265 as the relevant authority in Alberta. **In this case, the Alberta Court of Appeal discussed the application of Rules 5.7 and 5.8 of the Rules of Court (producible records, and records for which there is an objection to produce).** The Court stated (at paras. 42-43):*

...Therefore, in explaining the grounds for claiming privilege over a specific record, a party will necessarily need to provide sufficient information about that record that, short of disclosing privileged information, shows why the claimed privilege is applicable to it.

Depending on the circumstances, this may require more or less than the “brief description” contemplated under Rule 5.7(1)(b) although we expect that oftentimes the brief description will suffice.

Accordingly, **under either interpretation of the relevant Rules, a party must provide a sufficient description of a record claimed to be privileged to assist other parties in assessing the validity of that claim.** From this, it follows that all relevant and material records must be numbered and, at a minimum, briefly described, including those records for which privilege is claimed. As noted, though, this is subject to the proviso that the description need not reveal any information that is privileged.

This is the basis for the practice note for the provision of evidence by Respondents claiming solicitor-client privilege over records. The practice note also applies to litigation privilege on the basis of the significance attributed to that privilege by the SCC in *Lizotte v. Aviva Insurance Company of Canada*, 2016 SCC 52.

[OIPC Privilege Practice Note (2016), at p. 1]

[Emphasis added]

[para 26] This points to how both the Courts and the OIPC Commissioner have turned to the Alberta Rules of Court as the legal and logical source for the rules governing the provision of evidence. As the *OIPC Privilege Practice Note (2016)* states the “(SCC) suggested that the rules applicable to claims of solicitor-client privilege in the context of civil litigation apply to privilege claims in the context of access requests.” On that basis, I consider it appropriate to turn to the Alberta Rules of Court for guidance in this situation where new evidence with respect to the Public Body’s claim of legal privilege has been submitted. Submission of the “*Additional Information*” in this Inquiry may be seen as analogous or similar to when a new, relevant and material record arises in a proceeding, [Alberta Rule of Court 5.10], which requires a supplementary Affidavit of Records, or when a person questioned on an Affidavit of Records provides an incorrect or misleading answer as a result of new information [Alberta Rule of Court 5.27], which requires a correcting affidavit. The importance of affidavit evidence was brought to the attention of the Public Body in the 2017 Notice of Continuation of the Inquiry, dated September 27, 2017, referred to in the 2018 Interim Decision/Order, at para. 15, that read, in part, as follows:

...
In regard to your September 25, 2017 letter, I am heartened at the news that you will be reviewing the Records at Issue and that you propose to provide evidence respecting any legal privilege exception, which the Public Body intends to continue to claim. I can assure you that I have no interest in injuring or compromising valid claims to legal privilege. The 2014 Initial Submission from the Public Body, however, was deplete leaving me, as the ShawCor Court of Appeal of Alberta put it “blindfolded”: inadequate description of each page or bundle of records, unclear link between the particular grounds of legal privilege being claimed for each page or bundle of records, and insufficient information/evidence to assist me (without the Records at Issue over which legal privilege has been claimed being available to me) in assessing the validity of the claimed privilege. I encourage you to put your attention to all these aspects during your review of the records and preparation of the relevant affidavit evidence.

Should you, [name of new lawyer], on your review of the Records at Issue, discover that some of the pages of records do not fit within any legal privilege exception, I urge you to provide those pages to me, making clear any other exceptions on which the Public Body is continuing to rely for those pages. In addition, if you discover any pages of records where the Public Body no longer intends to rely on the claimed exceptions and is now prepared to disclose to the Applicants, I would invite you to do so.

I recognize as new counsel that at the outset you will require considerable time to get up to speed on, and to familiarize yourself with, this Inquiry file. The changing scope of the Records at Issue (initially 564 pages; now 2,353 pages in the Records of Issue left to review, remembering that the continuation of the Inquiry will not include the 35 pages in the June 10, 2016 Records at Issue,

which were the subject of Order 2017-61) and the numerous Indices produced by the Public Body have made this Inquiry particularly complex. In that regard, in the Notice of Continuation dated September 20, 2017, I attempted to highlight some of the details of these complexities, posing questions for the Public Body (refer to p. 5 of the Notice of Continuation). It is reasonable for me to conclude that given the present state of the January 2017 Index, [name of new lawyer], your plan to include a description of the Records at Issue, as set out in ShawCor, as part of the new affidavit evidence, will take some time. Also, importantly, given what I referred to as deplete submissions from the Public Body regarding the legal privilege exceptions on which it has relied (refer to pp. 6-8 of the Notice of Continuation, I laid out specific demands for evidence in line with the ShawCor decision and the Alberta Rules of Court, which I appreciate may require some time to organize and is, therefore, another important factor for me to consider. That being said, I need to be fair to all the parties: reaching a balance between your needs as new counsel for the Public Body with the interests of the Applicants whose access to information requests date back to 2012 and who have never, over the last 5 years, had the opportunity to respond to the kind of evidence you are proposing to submit.

...

[2018 Interim Decision/Order, at para. 15]
[Emphasis added]

[para 27] For some of the Records at Issue, the new evidence in the “Additional Information” in the 2019 Revised Index has provided descriptive information and detail, record by record, as required by the Solosky decision, which reads, in part, as follows:

... *privilege can only be claimed **document by document**, with each document being required to meet the criteria for the privilege ...*

[Solosky v. The Queen, [1980] 1 SCR 821, at p. 838; See also discussion of the ShawCor decision in the 2018 Interim Decision/Order, at para. 84]
[Emphasis added]

[para 28] The “Additional Information”, however, which adds new and amends existing evidence, has not been provided as a sworn exhibit to an Affidavit of Records. In order to be able to give the appropriate weight to the evidence in the Additional Information Column in the 2019 Revised Index, which amended or substantively changed evidence *throughout* the 2017 Exhibited Index, I turned to the Alberta Rules of Court for guidance. In this case, even when prompted to do so, the Public Body disregarded my request as if it considered a new affirmation or a reaffirmation an unnecessary step. This amounts to the Public Body submitting new evidence in the Inquiry in order to meet its burden of proof that it has properly relied on legal privilege pursuant to s. 27(1)(a) without an accompanying up-to-date affidavit of records and exhibited index. Given the importance of legal privilege as the primary issue in this Inquiry and the central role the 2017 Affidavit of Records and its 2017 Exhibited Index play in meeting its evidentiary burden *particularly where there are substantive changes to the evidence*, I find that it would have been reasonable for the Public Body to turn its attention to the Alberta Rules of Court for guidance and to have the Affiant re-affirm his/her 2017 Affidavit of Records, as amended by the 2019 Revised Index, or swear a supplementary Affidavit of Records attaching the 2019 Revised Index that contains the “Additional Information.”

