

## **ALBERTA**

### **OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER**

#### **ORDER F2020-23**

August 17, 2020

#### **BOARD OF TRUSTEES OF EDMONTON SCHOOL DIVISION**

Case File Number 006955

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Applicant made an access to information request under the *Freedom of Information and Protection of Privacy Act*, (the Act) to The Board of Trustees of Edmonton School Division (the Public Body) seeking information about her son, who was a student at one of its schools. The Public Body withheld some records and information under sections 17(1), 24(1)(a) and (b), and 27 of the Act, and as non-responsive. The Applicant believed that the Public Body did not meet its duty under section 10(1) of the Act, and failed to properly search for and provide all records responsive to the access request.

The Adjudicator found that the Public Body failed to meet its duty under section 10(1). While the Public Body conducted a thorough search for records, its application of sections 17(1), 24(1)(a) and (b), and identification of information as non-responsive were inconsistent. The response to the access request therefore fell short of the requirement under section 10(1) to respond to an access request accurately.

The Adjudicator permitted the Public Body to vary its response to the access request and apply section 24(1) to information initially withheld under section 27. The Adjudicator found that given the complexity of privacy law, some latitude is warranted to permit a public body to apply discretionary exceptions to disclosure after its initial response to the access request. The Adjudicator cautioned however that permitting late application of discretionary exceptions must not go too far. The Adjudicator noted that the purpose of the Act is to provide for reviews of decisions made by public bodies in response to an

access request, not to invite them to make new decisions about how to respond to an access request after the fact. Since the late application of section 24(1) was less a matter of the Public Body making a new decision, and more a matter that it improperly classified information that was of a type which it always intended to withhold under section 24(1), the change was allowed.

The Adjudicator found that the Public Body withheld information under section 17(1) that it was not required to, and improperly withheld information under sections 24(1)(a) and (b). The Adjudicator also found that the Public Body failed to establish that it properly exercised its discretion to apply section 24(1). Finally, the Adjudicator found that the Public Body had incorrectly identified some information as non-responsive.

The Adjudicator ordered the Public Body to disclose to the Applicant information improperly withheld under section 17(1) and information withheld under section 24(1), but not captured under it. Regarding information that remained withheld under section 24(1), the Adjudicator ordered the Public Body to reconsider its application of section 24(1) and provide the Applicant any further information it finds should be disclosed.

In order to address the Public Body's failure to accurately respond to the access request, the Adjudicator ordered it to identify information withheld on one page of the records, but disclosed on another. The Public Body was ordered to provide the Applicant with an updated copy of the pages on which the information was withheld, revealing the information.

**Statutes Cited: AB:** *Education Act*, S.A. 2012, C-0.3 ss. 33(1)(d), 33(2), 256, 258, 290; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(h), 1(n); 1(n)(i), (vi), (vii), (viii), and (ix); 2(e); 10(1); 17(1); 17(4)(a), (b), (d), (f), and (g); 17(5), 17(5)(a), (c), (e), (f), and (h); 20(1)(a); 24(1)(a) and (b); 72; 84(1)(e); *School Act*, R.S.A. 2000, c. S-3 s. 45.1(1) and (2)

**Authorities Cited: AB:** Orders 96-012, 96-020, 97-002, 97-006, 2000-019, 2000-030, F2004-008, F2004-022, F2004-026, F2005-018, F2006-006, F2007-007, F2007-029, F2009-026, F2009-047, F2012-10, F2013-13, F2013-17, F2013-51, F2014-41, F2017-61, F2018-16.

## I. BACKGROUND

[para 1] On June 6, 2017, the Applicant made an access for information request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 (the Act), to The Board of Trustees of Edmonton School Division<sup>1</sup> (the Public Body). The Applicant sought records containing information about her child, a student of the Public Body. The request for information was worded as follows:

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<sup>1</sup> The Public Body's name on the Notice of Inquiry was "Edmonton Public School District No. 7." The Public Body's name was changed by ministerial order in August, 2019. The Public Body's current legal name is "The Board of Trustees of Edmonton School Division."

Edmonton Public School Board. [Applicant's son] Interviews with School. [Applicant's son] reports of all incidents.

- Incident reports all communication involved, staff reports, student reports between [Applicant's son] and [school attended by Applicant's son].
- Communication between staff, parent, school board, and support team.
- All communication with Edmonton Police Services.
- Investigation from school board (HR). [sic]

[para 2] The Applicant and the Public Body clarified the parameters of the request for information between June 6 and 9, 2017. The refined parameters of the request for information were,

All records, formal and informal, relating to yourself, [the Applicant] and your son, [Applicant's son]. This includes but is not limited to interviews and/or meetings with any school or District staff with [Applicant's son]. All records relating to [Applicant's Son] with anyone who has had dealings with [Applicant's son]. Basically you want all records/communications that have to do with your son, [Applicant's son]. Such as:

- copies and any reports or interviews with [Applicant's son] with school or District staff\*,
- all incident reports,
- records from Edmonton Public School, Human Resources Department that contain information or records relating to, or written by [Applicant's son],
- communications between District staff\* and includes records and communications with non-District Staff and organizations (i.e. Doctor, therapist),
- communications and records with Edmonton Police Services,
- communications (emails, letters, notes) between yourself, [School attended by the Applicant's son] and District staff and other party's involved with [Applicant's son].

\*District staff refers to staff from: District Support Services, the Superintendent, [School attended by the Applicant's son] (principals, support staff, E.A.'s), Inclusive Learning (Mobile Mental Health), and Human Resources, Staff Relations.

The date range for this request is September 1, 2016 to June 7, 2017.

The request excludes duplicate records, the Student Record, and records relating to [Applicant's son's] school work.

[para 3] The Public Body responded to the access request on August 4, 2017.

[para 4] On October 4, 2017, the Applicant sought a review of the Public Body's response to the access request. Through investigation and mediation the Public Body released 14 additional documents to the Applicant on September 18, 2018.

[para 5] At mediation, the Public Body also varied its response to the access request. It no longer relies on section 27 to withhold information, but continues to withhold the same information under section 24(1).

[para 6] All together, the Public Body released 214 documents, totaling 1055 pages. Some records and information were withheld or redacted under sections 17(1), 20(1)(a), 24(1)(a) and (b), and 27(1) of the Act. The responsive records have both a document number and a page number. Document numbers refer to one document, regardless of how many pages are in it. Page numbers refer to a specific page within the responsive records. I refer to the records at issue by page number.

[para 7] Despite that further records were released, the matter remained unresolved and proceeded to inquiry. The Applicant believes that responsive paperwork and records related to incidents involving her son are missing from the response to her access request.

## **II. RECORDS AT ISSUE**

[para 8] Many of the 1055 pages were fully disclosed to the Applicant. The records at issue are those pages that were withheld entirely or had information redacted from them. All of them are referenced in **Schedule A** to this Order.

## **III. ISSUES**

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

**ISSUE B: Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information to which the Public Body applied this provision?**

**ISSUE C: Did the Public Body properly apply section 20(1) of the Act (disclosure harmful to law enforcement) to the information in the records?**

**ISSUE D: Did the Public Body properly apply section 24(1) of the Act (advice from officials) to the information in the records?**

[para 9] Throughout the records the Public Body redacted information on the grounds that it is non-responsive to the access request. I have reviewed these redactions as well. I discuss my brief findings of these records under Issue E, below:

**ISSUE E: Did the Public Body properly identify non-responsive information?**

## **IV. DISCUSSION OF ISSUES**

*Preliminary Matter – Applicant’s authority to request her son’s personal information*

[para 10] Since the Applicant’s son was a minor at the time of the access request, section 84(1)(e) of the Act applies. Section 84(1)(e) states,

*84(1) Any right or power conferred on an individual by this Act may be exercised*

*(e) if the individual is a minor, by a guardian of the minor in circumstances where, in the opinion of the head of the public body concerned, the exercise of the right or power by the guardian would not constitute an unreasonable invasion of the personal privacy of the minor, or*

[para 11] The Public Body does not argue that releasing any personal information about the Applicant's son is an unreasonable invasion of his personal privacy. I infer that the Public Body concluded that releasing such information did not have this effect. Considering the circumstances that were operating in the background to the access request, I agree. The Applicant has been involved with the Public Body at length regarding its dealings with her son. The Public Body, the Applicant, and her son, have all been involved in the same incidents, and are familiar with them. Personal information about the Applicant's son in the records is related to his involvement in these incidents. None of it is of an intensely personal nature that may give rise to concerns about personal privacy – for example, records of thoughts or feelings a student may disclose in secrecy to a guidance counselor, or even records that such a conversation took place.

*Preliminary Matter – Late raising of the application of section 24(1)(b) to some records*

[para 12] Redactions to pages 28, 34, 35, and 120 were initially made under section 27 of the Act in response to the access request, but, as indicated earlier, the Public Body ceased relying on that section. The Public Body now relies on section 24(1)(b) to withhold the same information.

[para 13] In earlier cases before this office, late raising of exceptions to disclosure has been an issue. For example, the former Commissioner stated in Order F2009-047 at para. 50,

Finally, I agree with the Applicant that it is improper for the Public Body to raise the possible application of sections 24(1)(a) and 24(1)(e) by merely mentioning them at this late stage. I specifically note the Public Body's statement in its rebuttal submission that, in responding to the Access Request, it advised the Applicant in its cover letter attaching the Responsive Records that it had applied section 24(1)(b) in refusing to disclose information. I accepted this review, and it proceeded to inquiry, on the basis of the Public Body's response to the Access Request as communicated to the Applicant. Furthermore, numerous orders of my Office have dealt with the criteria for the late raising of discretionary exceptions to disclosure. The burden is on the Public Body to meet those criteria, which it has not done.

[para 14] In this case, though I am not bound to, I permit the application of section 24(1)(b) to information previously redacted under section 27(1). It is evident that even in its initial response to the access request, the Public Body intended to exercise its discretion under the Act to withhold information that falls within section 24(1)(b), and inform the Applicant of the same. The Public Body redacted much other information under section 24(1)(b). The application of section 24(1)(b) has been an issue since the Applicant requested a review of the response to the access request, and the Applicant knew of the change in sections prior to requesting an inquiry, where it remains an issue. In this light, the application of section 24(1)(b) to information initially withheld under

section 27(1) is less a matter of the late raising of the application of section 24(1)(b), and more a matter that the Public Body incorrectly categorized the information now redacted under it. The FOIP Coordinator attests to this reason for the change.