[para 29] In this case, I do not consider it reasonable to totally discount the evidence in the Additional Information Column in the 2019 Revised Index simply because the Public Body failed to provide the new evidence in the form of an amended or supplementary Affidavit of Records. Rather, it was a question of the weight to be given to the new evidence. For some of the Records at Issue where the evidence in the Additional Information Column is sparse, submitting the 2019 Revised Index with an accompanying affidavit as sworn evidence, would have assisted the Public Body *vis à vis* its burden of proof. I have, however, considered the Public Body’s submissions in their totality, applying the evidentiary standard of a balance of probabilities, in order to make my Findings, record by record [Refer to 2018 Interim Decision/Order, at paras. 57 and 108]. The unsworn “Additional Information”, however, is being given less weight than it might otherwise be given because the Public Body failed to provide an amended or supplementary Affidavit of Records with its 2019 Revised Index: confirmation from the Affiant

that s/he could attest to the information populating the Additional Information Column in the 2019 Revised Index, as that evidence adds to, amends and/or corrects what the Public Body has submitted for each specific Record at Issue.

[para 30] I turn now to the final discussion regarding the evidence. Equally problematic to the evidence not being provided in affidavit form is the fact that the Public Body has failed to provide any or insufficient Additional Information for some of the Records at Issue contrary to the terms of the 2018 Interim Decision, in particular, *but not restricted to*, Records at Issue described in whole or in part as the “Contingency Fee Agreement” including CFA drafts. There are a total of 88 Records at Issue under the 2018 Interim Decision where the Public Body failed to submit any or insufficient Additional Information in the 2019 Revised Index and has, as a result, not met its burden of proof that it properly relied on s. 27(1), with the one exception noted [not identified as the CFA or related to the CFA], the breakdown for which Doc Counts is as follows:

A. No Additional Information for Records at Issue - identified as the CFA or draft CFA and where s. 16 has not been claimed by the Public Body:

Doc Counts: 179, 222

B. No Additional or Insufficient Additional Information for Records at Issue - identified as related to the CFA and where s. 16 has not been claimed by the Public Body:

Doc Counts: 387, 388, 428, 582, 602, 604, 791

C. No Additional or Insufficient Additional Information for Records at Issue - identified as the CFA or related to the CFA and where s. 16 has been claimed by the Public Body:

Doc Counts 205, 210, 217, 223, 231, 243, 246, 252, 256, 266, 276, 279, 294, 297, 301, 311, 314, 319, 325, 341, 344, 347, 353, 356, 361, 364, 367, 370, 379, 381, 385, 389, 391, 397, 399, 414, 426, 430, 475, 520, 522, 527, 541, 550, 556, 562, 563, 565, 568, 571, 576, 586, 597, 599, 612, 614, 627, 629

D. No Additional or Insufficient Information for Records at Issue - not identified as the CFA or related to the CFA and where s. 16 has not been claimed by the Public Body:

Doc Counts: 3, 5, 9, 10, 14, 15, 16, 99, 100, 423, 476, 488, 489, 490, 491, 492, 493, 494, 530, 583, 751, 753, 755

[NOTE: There is one Record at Issue [Doc Count 423] where Public Body did not populate the Additional Information Column but I found it met its burden of proof for s. 27(1), details of which are in the Findings *infra*.]

[para 31] The Public Body continued to treat any Record at Issue described as the CFA or a draft, in its entirety, as subject to legal privilege, for which the Public Body appeared to consider it unnecessary to provide any evidentiary base to substantiate that claim in the Additional Information Column [Refer to para. 28 *supra*]. The Public Body has continued to argue that the CFA in its entirety is subject to legal privilege.

[para 32] The issue of the CFA was discussed in the 2018 Interim Decision/Order [Refer to paras. 97-100]. It is recognized that there are competing authorities regarding contingency fee agreements, retainers and lawyers' bills *vis à vis* legal privilege. As a result, in this case, I specifically requested, but did not receive, evidence from the Public Body to support its position regarding the CFA. It is important to point out: the Alberta Rules of Court [Part 10 ss. 10.7-10.8] detail the *mandatory* particulars in order for a contingency fee agreement to be enforceable. Some of these may amount to template-type provisions in the CFA. No explanation was forthcoming from the Public Body as to why it failed to populate the Additional Information Column, other than to indicate it would not be doing so. Nor did the Public Body explain why it was unable to redact the legally privileged information from any of the CFA-related Records

at Issue, thus enabling it to fulfil its statutory obligation to provide access to the Applicants to as much information as possible, pursuant to s. 6(2) of the *FOIP Act*. As Justice Hall stated as one of his questions for the appropriate test for legal privilege in his decision that I referred to at para. 12 *supra*: “*If there is any privileged information, can it be reasonably severed from the rest of the record, without revealing the privilege?*” The Findings *infra* reflect the outcome of the Public Body, for the most part, *failing to provide any evidence* in the Additional Information Column for the Records at Issue subject to the terms of the 2018 Interim Decision described as the CFA or draft CFA.

[para 33] One concluding point with respect to the discussion regarding legal privilege. On examination of the contents of the Additional Information Column, the name and/or roles in the descriptors for people or organizations who are a party to the communication and the subject matter of that communication or document have been added for many Records at Issue. The reason for drawing attention to this fact is for the following reasons: first, in every instance where Additional Information has been provided, it is reasonable to assume all that information would have been available to the Public Body when the Inquiry began; second, none of it is information that would have disclosed legally privileged information; third, had the information been provided years ago, in many instances, it would have constituted sufficient evidence for the Public Body to meet its burden of proof in a more timely fashion; and fourth, providing this information years ago may have avoided these Records at Issue being the subject of the 2018 Interim Decision, which also contributed to the long life of this Inquiry.

[para 34] While being cautious in managing legally privileged information contained within Records at Issue is understandable and correct, the Public Body adopted a minimalist approach in preparing and providing evidence to establish it properly relied on s. 27(1)(a) of the *FOIP Act* up until its submission in response to the 2018 Interim Decision and, in some instances, including in that submission. The preferred approach, in my opinion, would be for the Public Body to bring the same vigour with which it claims to be protecting legally privileged records to producing sufficiently clear, convincing, and cogent evidence to meet its burden of proof under s. 71(1) of the *FOIP Act* that it has properly *relied* on s. 27(1)(a) for information that is subject to legal privilege in a timely fashion.

C. Issue #3: Whether the Public Body has met its burden of proof by providing sufficiently clear, convincing, and cogent evidence to comply with the legal and evidentiary terms set out in the 2018 Interim Decision with respect to its claim that the mandatory exception in s. 16 of the *FOIP Act* applied to some of the Records at Issue.

[para 35] I turn now to the issue of the Public Body’s reliance on s. 16. For ease, the relevant portion of para. 9.C.iii from the Findings in the 2018 Interim Decision/Order are reproduced here:

C. Section 27(1)(a) (Legal Privilege) and s. 16(1) (Disclosure harmful to Third Party Business Interest) claimed

[NOTE: This section deals with Records at Issue where the Public Body has relied on and applied both s. 27(1)(a) discretionary exception and the s. 16(1) mandatory exception. For all the Records at Issue where the Public Body claimed s. 16(1), it also claimed legal privilege pursuant to s. 27(1)(a). This section is divided into three parts. The first subsection lists the Records at Issue where the Public Body has applied both s. 27(1)(a) and s. 16(1), has met its burden of proof under s. 27(1)(a) and, in some cases s. 16(1), and, therefore, the Records at Issue do not fall under the Interim Decision. The second subsection lists the Records at Issue where the Public Body has failed to meet its burden of proof under s. 27(1)(a) but has met its burden of proof under s. 16(1) based on exhibited evidence from the affected third parties. These Records at Issue also do not fall under the Interim Decision. The third subsection is where the Public Body has failed to meet its burden of proof for both s. 27(1)(a) and s. 16(1) and, therefore all these Records at Issue will fall under the Interim Decision. It is important to remember that at the time the evidence was prepared by the affected third parties in August 2012, the range of the pages for the Records at Issue was 1-564 pages [Doc Counts 1-179].]