[para 15] I caution, though, that I do not make this decision lightly. Under section 2(e) of the Act, one of its purposes is to provide an independent review of decisions made by public bodies.

*2 The purposes of this Act are*

*(e) to provide for independent reviews of decisions made by public bodies under this Act and the resolution of complaints under this Act.*

[para 16] The Public Body's decisions under review in this case are those that it made in response to the access request, including whether to exercise discretion to withhold information under sections 27 and 24. As the one making the decision, it bears the responsibility to understand the discretion it has under the Act, and use the discretion properly within its legislated boundaries. This includes applying discretionary exceptions to disclosure only to information properly captured by them. While I recognize that given the complexity of privacy law under the Act, some discretion to allow a public body to vary its response to an access request is warranted, I must not go too far. My function is to *review* decisions made in response to an access request, not to invite a public body to make different decisions, after the fact.

[para 17] Given the context surrounding the change in application of section 24, I am satisfied that even though I permit the change, the result is not so far removed from the initial response to the access request, that the Public Body is making a significantly different decision.

[para 18] As discussed below, the change in application of section 24 is relevant to the issue of whether the Public Body met its duty under section 10(1) of the Act to respond to the access request accurately.

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

[para 19] Section 10(1) states as follows:

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

[para 20] The two parts of the duty to assist in s. 10(1) were set out in Order F2004-008 at para 32:

- Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 10(1) of FOIP?

- Did the Public Body conduct an adequate search for responsive records, and thereby meet its duty to the Applicant, as required by section 10(1) of FOIP?

[para 21] The burden of proof falls on the Public Body to demonstrate that it met its duty under section 10(1). (See Order 97-006). A public body must provide the Commissioner with sufficient evidence to show that it made a reasonable effort to identify and locate records responsive to the request. (See Order 2000-030). Former Commissioner Work, Q.C. described the general points that a public body's evidence should cover in Order F2007-029 at para. 66:

In general, evidence as to the adequacy of a search should cover the following points:

- The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request
- The scope of the search conducted – for example: physical sites, program areas, specific databases, off-site storage areas, etc.
- The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
- Who did the search
- Why the Public Body believes no more responsive records exist than what has been found or produced

[para 22] The details of the Public Body's search for records were set out in the Affidavit of its FOIP Coordinator.

[para 23] The FOIP Coordinator carried out the search for records.

[para 24] The FOIP Coordinator identified five departments that may have had responsive records, and contacted the administrator responsible for access requests in each department about the request. Each administrator was provided with the parameters of the access request as they are set out above. Those administrators were in turn responsible for identifying staff members in their departments who may have had responsive records, and disseminating the particulars of the access request to them.

[para 25] The FOIP Coordinator provided a checklist to each staff member involved with the search which was to be used to document participation in the search. The checklist details electronic and hardcopy locations searched for records, keywords used in electronic searches, and inquires about whether there are any audio or visual records. The checklist also prompts the person completing it to describe why they believe no records exists if no records are found. Once complete, the checklists were returned to the FOIP Coordinator. Only one person did not find responsive records.

[para 26] In total, 30 individuals at the Public Body searched for records. Twenty-nine of them provided a completed checklist, and one person phoned the FOIP Coordinator to inform that they found no responsive records. The Public Body also contacted three external organizations who may have copies of responsive records.

[para 27] The FOIP Coordinator reviewed the checklists and determined that the proper locations were searched, and appropriate keyword searches were used in the search. I reach the same conclusion upon my own review of the checklists. The individuals conducting the search checked their own files, using keywords germane to records requested.

[para 28] Prior to requesting a review of the response to the access request from this office, the Applicant raised concerns with the Public Body that the following responsive records had not been provided:

- Communications from the Minister of Education
- Police Reports
- Communications with the MLA's office
- E-mails between the Superintendent's Office and a particular person at Division Support Services
- E-mails between school staff and a certain doctor
- Additional incident reports, including the statements of her son regarding an incident where an Educational Assistant's leg was injured.

[para 29] In response to the Applicant's concerns, the FOIP Coordinator conducted a further search for each of the records identified as missing. The results were as follows:

- The FOIP Coordinator confirmed with the Superintendent that there were no communications from the Minister of Education.
- The FOIP Coordinator confirmed with the Principal that the Public Body did not have copies of any police reports concerning the Applicant's son. The Applicant was advised that if she believed that there were Police Reports, or that her MLA's office had records, she should contact them directly. The same advice was given regarding records held by Alberta Education.
- The Public Body provided the Applicant records from the particular person at Division Support Services.
- The FOIP Coordinator confirmed with the Principal that there were no records of e-mails between staff and the doctor.
- The FOIP Coordinator confirmed with the Principal that an incident statement from the Applicant's son was not provided in the initial response; the statement was then provided to the Applicant. The Principal also confirmed that there was

an informal investigation regarding an incident with the Applicant's son, but no investigation report was prepared.

[para 30] After the Applicant sought a review of the response to her access request, the Public Body provided further records as the matter wound through the investigation and mediation process.