Referring to the Records at Issue by Doc Count number (Column 1) and where shown as more than one Record at Issue, the numbers are inclusive:

...
iii. Records where the application of s. 27(1)(a) has not been established and the Public Body has failed to meet its burden of proof under s. 16(1). Note that for these Records at Issue where the Public Body has claimed s. 16(1), some of the records could not have been provided to the affected third parties as they did not form part of the Records at Issue in August 2012 [In 2012 Records at Issue did not include Doc Counts 180-805]. For the remainder, the burden of proof has not been met based on the evidence of the descriptors in the 2017 Affidavit of Records Exhibited Index and in the exhibited letters from the affected third parties. These Records at Issue **will fall under the Interim Decision**:

80, 118-121, 158-160, 178, 184-194, 205, 210, 217, 223, 231, 234, 243, 246, 249, 252, 256, 266, 276, 279, 294, 297, 301, 311, 314, 319, 325, 341, 344, 347, 353, 356, 361, 364, 367, 370, 379, 381, 383, 385, 389, 391, 397, 399, 414, 426, 430, 434, 436-439, 441, 447, 449, 451, 453, 459, 462, 466, 468, 475, 520, 522, 527, 535, 541, 545, 550, 556, 560, 562-563, 565, 568, 571, 576, 586, 597, 599, 612, 614, 627, 629, 701, 731, 749

[Emphasis added]

[para 36] In addition, the 2018 Interim Decision made clear it at para. 193, that in addition to para. 9.C.iii *supra*, in complying with the decision, the Public Body was to provide a response with respect to the Doc Counts in para. 9.B.i *infra* with respect to those Records at Issue where s. 16 had also been claimed in the event it did not meet its burden of proof with respect to s. 27(1)(a). Pursuant to the terms of the 2018 Interim Decision, the Public Body was required to provide sufficiently clear, cogent, and convincing evidence to meet its burden of proof under s. 71(1) of the *FOIP Act* for both s. 27(1)(a) and s. 16 of the *FOIP Act*, which terms read as follows:

*In complying with this Interim Decision, there are some Records at Issue where I have found the Public Body has met its burden of proof for s. 27(1)(a) and in some instances met its burden for s. 16(1), described at para. 9.C.i. (marked with an asterisk). For other records, the Public Body has failed to meet its burden of proof for s. 27(1)(a) but has met its burden with respect to s. 16(1), described at para. 9.C.ii. To be clear, these Records at Issue will not fall under the Interim Decision as the application of either or both s. 27(1)(a) and/or s. 16(1) exceptions has been established (Refer to Order *infra*).*

There are other Records at Issue where the Public Body has failed to meet its burden of proof for either s. 27(1)(a) or s. 16(1), described at para. 9.C.iii, which Records at Issue will fall under the Interim Decision. The Public Body will be required to gather evidence and authority, specifically evidence sufficient to meet its burden of proof for s. 27(1)(a) if it continues to claim legal privilege (all of the Records at Issue described at para. 9.C.iii are included within para. 9.B.i) and/or to meet the three-part test that the s. 16(1) mandatory exception requires. The latter evidence can be similar in kind to the evidence from the affected third parties provided regarding the first 564 pages of the records.

*I reserve jurisdiction over this Inquiry with respect to the Interim Decision only. Following the 60 days, the Inquiry will resume, if necessary, to dispose of any outstanding issues in relation to the Public Body's compliance with the Interim Decision, specifically, its disposition regarding the Records at Issue, with respect to s. 27(1)(a) and/or s. 16, described *supra* at:*

- para. 9.B.i (that includes Records at Issue described at para. 9.B.ii)
- para. 9.C.iii

[2018 Interim Decision/Order, at paras. 191-193]

[para 37] In the 2018 Interim Decision/Order I discussed the s. 16 mandatory exception at paras. 111-130. The test for s. 16 was discussed at paras. 124-125, as follows:

Section 16(1) is a mandatory exception that obliges a public body to refuse access to information in a record where the disclosure of the information meets the three-part harms test. In order to demonstrate that this mandatory exception does, in fact, apply to the Records at Issue, the Public Body must provide evidence demonstrating, on a balance of probabilities, that all three conditions set out in the statute are met:

Order F2004-013 held that to qualify for the exception in section 16(1), a record must satisfy the following three-part test:

Part 1: Would disclosure of the information reveal trade secrets of a third party or commercial, financial, labour relations, scientific or technical information of a third party?

Part 2: Was the information supplied, explicitly or implicitly, in confidence?

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

[Order F2016-65, at para. 24 referring to Order F2005-011]

With respect to the outcomes referred to in Part 3 supra, in order to satisfy the harms test, there must be evidence that disclosure 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

[FOIP Act, s. 16(1)(i)-(iv)]

[2018 Interim Decision/Order, at paras. 124-125]

[para 38] For every Record at Issue where the Public Body has claimed s. 16, it has also relied on s. 27(1)(a) and, therefore, these records were not available for my review. In its response to the 2018 Interim Decision, the Public Body failed to provide any submissions or evidence in the Additional Information Column with respect to the mandatory exception in s. 16 of the *FOIP Act*, where it was required to do so under the terms of the 2018 Interim Decision. As its February 1, 2019 correspondence reads, the Public Body appears to have limited its submissions in response to the 2018 Interim Decision to legal privilege without providing evidence or authority with respect to s. 16, as required by the terms of the 2018 Interim Decision. It is on that basis that I now turn to the specifics with respect to the Findings regarding the s. 16 mandatory exception.

[para 39] The Public Body has not consistently claimed s. 16 for the CFA or drafts of the CFA. Examples are cited here simply to point out the inconsistencies in the Public Body's claim to s. 16 for Records at Issue purporting to be the CFA and/or a draft or an excerpt of a draft CFA. The Public Body does not provide an explanation for its inconsistent application of s. 16 to Records at Issue purporting to be CFA or CFA drafts. Other than the general assertions in its 2014 PBIS, the Public Body did not provide sufficiently clear, cogent and convincing evidence to meet the three-part test for s. 16. This is important because s. 16 is a mandatory exception, which means the Public Body is under a statutory duty to deny access to the Applicants to the Records at Issue where it meets its burden of proof that s. 16 applies. The following Doc Counts demonstrate the inconsistent claim to s. 16 (**not an exhaustive list but a sample only**):

Section 16 *not* claimed for CFA or draft CFA Doc Counts: 179, 222

Section 16 claimed for CFA or draft CFA Doc Counts: 205, 210, 217, 223, 231

[para 40] A brief reference to the history may be helpful. At para. 29 of the 2017 PBSS, the Public Body refers to the submissions received from affected third parties as Exhibits B-F of the 2017 Affidavit of Records. The Affiant swore that "[a]ll of the Third Parties identified in the records have been given notice of this inquiry, all of which have refused to consent to the disclosure of all or part of their information found within the records" [Refer to para. 50(18) of the 2018 Interim Decision/Order]. But as discussed in the 2018 Interim Decision/Order, the affected third parties identified by the Public Body were provided with notice of the access to information requests in 2012 by the FOIP Manager [Refer to the 2018 Interim Decision/Order, paras. 111-130 for full discussion regarding responses from the affected third parties]. The submissions exhibited to the 2017 Affidavit of Records were the third parties' responses regarding the copies of relevant Records at Issue containing their business information. This was, it must be remembered, when the complete Records at Issue involved Records at Issue numbered pages 1-564 from the original 2014 Index, which in the 2019 Revised Index are referred to as Doc Counts 1-179 [Doc Count 180 had already been released by the Public Body]. As discussed in the 2018 Interim Decision/Order, within this initial scope of Records at Issue, there were some Records at Issue where the Public Body failed to meet its burden for both s. 27(1)(a) and s. 16 [Refer to para. 9.C.iii], which, therefore, fell under the terms of the 2018 Interim Decision, the Findings for which are detailed in the Table *infra*.

[para 41] To my knowledge, the affected third parties have neither received Notice of the Inquiry nor have they provided any submissions to the full complement of the expanded scope of the Records at Issue [to include the added Doc Counts 181-805]. No revised Affidavit of Records with evidence from the affected third parties with respect to the application of s. 16 regarding the expanded scope of Records at Issue was submitted in response to the 2018 Interim Decision. Observations and Findings regarding the evidence from the affected third parties are detailed in the 2018 Interim Decision/Order, at paras. 123-130. It was in the 2017 Affidavit of Records that the Public Body first submitted the 2012 correspondence from some of the affected third parties, arguing up to that point that notice to affected third parties remained an outstanding issue, failing, at any point, to indicate that it had this evidence in hand. Without the Records at Issue to review, it was not possible to identify all of the affected third parties. The question to be decided is whether the Public Body has provided sufficiently clear, cogent and convincing evidence regarding its claim that s. 16 applies to the Records at Issue under the terms of the 2018 Interim Decision.

[para 42] The evidence from some of the affected third parties exhibited to the 2017 Affidavit of Records was sufficient for the Public Body to meet its burden of proof for s. 16 and, therefore, these Records at Issue formed part of the 2018 Interim Decision/Order [Refer to para. 185, para. 9.C.ii.], which made it clear these Records at Issue would not fall under the 2018 Interim Decision. As discussed at para. 185 of the 2018 Interim Decision/Order, the Records at Issue where the Public Body had not met its burden of proof for s. 27(1)(a) but had provided sufficiently clear, cogent, and convincing evidence with respect to s. 16, I confirmed the decision of the Public Body [Refer to the 2018 Interim Decision/Order, at paras. 202 and 203]. As laid out in the 2018 Interim Decision, the Public Body was to gather evidence and authority to meet its burden of proof for s. 16 for those Records at Issue, contained within the expanded scope of the Records at Issue [Doc Counts 1-850], which had not been part of the 2018 Interim Decision/Order and did fall under the terms of the 2018 Interim Decision. In its submissions in response to the terms of the 2018 Interim Decision, the Public Body failed to provide any evidence in the Additional Information Column with respect to its claim that the mandatory exception in s. 16 of the *FOIP Act* applied to some of the information, which the Public Body is under a statutory duty to withhold, and, as a result has failed to discharge its burden of proof. The totality of the evidence provided by the Public Body throughout the Inquiry [For discussion about s. 16 in the 2018 Interim Decision/Order refer to paras. 111-130] fell far short of meeting its burden to establish the three-part test for s. 16 (business interests of a third party). The results of the Public Body failing to meet its burden of proof with respect to s. 16 of the *FOIP Act* for the Records at Issue where it claims it applies are detailed in the Findings in the Table *infra*.

V. FINDINGS

[para 43] I turn now to the Findings for the final phase of the Inquiry. The Findings are limited solely to the specific Records at Issue stipulated in the 2018 Interim Decision. The evidence for each of these specific Records at Issue has been reviewed as it has been described by the Public Body in the multiple indexes submitted, summarized as follows:

- Index received August 6, 2014 as part of the 2014 Public Body Initial Submission
- Several indexes provided between June 10, 2016 to April 7, 2017 during the phase of the inquiry that dealt with the June 10, 2016 Records at Issue [For a list of these indexes refer to Appendix A of Order F2017-61], which included indexes reflecting the expanded scope of the Records at Issue
- Index (updated) received January 19, 2017 with copies of a portion of the Records at Issue provided to the External Adjudicator only
- 2017 Exhibited Index received November 15, 2017 attached to the 2017 Affidavit of Records as part of the 2017 Public Body Initial (supplementary) Submission
- Electronic searchable copy of 2017 Exhibited Index received on November 21, 2017
- Index (updated) received January 17, 2018 with the 2018 Public Body Rebuttal Submission
- 2019 Revised Index received February 1, 2019 in Public Body's response to the 2018 Interim Decision

[para 44] The Public Body made it clear in its response to the 2018 Interim Decision that the 2019 Revised Index is to form part of its submissions in the Inquiry and, therefore, all of the indexes submitted over the course of the Inquiry have been considered. For the purpose of adjudicating the Public Body's response to the terms of the 2018 Interim Decision in relation to the specific Records at Issue, it is the 2017 Exhibited Index (with the 2017 Affidavit of Records) and the 2019 Revised Index that have been given the greatest attention, the last in the list *supra* being the index into which the Public Body incorporated the Additional Information Column.

[para 45] The first issue to be decided is whether the Public Body has met its burden of proof to establish it has properly *relied* on s. 27(1)(a) of the *FOIP Act*, with respect to claiming either solicitor client privilege and/or litigation privilege. In answering the question, I have considered all of the evidence submitted by the Public Body including the "*Additional Information*" in the 2019 Revised Index despite the fact that the latter evidence has not been submitted in affidavit form. Throughout the 2019 Revised Index, in some instances, the Public Body has met its burden of proof for solicitor client privilege (some of which may also be protected by litigation privilege). For examples (***not an exhaustive list but a sample only***), refer to:

Doc Counts: 209, 220, 221, 224, 233, 234, 240, 245, 251, 335, 383, 393, 401, 433, 436, 438, 482, 483, 535, 573, 616, 619

[para 46] There are other instances, however, where the Public Body has not met its burden of proof for solicitor client privilege but it has met its burden of proof for litigation privilege. For examples (***not an exhaustive list but a sample only***) refer to:

Doc Counts: 4, 6, 19, 40, 45, 51, 53, 57, 59, 73, 169, 184, 229, 249, 266, 336, 435, 441

[para 47] In the Table that follows *infra*, the Order for each specific Record at Issue where the Public Body has, on a balance of probabilities, met its burden of proof that it has properly relied on s. 27(1)(a), reads as "*Properly withheld as privileged.*" For these Records at Issue, it is unnecessary to consider the exercise of its discretion as that was decided in the 2018 Interim Decision/Order [Refer to paras. 101-108]. These include all but one [Doc Count 475] of the 54 Records at Issue where the information in the 2017 Exhibited Index had been REDACTED, which are included in the Table *infra*, the Doc Counts for which are reproduced para. 14 *supra* [Refer to the 2018 Interim Decision/Order, at para. 9.B.ii]. For the other Records at Issue where the Public Body has, on a balance of probabilities, failed to

meet its burden of proof that it has properly relied on s. 27(1)(a), the Order for each of these specific Records at Issue is “*Producible.*” I have made an Order for some of these Records at Issue that reads “*Producible [possible redactions]*”, where it appears that the Record at Issue may contain some information protected by legal privilege but which record should be redacted so that the Public Body can provide access to the Applicants to the part of the information in the record not protected by legal privilege. The Findings and Order in the Table *infra* also address the answer to the second issue with respect to the application of s. 16 of the *FOIP Act* as discussed *supra*.