[para 31] The Applicant remains concerned that she has not received all responsive records. The Applicant states that the following specific records are still missing:

- a) A letter addressed to the Applicant from the Principal dated April 5, 2017
- b) An incident report dated April 4 , 2017
- c) Communication to her son's doctor, possibly an email from the Public Body's psychologist regarding her son's behaviour
- d) Incident report between a teacher and her son, resulting in injuries to both
- e) Communication between Edmonton Police Services and her son's school regarding two complaints of assault filed by the Applicant
- f) Entire logs about her son
- g) Copies of all suspensions
- h) Communications, regarding her son, between the employee at Division Support Services, her son's school, and all parties, involved with her son
- i) Communication between the Public Body's Psychologist and the Principal
- j) Communication between any outside parties and her son's school regarding her son
- k) Several incident reports
- l) Communication between another psychologist and her son's school

[para 32] The FOIP Coordinator addressed each of the missing records. A summary of explanations given, and actions taken, to address the Applicant's concerns are below. As noted, the Public Body released additional documents to the Applicant after considering her concerns.

- (a) This letter was provided in the initial release of documents at page 776.

- (b) (d), and (k) The FOIP Coordinator contacted the Health Services Department to determine if there were any incident reports concerning injury to staff. Two responsive records were provided to the Applicant, with redactions.
- (c) The FOIP Coordinator again inquired with the department where the Psychologist works, about communications with the doctor for the Applicant's son and was advised that were no records of communication.
- (e) The FOIP Coordinated reiterated that there are no records of any police reports concerning the Applicant's son. The FOIP Coordinator explains possible police involvement. The Police did attend her son's school after being called there by a third party. The FOIP Coordinator consulted with the school Principal who confirmed that the Police never provided the school with a copy of any reports they prepared.
- (f) The FOIP Coordinator stated that log notes about a student can be viewed at any time, without an access, and so were not included in the initial response. However, in order to address the Applicant's concern, the log notes have since been provided with redactions.
- (g) The Coordinator stated that suspensions are part of the Student Record for the Applicant's son, which was initially understood to be outside of the terms of the access request. Like log notes, suspensions can be requested from the School at any time, without an access request. The Public Body provided suspension letters for the 2016-2017 school-year to the Applicant.
- (h) The FOIP Coordinator confirmed that all records have already been provided. The FOIP Coordinator further advised that the employee whose records are in question typically deals with others verbally, and not through e-mail, which explains why there are no further records.
- (i) The FOIP Coordinator confirmed that all responsive records have been provided.
- (j) The FOIP Coordinator stated that she was advised by the Principal that only three outside organizations had contact with the school, and all responsive records from those organizations had been provided. I note that these are the same organizations that were included in the initial search.
- (l) The FOIP Coordinator took steps to determine the identity of the psychologist and was advised by the Principal that there was no contact between this psychologist and the school.

[para 33] Overall, it appears that the Public Body has conducted an expansive and thorough search for records. It has made clear the steps it took to respond to the access request, who was involved, and what locations it searched. The Public Body has satisfactorily explained why it believes no further records exist. Even though the initial

response to the access request did not yield every responsive record, given the thorough response to the Applicant's concerns, the Public Body's subsequent efforts have remedied that issue.

[para 34] Despite the above, the Applicant argues that the response to the access request is defective since some of the individuals tasked with locating responsive records chose to search for records under her last name, but not under her son's last name, which is different.

[para 35] In response, the Public Body contends that the standard under section 10(1) of the Act is one of reasonableness, not perfection, and that its response to the access request was reasonable, despite that not every individual search was conducted using the last name of the Applicant's son. The Public Body argues that it was reasonable to provide instruction on the process of responding to the access request to the individuals and to let them determine the best way to search for their own records. It relies on Order F2005-018 in support this point. Order F2005-018 states the following at para. 12:

Order 98-003 stated that how a public body fulfills its duty to assist will vary according to the fact situation in each request. In Order 2001-024, it was stated that a public body must make every reasonable effort to assist an applicant and respond openly, accurately and completely to him. The standard directed by the Act is not perfection, but what is "reasonable". In Order 98-002, the former Commissioner adopted the definition of "reasonable" found in *Black's Law Dictionary* (St. Paul, Minnesota, West Corp., 1999) as "fair, proper, just, moderate, suitable under the circumstances. Fit and appropriate to the end in view."

[para 36] I agree with the Public Body on this point.

[para 37] As detailed above, the Public Body conducted an expansive search for records. There is no indication that its efforts to locate responsive records was deficient. The parameters of the access request were provided to each department in full, including the last name of the Applicant's son, as well as of the Applicant. Thus, each individual involved in the search for records would have known that both names were relevant to it, and would have been able to recognize whether responsive records in their possession were likely to relate to one, the other, or both. Each individual would also know under what names the Applicant and/or her son were known to them. Under these circumstances, it was reasonable to allow them to tailor their individual searches using that knowledge.

[para 38] Accordingly, I find that the Public Body conducted an adequate search for records under section 10(1). It fulfilled the second part of the duty under section 10(1), described in order F2004-008, above.

[para 39] However, I do not find that the Public Body has responded to the access request accurately as required under the first part of the duty under section 10(1).

[para 40] In several places in the records, the same information appears on more than one page. This occurs most frequently in the records containing text messages on pages 248 to 400. For example, page 307 and 331 are the same, yet, everything on page 331 was redacted under sections 17(1) and 24(1)(b), while much of page 307 was released. Of the information redacted on page 307, some was redacted under 17(1) and some under 24(1)(b). The same issue occurs regarding a statement on page 275 and 324. On page 275 it is redacted under section 17(1) and as non-responsive; on page 324 it is redacted under sections 17(1), 24(1)(a), and 24(1)(b). Pages 256 and 257 are identical. On page 256 the first text box is redacted under section 17(1), but it is redacted as non-responsive on 257. There are doubtless other examples of this phenomenon.