[para 48] The following Table contains a Findings and disposition for each of the specific Records at Issue that fall under the terms of the 2018 Interim Decision.

Findings for 2018 Interim Decision Records at Issue by Doc Count

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
|-----------|---|--|
| 3 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. | Producible |
| 4 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 5 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. | Producible |
| 6 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 9 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. | Producible |
| 10 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. | Producible |
| 13 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 14 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. | Producible |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
|-----------|---|--|
| 15 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. | Producible |
| 16 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. | Producible |
| 19 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. [See * NOTE at the end of this Table.] | Properly withheld as privileged |
| 20 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 23 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 40 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 41 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 42 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 45 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 46 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 47 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
|------------------|--|---|
| 48 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 49 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 50 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 51 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 52 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 53 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 54 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 57 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 58 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 59 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 73 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 74 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
|--|---|---|
| 75 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 76 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| [NOTE: Additional Information provided for Doc Count 79, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.] | | |
| 80 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Under the terms of the 2018 Interim Decision/Order [Refer to para. 9.C.iii], I found the Public Body had failed to meet its burden of proof pursuant to s. 16. | Properly withheld as privileged |
| [NOTE: Additional Information provided for Doc Count 81 in error as it is not a Record at Issue under the terms of the 2018 Interim Decision. Under the Findings in the 2018 Interim Decision/Order at para. 9.C.ii, I held the Public Body had met its burden of proof that Doc Count 81 had been properly withheld pursuant to s. 16.] | | |
| 90 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 91 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 92 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 97 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. [See * NOTE at the end of this Table.] | Properly withheld as privileged |
| 99 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. [See * NOTE at the end of this Table.] | Producible [possible redactions] |
| 100 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. [See * NOTE at the end of this Table.] | Producible [possible redactions] |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
|--|---|---|
| 105 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 106 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 107 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 111 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 112 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 113 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 114 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 115 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege because this Doc Count has been linked sufficiently to Doc Count 114, for which the Public Body has met its burden. | Properly withheld as privileged |
| [NOTE: Additional Information provided for Doc Count 116 in error as it is not a Record at Issue under the terms of the 2018 Interim Decision. Under the Findings in the 2018 Interim Decision/Order at para. 9.C.ii, I held the Public Body had met its burden of proof that Doc Count 116 had been properly withheld pursuant to s. 16.] | | |
| [NOTE: Additional Information provided for Doc Count 117 in error as it is not a Record at Issue under the terms of the 2018 Interim Decision. Under the Findings in the 2018 Interim Decision/Order at para. 9.C.ii, I held the Public Body had met its burden of proof that Doc Count 117 had been properly withheld pursuant to s. 16.] | | |
| 118 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 119 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
|--|---|--|
| 120 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 121 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| [NOTE: Additional Information provided for Doc Count 150 in error as it is not a Record at Issue under the terms of the 2018 Interim Decision. Under the Findings in the 2018 Interim Decision/Order at para. 9.C.ii, I held the Public Body had met its burden of proof that Doc Count 150 had been properly withheld pursuant to s. 16.] | | |
| 151 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 152 | The Public Body failed to acknowledge its error in populating the Privilege Column and did not confirm that it was or was not claiming privilege for this record that had already been released. | No Order: previously released by the Public Body |
| 153 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 154 | Additional Information provided for Doc Count 154, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order, at para. 9.C.v.], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 155 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 158 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 159 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 160 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege because this Doc Count has been linked sufficiently to Doc Count 159, for which the Public Body has met its burden. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
|-----------|--|--|
| | [NOTE: Additional Information provided for Doc Count 162 in error as it is not a Record at Issue under the terms of the 2018 Interim Decision. Under the Findings in the 2018 Interim Decision/Order at para. 9.C.ii, I held the Public Body had met its burden of proof that Doc Count 162 had been properly withheld pursuant to s. 16.] | |
| | [NOTE: Additional Information provided for Doc Count 163 in error as it is not a Record at Issue under the terms of the 2018 Interim Decision. Under the Findings in the 2018 Interim Decision/Order at para. 9.C.ii, I held the Public Body had met its burden of proof that Doc Count 163 had been properly withheld pursuant to s. 16.] | |
| | [NOTE: Additional Information provided for Doc Count 164 in error as it is not a Record at Issue under the terms of the 2018 Interim Decision. Under the Findings in the 2018 Interim Decision/Order at para. 9.C.ii, I held the Public Body had met its burden of proof that Doc Count 164 had been properly withheld pursuant to s. 16.] | |
| | [NOTE: Additional Information provided for Doc Count 169 in error as it is not a Record at Issue under the terms of the 2018 Interim Decision. Under the Findings in the 2018 Interim Decision/Order at para. 9.C.ii, I held the Public Body had met its burden of proof that Doc Count 169 had been properly withheld pursuant to s. 16.] | |
| | [NOTE: Additional Information provided for Doc Count 170 in error as it is not a Record at Issue under the terms of the 2018 Interim Decision. Under the Findings in the 2018 Interim Decision/Order at para. 9.C.ii, I held the Public Body had met its burden of proof that Doc Count 170 had been properly withheld pursuant to s. 16.] | |
| | [NOTE: Additional Information provided for Doc Count 171 in error as it is not a Record at Issue under the terms of the 2018 Interim Decision. Under the Findings in the 2018 Interim Decision/Order at para. 9.C.ii, I held the Public Body had met its burden of proof that Doc Count 171 had been properly withheld pursuant to s. 16.] | |
| | [NOTE: Additional Information provided for Doc Count 172 in error as it is not a Record at Issue under the terms of the 2018 Interim Decision. Under the Findings in the 2018 Interim Decision/Order at para. 9.C.ii, I held the Public Body had met its burden of proof that Doc Count 172 had been properly withheld pursuant to s. 16.] | |
| | [NOTE: Additional Information provided for Doc Count 173 in error as it is not a Record at Issue under the terms of the 2018 Interim Decision. Under the Findings in the 2018 Interim Decision/Order at para. 9.C.ii, I held the Public Body had met its burden of proof that Doc Count 173 had been properly withheld pursuant to s. 16.] | |
| | [NOTE: Additional Information provided for Doc Count 174 in error as it is not a Record at Issue under the terms of the 2018 Interim Decision. Under the Findings in the 2018 Interim Decision/Order at para. 9.C.ii, I held the Public Body had met its burden of proof that Doc Count 174 had been properly withheld pursuant to s. 16.] | |
| | [NOTE: Additional Information provided for Doc Count 175 in error as it is not a Record at Issue under the terms of the 2018 Interim Decision. Under the Findings in the 2018 Interim Decision/Order at para. 9.C.ii, I held the Public Body had met its burden of proof that Doc Count 175 had been properly withheld pursuant to s. 16.] | |
| | [NOTE: Additional Information provided for Doc Count 176 in error as it is not a Record at Issue under the terms of the 2018 Interim Decision. Under the Findings in the 2018 Interim Decision/Order at para. 9.C.ii, I held the Public Body had met its burden of proof that Doc Count 176 had been properly withheld pursuant to s. 16.] | |
| | [NOTE: Additional Information provided for Doc Count 177 in error as it is not a Record at Issue under the terms of the 2018 Interim Decision. Under the Findings in the 2018 Interim Decision/Order at para. 9.C.ii, I held the Public Body had met its burden of proof that Doc Count 177 had been properly withheld pursuant to s. 16.] | |
| 178 | Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
|---|---|--|
| 179 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Despite the fact this is one of the Records at Issue described as the CFA, s. 16 has <i>not</i> been claimed. [Refer to Order F2017-61, at paras. 136, 159, 161, 185 and 186.] In the 2018 Interim Decision/Order, the portion of Doc Count 179 that had been the subject of public comment had been ordered released. The remainder of Doc Count 179 remained as a Record at Issue [Refer to para. 6 <i>supra</i> .] | Producible [possible redactions] |
| 181 | Additional Information provided by the Public Body to correct its error in failing to claim s. 27(1)(a) in previous indexes by adding its reliance on s. 27(1)(a). It had populated the Privilege Column [Refer to the 2018 Interim Decision/Order, at para. 185 at para. 9.B.iii.] No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Other exceptions do not apply pursuant to Findings in the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order <i>supra</i> .] Section 16 not claimed. | Producible [possible redactions] |
| 182 | Additional Information provided by the Public Body to correct its error in failing to claim s. 27(1)(a) in the 2017 Exhibited Index by adding its reliance on s. 27(1)(a). It had populated the Privilege Column [Refer to the 2018 Interim Decision/Order, at para. 185 at para. 9.B.iii.] No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Other exceptions do not apply pursuant to Findings in the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order <i>supra</i> .] Section 16 not claimed. | Producible [possible redactions] |
| [NOTE: Additional Information provided for Doc Count 183, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.] | | |
| 184 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 185 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 186 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
|------------------|--|---|
| 187 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 188 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 189 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 190 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 191 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 192 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 193 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 194 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 200 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 205 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 206 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 209 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
|-----------|--|--|
| 210 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 212 | Additional Information provided for Doc Count 212, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 217 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 219 | Additional Information provided for Doc Count 219, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 220 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 221 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 222 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Despite the fact this is one of the Records at Issue described as the CFA, s. 16 has <i>not</i> been claimed. | Producible [possible redactions] |
| 223 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 224 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 229 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
|------------------|---|--|
| 230 | Additional Information provided for Doc Count 230, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 231 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 232 | Additional Information provided for Doc Count 232, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 233 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 234 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 239 | Additional Information provided for Doc Count 239, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 240 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 243 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 244 | Additional Information provided for Doc Count 244, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 245 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 246 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 248 | Additional Information provided for Doc Count 248, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 249 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 250 | Additional Information provided for Doc Count 250, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 251 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 252 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 254 | Additional Information provided for Doc Count 254, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 256 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 266 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 276 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 277 | Additional Information provided for Doc Count 277, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 278 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 279 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 280 | Additional Information provided for Doc Count 280, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 294 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 296 | Additional Information provided for Doc Count 296, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 297 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 298 | Additional Information provided for Doc Count 298, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 299 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 301 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 303 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 304 | Additional Information provided for Doc Count 304, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 305 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 311 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 312 | Additional Information provided for Doc Count 312, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 314 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 315 | Additional Information provided for Doc Count 315, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 319 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 320 | Additional Information provided for Doc Count 320, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 325 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 327 | Additional Information provided for Doc Count 327, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 330 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 335 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 336 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 337 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 341 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 342 | Additional Information provided for Doc Count 342, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 344 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 345 | Additional Information provided for Doc Count 345, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | Previously released |