[para 41] Since the Public Body has redacted information inconsistently, I cannot conclude that it accurately responded to the access request. It has muddled its classification of information as responsive or not, personal information or not, or information captured under section 24(1) or not. The same can be said of its decision to cease relying on section 27 to withhold certain information. The Public Body cannot claim accuracy when it is unclear what information was its target to begin with.

[para 42] In service to the Applicant's right to have the response to the access request reviewed, I have persevered and taken account of these inconsistencies to the best of my abilities in my findings regarding the Public Body's redactions. It was open to me, before considering Issues B through E, to issue a preliminary order to the Public Body, requiring it to review its entire response to sort out the inconsistencies, and return an updated response to the access request to the Applicant and myself. I did not do so because it would have delayed the process. However, my effort in this regard does not remedy the Public Body's failure to respond accurately to the access request. The duty under section 10(1) falls on the Public Body; it is inappropriate for it to rely on the Information and Privacy Commissioner to do its work for it.

[para 43] In view of these concerns, I find that the Public Body has failed to meet its duty under section 10(1).

**ISSUE B: Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information to which the Public Body applied this provision?**

[para 44] The reasons why I find each item of information should be disclosed or withheld appear in the body of the order. However, since there are hundreds of redactions at issue, I list the pieces of information to which my reasons apply in **Tables A** through **Y**, included in **Schedule A** to this order.

[para 45] "Personal information" is defined in section 1(n) of the Act:

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

- (i) the individual's name, home or business address or home or business telephone number,
- (ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,
- (iii) the individual's age, sex, marital status or family status,
- (iv) an identifying number, symbol or other particular assigned to the individual,
- (v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,
- (vi) information about the individual's health and health care history, including information about a physical or mental disability,
- (vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,
- (viii) anyone else's opinions about the individual, and
- (ix) the individual's personal views or opinions, except if they are about someone else;

[para 46] Section 17(1) requires the Public Body to withhold personal information where disclosing it would be an unreasonable invasion of a third party's personal privacy:

*17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.*

[para 47] Whether or not disclosing personal information results in an unreasonable invasion of personal privacy is informed by sections 17(2) to (5).<sup>2</sup>

[para 48] Since different considerations under sections 17(1), and where applicable, sections 17(4) and (5), apply to the redacted information, I have broken the information redacted under section 17(1) into four main categories, with applicable sub categories:

## **1. Personal Information identified under section 1(n) of the Act**

*Names appearing with Personal Information*

*Student Educational History*

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<sup>2</sup> Section 17(2) prescribes circumstances where disclosing personal information is not an unreasonable invasion of personal privacy, but none of them are applicable in this case. As section 17(2) does not apply, neither do the considerations in section 17(3), since they only apply to section 17(2).

*Medical information and Staff Employment History*

*Other Third Party Personal Information*

## **2. Opinions of Staff that have a personal dimension**

*The Law Respecting Opinions*

*Records at Issue*

*Personal Views or Opinions not about Others*

*Personal Views and Opinions about other Employees*

*Personal Views and Opinions about the Applicant and her Son*

*Personal Views and Opinions about a Third Party*

*Personal Views and Opinions about the Public Body*

## **3. Information that is not personal information**

*Statements of the Public Body, its Operations, or Performance of Employment Duties*

*Statements of Fact and Observations*

*Questions*

*Other information that is not personal information*

## **4. Information concerning law enforcement**

*Records at issue*

- *Records related to the Informal Investigation*
- *Records related to the Formal Investigation*

*Is the information part of a law enforcement record?*

*Student Educational History*

*Staff Employment History*

*Personal Opinions about other Employees*

*Statements of the Public Body, its Operations, or Performance of Employment Duties; Statements of Fact and Observations; Opinions*

[para 49] Below, I consider each category on its own.

**1. Personal Information identified under section 1(n) of the Act**

[para 50] This category consists of several types of personal information defined in section 1(n) of the Act. The Public Body argues that the considerations under sections 17(4) and (5) indicate that this information should be withheld. This information consists of the following types of information:

- (a) the names of third parties (students and staff, family members of staff);
- (b) other student's education, discipline, behaviour notes, etc.;
- (c) personal email addresses of staff, work history, medical information, employee investigation outcomes, staff personal business;

[para 51] The information in (a), (b), and (c) above is personal information under the Act.

[para 52] Names are captured as personal information under section 1(n)(i).

[para 53] The student information identified in (b) is a matter of educational history under section 1(n)(vii) of the Act.

[para 54] Personal e-mail addresses of staff, and their personal business is personal information where the information is about staff, and they are identifiable by it. Staff information of this type redacted by the Public Body meets these criteria. Staff names always accompany such information, and the redacted information consists of details of their daily, personal lives.

[para 55] Information related to staff work history, and employee investigation outcomes, are also captured under section 1(n)(vii) as employment history.

[para 56] Medical information is considered personal information under section 1(n)(vi).

[para 57] For each type of personal information identified above, there is a presumption that disclosure of it is an unreasonable invasion of personal privacy under section 17(4) of the Act. The relevant subsections of section 17(4) related to medical information, educational history employment history, and personal information accompanying a name are set out below:

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

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

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

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

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

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

[para 58] The Public Body also states that section 17(4)(f) applies to some of the withheld information:

(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,

[para 59] Where a presumption against disclosure applies, a Public Body must refuse to disclose the personal information unless consideration of the factors in section 17(5) or any other considerations indicate that the presumption should be rebutted.

[para 60] The Public Body did not specify which subsections of section 17(4) were applied to which pages. However, it is obvious on the face of the records where redacted information is of the type described in sections 17(4)(a), (d), (f) and (g).

[para 61] The Public Body indicated which considerations it applied under section 17(5) in the records released to the Applicant. I find, though, that I do not need to consider these factors. A presumption against disclosure under section 17(4) applies to the information in each case, and neither the enumerated factors under section 17(5), nor any other relevant circumstances, indicate that the presumption is rebutted. I note that the Applicant has not made any arguments in that regard.

#### *Names appearing with Personal Information*

[para 62] When the Public Body redacted names (whether the name was that of a student, staff, or family member of staff) the name appeared alongside other personal information of the named individual. The presumption against disclosure under section 17(4)(g) applies in these instances.

[para 63] The type of information redacted alongside of the name was information about the daily, personal life of the individual; or pictures of, or contact information for,

that individual. None of the considerations under section 17(5) or any other relevant factors suggest the presumption against disclosure is rebutted.

[para 64] The information I find is correctly redacted on this basis is recorded in **Table A**, on **Schedule A** to this Order.

#### *Student Educational History*

[para 65] Frequently, there were redactions to information that consists of the educational history of third party students. These statements contain a description of the student's activities and involvement in what their teachers (or educational administrators, such as principals) consider to be some form of misconduct. The presumption against disclosure under section 17(4)(d) applies to these redactions. The information redacted is the personal information of students, other than the Applicant's son. None of the factors under section 17(5), indicate that the presumption under section 17(4)(g) should be rebutted.

[para 66] The information I find is correctly redacted on this basis is recorded in **Table B**, on **Schedule A** to this Order.

#### *Medical information and staff employment history*

[para 67] The records at issue contain a few instances where staff medical or employment history information was redacted. The information redacted consists of descriptions of an employee's medical circumstances, or performance. In a few other instances, medical information of a third party is also mentioned. I have made decisions about these redactions under this heading as well. The presumption against disclosure under sections 17(4)(a) and (d) apply to this information.

[para 68] Again, none of the factors under section 17(5), indicates that the presumption under section 17(4)(g) should be rebutted.

[para 69] The information I find is correctly redacted on this basis is recorded in **Table C**, on **Schedule A** to this Order.

#### *Other third party Personal Information*

[para 70] Lastly, there are several instances where the Public Body redacted information that is personal information of a third party. This information is the personal information of the third party (at times a student), that can be identified from the information. The names of the third party and/or student are also present with the information, and as such, the presumption against disclosure under section 17(4)(g)(i) applies. None of the factors under section 17(5), favour disclosure of this information.

[para 71] The information I find is correctly redacted on this basis is recorded in **Table D**, on Schedule A to this Order.

## **2. Opinions of Staff that have a personal dimension**

### *The Law Respecting Opinions*

[para 72] Under section 1(n)(ix) of the Act, an individual's personal view or opinion about something is that individual's personal information, unless the opinion is about another individual. In the latter case, it is the personal information of the individual that the opinion is about, under section 1(n)(viii) of the Act.

[para 73] The fact that an individual holds an opinion about someone else can be an item of personal information about the individual who holds the opinion. See Order F2006-006 at para. 115.

[para 74] The Public Body explained how it applied section 17(1) to this type of personal information.

[para 75] In respect of opinions contained in communications between its employees, the Public Body considered whether information in them constituted the personal information of its employees, or whether they were communications of the Public Body. In the latter case, the communications are not considered to be personal information, and section 17(1) does not apply to them.

[para 76] The Public Body determined which communications contained personal information, and which did not, by considering whether there was a personal dimension to the redacted information. The Public Body relies on the decision in Order F2014-41 in support of its approach.

[para 77] In Order F2014-41, the Adjudicator considered whether the statement of an employee about a safety concern in the workplace was the employee's personal information. The employee's statement described the employee's state of mind. The Adjudicator held the statement was the employee's personal information, stating at para. 22:

With regard to the employee Information, the Information has a personal dimension as it refers to her personal point of view. The information that was severed is therefore about her, rather than about the public body she represents as an employee.

[para 78] I agree with the Public Body's approach to determining what was personal information regarding opinion statements of its employees. I add though, that a personal view or opinion that is provided as a matter of performing an employment duty is considered performance of an employment duty. In these cases the view or opinion and the fact that an individual holds the view or opinion is not that individual's personal information. I discuss this point further under the heading "Information concerning law enforcement." For my purposes in this discussion, I note that the opinions I have considered here were not provided as part of the performance of a job duty.

### *The Records at Issue*

[para 79] The Public Body did not specify which pages or items of information it considered to be the personal opinions of its employees. Unlike with the other types of personal information discussed above, it is not always evident on the face of a record that any of the redacted information constitutes a personal opinion. The Public Body provides a general description of the type of information redacted on this basis in its submission:

Many of the text messages that were sent between staff clearly have a personal dimension to them...