| 346 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 347 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 348 | Additional Information provided for Doc Count 348, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 353 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 354 | Additional Information provided for Doc Count 354, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 355 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 356 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 357 | Additional Information provided for Doc Count 357, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 359 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 361 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 362 | Additional Information provided for Doc Count 362, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 363 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 364 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 365 | Additional Information provided for Doc Count 364, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 367 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 368 | Additional Information provided for Doc Count 368, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 369 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 370 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 371 | Additional Information provided for Doc Count 371, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| [NOTE: Additional Information provided by the Public Body for Doc Count 372, which is not a Record at Issue under the terms of the 2018 Interim Decision. Refer to para. 9.A in the 2018 Interim Decision/Order.] | | |
| 379 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 380 | Additional Information provided for Doc Count 380, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 381 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 382 | Additional Information provided for Doc Count 382, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 383 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 385 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 386 | Additional Information provided for Doc Count 386, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 387 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. | Producible |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 388 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. | Producible |
| 389 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 390 | Additional Information provided for Doc Count 390, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 391 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 392 | Additional Information provided for Doc Count 392, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 393 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 397 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 398 | Additional Information provided for Doc Count 398, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 399 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 400 | Additional Information provided for Doc Count 400, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 401 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 404 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 405 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege because this Doc Count has been linked sufficiently to Doc Count 404, for which the Public Body has met its burden. | Properly withheld as privileged |
| 406 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege because this Doc Count has been linked sufficiently to Doc Count 404, for which the Public Body has met its burden. | Properly withheld as privileged |
| 407 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege because this Doc Count has been linked sufficiently to Doc Count 404, for which the Public Body has met its burden. | Properly withheld as privileged |
| 408 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege because this Doc Count has been linked sufficiently to Doc Count 404, for which the Public Body has met its burden. | Properly withheld as privileged |
| 409 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege because this Doc Count has been linked sufficiently to Doc Count 404, for which the Public Body has met its burden. | Properly withheld as privileged |
| 410 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege because this Doc Count has been linked sufficiently to Doc Count 404, for which the Public Body has met its burden. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 411 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 413 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 414 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 415 | Additional Information provided for Doc Count 415, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 418 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 423 | No Additional Information provided by the Public Body to meet its burden of proof to establish legal privilege on the basis of s. 27(1)(a) but person referred to in the description for Doc Count 423 has been identified by name and professional role (lawyer) in the Additional Information for Doc Count 111 and therefore the Public Body has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege for this record. Section 16 not claimed. | Properly withheld as privileged |
| 426 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 427 | Additional Information provided for Doc Count 427, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 428 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. | Producible |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 430 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 431 | Additional Information provided for Doc Count 431, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 433 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 434 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 435 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 436 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 437 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 438 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 439 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 441 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 442 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 446 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 447 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 449 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 450 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 451 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 452 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 453 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 458 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 459 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 461 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 462 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 463 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 464 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 465 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 466 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 467 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 468 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 469 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 470 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 471 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 472 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 473 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 475 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 476 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. Described as coversheet for Doc Count 477 that is no longer a Record at Issue as it has already been released. | Producible |
| 478 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 479 | Additional Information provided by the Public Body to correct its errors in the 2017 Exhibited Index in which it had failed to specify any exceptions including s. 27(1)(a) and failed to populate the Privilege Column. [Refer to 2018 Interim Decision /Order at para. 184, para. 9.E]. The Public Body submitted that it was claiming both litigation privilege and solicitor client privilege; claiming s. 27(1)(a) along with other exceptions previously not claimed. Linked sufficiently to Doc Count 480 to rectify gap in Privilege Column. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 480 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 482 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 483 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege because this Doc Count has been linked sufficiently to Doc Count 482, for which the Public Body has met its burden. | Properly withheld as privileged |
| 487 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 488 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. Additional Information for this record refers to "providing advice" and not "legal advice." | Producible |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 489 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. Additional Information for this record refers to "providing advice" and not "legal advice." | Producible |
| 490 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. Linked to Doc Count 489 <i>supra</i> . | Producible |
| 491 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. Additional Information for this record refers to "providing advice" and not "legal advice." | Producible |
| 492 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. Linked to Doc Count 491 <i>supra</i> . | Producible |
| 493 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. Additional Information for this record refers to "providing advice" and not "legal advice." | Producible |
| 494 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. Linked sufficiently to Doc Count 493 <i>supra</i> . | Producible |
| 499 | Additional Information provided for Doc Count 499, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 500 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege because this Doc Count has been linked sufficiently to Doc Count 501, for which the Public Body has met its burden. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 501 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 502 | Additional Information provided for Doc Count 502, which is a Record at Issue under the terms of the 2018 Interim Decision [Refer to para. 196 at para. 9.B.iv of the 2018 Interim Decision/Order <i>supra</i>], the Public Body submits it is an attachment to Doc Count 501 that has been found to be subject to legal privilege, which means that it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 505 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 508 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege but only for some of the information in the Record (contents of lawyer's invoice may reveal legally privileged information). By the nature of the description, this Record at Issue may contain some information that is not protected by legal privilege and, therefore, it may be producible with the legally privileged information redacted. | Producible [possible redactions] |
| 511 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege but only for some of the information in the Record (contents of lawyer's invoice may reveal legally privileged information). By the nature of the description, this Record at Issue may contain some information that is not protected by legal privilege and, therefore, it may be producible with the legally privileged information redacted. | Properly withheld as privileged |
| 514 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Producible [possible redactions] |
| 515 | Additional Information provided for Doc Count 515, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 517 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 520 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 521 | Additional Information provided for Doc Count 521, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 522 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 523 | Additional Information provided for Doc Count 523, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 525 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 526 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 527 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 528 | Additional Information provided for Doc Count 528, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 529 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 530 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. | Producible |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 531 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 532 | Additional Information provided for Doc Count 532, which is a Record at Issue under the terms of the 2018 Interim Decision [Refer to para. 196 at para. 9.B.iv of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column and that because this record was categorized as “non responsive” it is not claiming any form of privilege over this record. | Producible |
| 535 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 536 | Additional Information provided for Doc Count 536, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 537 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 540 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 541 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 542 | Additional Information provided for Doc Count 542, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 543 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 545 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Linked sufficiently to Doc Count 544 held to be subject to legal privilege in the 2018 Interim Decision/Order. Refer to para. 9.A. | Properly withheld as privileged |
| 546 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege but only for some of the information in the Record (contents of lawyer's invoice may reveal legally privileged information). By the nature of the description, this Record at Issue may contain some information that is not protected by legal privilege and, therefore, it may be producible with the legally privileged information redacted. | Producible [possible redactions] |
| 550 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 556 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 557 | Additional Information provided for Doc Count 557, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 559 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 560 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 562 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 563 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Descriptions for Doc Count 563 as to HC Doc Date, Document Type and Document Title are exactly the same as Doc Counts 566, 569, 572, 577 and 613, which have all been released by the Public Body and for which Public Body has indicated in the Additional Information that the Privilege Column was populated in error. Section 16 claimed but burden of proof not met. | Producible |
| 565 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 566 | Additional Information provided for Doc Count 566, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 567 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 568 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 569 | Additional Information provided for Doc Count 569, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 570 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 571 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 572 | Additional Information provided for Doc Count 572, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 573 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 574 | Additional Information provided for Doc Count 574, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 575 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 576 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 577 | Additional Information provided for Doc Count 577, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 578 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 582 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. | Producible [possible redactions] |
| 583 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. Linked to Doc Count 582 <i>supra</i> . | Producible [possible redactions] |
| 586 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |

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| 587 | Additional Information provided for Doc Count 587, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 589 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege but only for some of the information in the record. Linked sufficiently to Doc Count 593 already found to be subject to legal privilege in the 2018 Interim Decision/Order, at para. 185 [Refer to 9.A]. By the nature of the description, this Record at Issue may contain some information that is publicly available and, therefore, it may be producible with the legally privileged information redacted. | Producible [possible redactions] |
| 590 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Linked sufficiently to Doc Count 593 already found to be subject to legal privilege in the 2018 Interim Decision/Order, at para. 185 [Refer to 9.A]. By the nature of the description, this Record at Issue may contain some information that is publicly available and, therefore, it may be producible with the legally privileged information redacted. | Producible [possible redactions] |
| 591 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Linked sufficiently to Doc Count 593 already found to be subject to legal privilege in the 2018 Interim Decision/Order, at para. 185 [Refer to 9.A]. By the nature of the description, this Record at Issue may contain some information that is publicly available and, therefore, it may be producible with the legally privileged information redacted. | Producible [possible redactions] |
| 592 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Linked sufficiently, as an attachment, to Doc Count 593 already found to be subject to legal privilege in the 2018 Interim Decision/Order, at para. 185 [Refer to 9.A]. By the nature of the description, this Record at Issue may contain some information that is publicly available and, therefore, it may be producible with the legally privileged information redacted. | Producible [possible redactions] |
| 594 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 597 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 598 | Additional Information provided for Doc Count 598, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 599 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 600 | Additional Information provided for Doc Count 600, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 602 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Linked indirectly but sufficiently to Doc Count 603 by reference to the ABJ page numbers (misplaced) in the Sections of the Act Column. Section 16 not claimed. | Producible [possible redactions] |
| 604 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. | Producible [possible redactions] |
| 606 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 607 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 609 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 610 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 612 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 613 | Additional Information provided for Doc Count 613, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 614 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 615 | Additional Information provided for Doc Count 615, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 616 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 619 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 620 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 623 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 624 | Additional Information provided for Doc Count 624, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 625 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