Some of the information redacted is the personal opinions of staff about other staff, intertwined with events that were unfolding with the Applicant's child. The opinions are not based in fact and are speculative at best. They are personal opinions about how other staff at the school responded to a stressful situation. They are clearly either opinions about other staff members, which must be excluded as being the personal information of the staff referred to in the opinion, or are personal information about the staff making the comments, or both. Either way, they are the personal information of a third party and must not be disclosed to the Applicant.

[para 80] The Public Body does not indicate which of the many situations referenced in the records are the "stressful situations" referred to in the above passage.

[para 81] From the description given by the Public Body, I understand that it applied section 17(1) to anything in the records containing text messages between employees that consists of an opinion that has a personal dimension. I further understand that the Public Body considered that any statements in the text messages where one staff comments about how another responded to something that could constitute a stressful situation fall within this category.

[para 82] The Public Body did not expressly state that it regarded statements in other records (additional to those containing text messages), as opinions with a personal dimensions. However, I have observed several places where section 17(1) was apparently applied to information in other records of a similar type to that in the text messages. I include my findings regarding that information in this section as well.

[para 83] I now consider the various types of opinions redacted from the records.

#### *Personal Views or Opinions Not About Others*

[para 84] While many of the personal opinions in the records at issue are about other people, some are not. These statements contain an evaluative component that indicates whether a situation is good or bad, or provide insight into an employee's state of mind. They are personal information under section 1(n)(ix) of the Act.

[para 85] I note that on the records containing text messages, the name or identity of the person making the statement is not indicated on every page. The text messages frequently only identify the person from whose phone the texts were produced. However,

records from both people involved in the same text chain were provided. By cross-referencing particular passages from both versions of the text chain, the identity of the person making a statement in either chain can be determined. Thus, even though a person making such a statement is not readily identifiable from each record of the statement made, the person making the statement is nevertheless identifiable when the redacted information is reviewed as a whole. Accordingly, I consider each instance of the statement to be personal information, no matter whether every page in itself identifies the one making the statement.

[para 86] The statements I have considered under this category are limited to those that do not involve opinions of other individuals, the Applicant, her son, or the Public Body. As discussed further on, those types of opinions invite different considerations. The opinions being considered here also appear along with the name of the person giving the opinion; as such, the presumption against disclosure under section 17(4)(g)(i) applies. I find that none of the considerations under section 17(5) favour disclosure.

[para 87] The information I find is correctly redacted on this basis is recorded in **Table E**, on **Schedule A** to this Order.

#### *Personal Views and Opinions about other Employees*

[para 88] Some information in the records contains statements by one employee about another. These statements involve an assessment about the conduct of the other employee, and whether it was in some way appropriate or inappropriate, or worthy of praise or condemnation. I note that none of these statements appear to be a personnel or personal evaluation of the subject employee under section 17(4)(f). Rather they are the personal views of one colleague about another, and not the sort of evaluation that has been interpreted as falling within that provision. (See Order 97-002 at paras. 31 and 36). In short, these opinions appear to be gossip between two employees.

[para 89] Since these opinions are about other individuals, the content of them is the personal information of the individual the opinion is about under section 1(n)(viii). In some instances, the name of the individual the opinion is about is also present, and therefore the presumption against disclosure under section 17(4)(g)(i) applies to those statements.

[para 90] In other instances, the name of the individual the opinion is about does not appear in the record, but the individual is still identifiable from the context. In these cases, while strictly speaking no presumption against disclosure arises under section 17(4), I believe the fact the individual who is the subject of the opinion is identifiable makes it an unreasonable invasion of their privacy to disclose it (in the absence of countervailing considerations), on the basis of the same reasoning that gives rise to the presumption.

[para 91] Thus, whether or not a presumption against disclosure applies, consideration of all the relevant circumstances, as required by section 17(5) leads me to conclude that this information should not be disclosed.

[para 92] Further, section 17(5)(h) states as follows:

*(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether*

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

[para 93] The information redacted as opinion about another employee is coming from individuals whose opinions are theirs' alone and they do not indicate any determination by the Public Body of whether an employee acted appropriately or inappropriately in a given situation. There is no basis to conclude that the individuals who formed the opinions were reasonably informed about the situation that the opinion refers to, spoke to the individual the opinion is about, or fairly considered all relevant points of view or considerations. Moreover, it appears that the Public Body scrutinized the behaviour of the employees that the opinions are about, and found that they acted properly. Releasing information that suggests otherwise may cast a shadow upon the professional reputation of these employees. I find that this factor weighs in favour of withholding the information, and that it should not be disclosed.

[para 94] The information I find is correctly redacted on this basis is recorded in **Table F**, on Schedule A to this Order.

#### *Opinions about the Applicant and her Son*

[para 95] For some of the redactions, what has been withheld is an opinion about the Applicant or her son. In these cases, under section 1(n)(viii) the redacted information is that of the Applicant or her son, to which the Applicant has a right under the Act. The only personal information concerning the person making the statement is the fact that the person holds that opinion. Unless there is reason under sections 17(4) or (5) that disclosing this information is an unreasonable invasion of the personal privacy of the one who holds the opinion, it should not be withheld under section 17(1).

[para 96] Where the name of the individual making the opinion is present, since the fact that the individual holds the opinion is that individual's personal information, a presumption that disclosure is an unreasonable invasion of personal privacy applies under section 17(4)(g)(i).