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| 627 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 628 | Additional Information provided for Doc Count 628, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 629 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. | Producible [possible redactions] |
| 630 | Additional Information provided for Doc Count 630, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 631 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 634 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 637 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 660 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 662 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 677 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 696 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
|------------------|---|--|
| 701 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 724 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 725 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 731 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 736 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 738 | Additional Information provided for Doc Count 738, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 746 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 747 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 748 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 749 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 751 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. | Producible [possible redactions] |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
|-----------|---|--|
| 753 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. | Producible [possible redactions] |
| 754 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege but persons referred to in the description for Doc Count 754 have been identified by name and professional role (lawyer) in other records and therefore the Public Body has met its burden of proof it properly relied on s. 27(1)(a) with respect to its claim of legal privilege for this record. | Properly withheld as privileged |
| 755 | No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Unidentified (possible lawyer) who is a party to the record is not described anywhere else in the 2019 Revised Index or in the 2017 Affidavit of Records (or any other index) and whose role is not identified. Section 16 not claimed. | Producible [possible redactions] |
| 758 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. By date and description, part of an ongoing exchange of emails with respect to litigation. | Properly withheld as privileged |
| 764 | Additional Information provided for Doc Count 764, which is a Record at Issue under the terms of the 2018 Interim Decision/Order [Refer to para. 196 of the 2018 Interim Decision/Order], the Public Body acknowledging its error in populating the Privilege Column. | No Order: previously released by the Public Body |
| 765 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Public Body only claimed Litigation Privilege in the Privilege Column. | Properly withheld as privileged |
| 769 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. By date and description, part of an ongoing exchange of emails with respect to litigation. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
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| 770 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. By date and description, part of an ongoing exchange of emails with respect to litigation. | Properly withheld as privileged |
| 771 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. By date and description, part of an ongoing exchange of emails with respect to litigation. | Properly withheld as privileged |
| 772 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. By date and description, part of an ongoing exchange of emails with respect to litigation. | Properly withheld as privileged |
| 773 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. By date and description, part of an ongoing exchange of emails with respect to litigation. | Properly withheld as privileged |
| 774 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. By date and description, part of an ongoing exchange of emails with respect to litigation. | Properly withheld as privileged |
| 775 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. By date and description, part of an ongoing exchange of emails with respect to litigation. | Properly withheld as privileged |
| 781 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |
| 791 | Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. The Additional Information indicates an executed copy of the CFA is attached to the email but the Page Cnt indicates 1 page. | Properly withheld as privileged |
| 797 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

| Doc Count | Findings | Order for Case Files #F6525 and #F6761 |
|-----------|---|--|
| 798 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege because this Doc Count has been linked sufficiently to Doc Count 797, for which the Public Body has met its burden. | Properly withheld as privileged |
| 805 | Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. | Properly withheld as privileged |

* **[NOTE:** A brief note regarding the other mandatory exception that has appeared in the indexes throughout the Inquiry. There are four Records at Issue that are subject to the terms of the 2018 Interim Decision where s. 17 continues to be in the Sections of the Act Column [Refer to Doc Counts 19, 97, 99 and 100], which claim was not amended or referred to in the Additional Information Column. These Records at Issue are marked with an asterisk in the Table *supra*. As the Public Body submitted that these four Records at Issue were also subject to legal privilege, the records were unavailable to review. In that regard, I refer back to the 2018 Interim Decision/Order at paras. 131-132 with respect to the Public Body's previous position *vis à vis* s. 17. During this phase of the Inquiry, the Public Body did not indicate whether or not it continued to claim s. 17 for the four Records at Issue and did not provide any submissions or "Additional Information" in order to meet its burden of proof in that regard [Refer also to Order F2017-61, at paras. 11 and 21(10)]. The Order for two of the subject Records at Issue is "Properly withheld as privileged." For the other two Records at Issue the Order is "Producible [possible redactions]" due to the uncertainty with respect to s. 17 because it is a mandatory exception.]

[para 49] The challenges in making a determination about whether exceptions apply to specific Records at Issue in the absence of having those records available to review are self-evident. For those Records at Issue where the Public Body has met its burden, I have made an Order that the Record has been "Properly withheld as privileged." For some of the Records at Issue where the Public Body has failed to meet its burden because it did not provide any or submitted insufficient "Additional Information", I have made an Order that the Record is "Producible." But for the some of the subject Records at Issue where the Public Body has not met its burden of proof, I have made an Order that the Record is "Producible [possible redactions]." This is for two reasons: first, the Order for the applicable Records at Issue is "Producible [possible redactions]" because the evidence was not sufficiently clear, convincing and cogent for the Public Body to meet its burden of proof for legal privilege, which had it done so, would have meant an Order confirming the Public Body's decision to withhold the Records at Issue in their entirety. The insufficiency of the evidence has been measured, in part, because the sparse evidence submitted is unsworn and thus given less weight than had it been submitted with a supporting Affidavit of Records; second, to avoid an ill-advised decision to order the Public Body to give access to the Applicants of potentially legally privileged information that may be contained within a Record at Issue [Refer to *Alberta (Municipal Affairs) v. Alberta (Information and Privacy Commissioner)*, 2019 ABQB 436]. Instead, when it complies with the Order, the Public Body will reconsider its decisions and provide access in part, appropriately redacting any information protected by legal privilege, in accordance with s. 72(2)(b) of the *FOIP Act*, while at the same time maximizing the information to which it provides access to the Applicants in accordance with s. 2(a) of the *FOIP Act*.

[para 50] In this Inquiry, I have considered all of the evidence and authorities submitted by the Public Body and the Applicants. This is a stand-alone Inquiry, which I have adjudicated, under the terms of my delegation from the OIPC Commissioner, in order to decide all questions of fact (reasonableness) and law (correctness) arising in this Inquiry, and, thereafter, to make the Order *infra*. The scope of the adjudication is based on the Applicants' access to information requests, the specific responsive Records at Issue identified by the Public Body in the 2019 Revised Index (and other indexes submitted over the course of the Inquiry) and the issues arising therefrom. No submissions or evidence from any other inquiries regarding other access to information requests related to a similar subject matter have been taken into account, as to do so would, in my opinion, be inappropriate.

VI. ORDER

[para 51] I make the following Order pursuant to s. 72 of the *FOIP Act*, which reads, in part, as follows:

72(1) On completing an inquiry under section 69, the Commissioner must dispose of the issues by making an order under this section.

(2) If the inquiry relates to a decision to give or to refuse to give access to all or part of a record, the Commissioner may, by order, do the following:

(a) require the head to give the applicant access to all or part of the record, if the Commissioner determines that the head is not authorized or required to refuse access;

(b) either confirm the decision of the head or require the head to reconsider it, if the Commissioner determines that the head is authorized to refuse access;

(c) require the head to refuse access to all or part of the record, if the Commissioner determines that the head is required to refuse access.

*...
(4) The Commissioner may specify any terms or conditions in an order made under this section.*

[para 52] For the Records at Issue where I have made a Finding that the *“Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege”*, pursuant to s. 72(2)(b) of the *FOIP Act*, I confirm the decision of the Public Body to refuse the Applicants access to the Records at Issue described as *“Properly withheld as privileged”* in the Table at para. 48 *supra*.

[para 53] For the Records at Issue where I have made a Finding that *“No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege”* or *“Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege”*, I order the Public Body to give the Applicants access to the Records at Issue listed in the Table at para. 48 *supra*, pursuant to s. 72(2)(a) of the *FOIP Act*, described as *“Producible”*, in their entirety, or, in accordance with s. 72(2)(b) of the *FOIP Act*, described as *“Producible [possible redactions]”*, in part.

[para 54] I further order the Public Body to notify me and the Applicants, in writing, within 50 days of being given a copy of the Order, that it has complied with it.

S. Dulcie McCallum, LL.B.
External Adjudicator