[para 97] However, upon considering the relevant circumstances including those under section 17(5), I find that this information should be released, even where a presumption that disclosure is an unreasonable invasion of personal privacy applies.

[para 98] I have considered the arguments of the Public Body that considerations under sections 17(5)(a), (c), (e), (f), and (h), potentially apply to the information that is has redacted, and indicate that this information should not be disclosed. I note that while the Public Body broadly asserts that these considerations apply, it has not specified how they apply to any particular item of information. I am left to determine how, if at all, each consideration applies based upon the information in a record. Sections 17(5)(a), (c), (e), (f) and (h), state,

*(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether*

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,*
- (c) the personal information is relevant to a fair determination of the applicant's rights,*
- (e) the third party will be exposed unfairly to financial or other harm,*
- (f) the personal information has been supplied in confidence,*
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and*

[para 99] I agree with the Public Body (regarding the information that contains opinions about the Applicant or her son) that releasing it is not desirable for “public scrutiny” under section 17(5)(a). “Public scrutiny” engages broader public concerns, such as would not arise from releasing opinions about the Applicant or her son. (See Order 96-020 at paras. 213 and 214). Accordingly, this factor does not favour disclosure. However, since it is not applicable at all, I find that it does not favour withholding this information either.

[para 100] I cannot see how sections 17(5)(c) or (e) apply to this information. I find that they favour neither disclosure, nor withholding.

[para 101] Regarding section 17(5)(f) (the information has been supplied in confidence), the Public Body has argued that this consideration applies to information provided by its employees as part of an investigation. It has not made any argument about whether any opinions about the Applicant provided outside of an investigation were confidential. Nevertheless, I will consider this factor in relation to opinions about the Applicant and her son as well.

[para 102] After reviewing opinions about the Applicant and her son that were provided outside the context of an investigation, I am unable to conclude that any of this information was supplied in confidence. The opinions were shared between employees of the Public Body as part of the general discourse surrounding the Public Body’s dealings

with the Applicant and her son. There is no indication that any message or piece of information was intended to be confidential. I note that the opinions are personal opinions, and are sensitive information from the Public Body's standpoint. I acknowledge that one person's opinion of another is often offered with the social expectation that it will not be passed on to the person it is about. However, without some submission from the Public Body to indicate that such opinions were intended to be or ought to be regarded as confidential, I cannot find that they are.

[para 103] Regarding section 17(5)(h) (unfair damage to reputation), the only persons' whose reputations appear to be at stake are the Applicant and her son. Since the Applicant is the only person to whom the information will be released, and can therefore control any further dissemination of it, I find that there is no real risk that the reputation of the Applicant or her son will be unfairly damaged by disclosing the information. On the contrary, disclosing this information may provide the Applicant with an opportunity to address opinions with which she disagrees. This factor weighs in favour of disclosure.

[para 104] The Public Body also argues that other relevant circumstances indicate that this information should not be disclosed. It argues that the Applicant has no real need for such information, and that disclosing it could damage the relationship between the Applicant and her son, and the Public Body.

[para 105] In support of its argument that the Applicant has no real need for the personal information, the Public Body relies on Order F2007-007. In that Order the Adjudicator discussed the role that the need for personal information played in that case. The Adjudicator stated at paras. 49 and 50:

The EPS suggests that whether the Applicant has a pressing need for the third party personal information is also a relevant circumstance (Order 2000-023).

In this inquiry, I find that this factor is irrelevant to a decision under section 17. There is no evidence as to whether the Applicant has a pressing need for the personal information.

[para 106] The same reasoning applied in Order F2007-007 applies here. There is no evidence as to whether the Applicant has a pressing need for this personal information, and so that factor is irrelevant.

[para 107] As to the argument that releasing the information could damage the relationship between the Applicant and her son, and the Public Body, I acknowledge that learning another's opinion of one's self can affect relationships. However, having reviewed the redacted information, I find that the risk of damaging the relationship is minimal, and that any damage that might occur would be minimal as well.

[para 108] Many of the opinions about the Applicant or her son are not direct commentary on them as people, but rather consist of thoughts or ideas as to what steps they may take in a given situation, and at times are sympathetic to their situation. In my view, releasing these opinions is not likely to cause significant detriment to the relationship. I note that there are some opinions that are direct comments about the

Applicant or her son, but they are few, and are reflective of the condition of the relationship between the Applicant and the Public Body as it is. They do not contain information that is likely to alter the relationship for better or worse.

[para 109] In light of the above, while I agree with the Public Body that the possibility of damaging the relationship weighs in favour of withholding the information, I do not find that it weighs heavily in favour.

[para 110] I find that there are other relevant circumstances that favour releasing the information.

[para 111] Since the content of opinions themselves reveal very little, if anything, about the individuals that hold them, the opinions are not the personal information of the individuals holding them. Similarly, the fact that an individual holds a particular opinion does not reveal anything further about the individual in these cases. If releasing such information is an invasion of personal privacy at all, it is an invasion of the most minimal kind.

[para 112] In sum, I find that the considerations in favour of disclosure outweigh those in favour of withholding the information. The minimal effect on third party personal privacy does not outweigh the Applicant's right to this personal information and the opportunity to know and address opinions about her and her son. The presumption that disclosure is an unreasonable invasion of privacy is rebutted. I find this information should be disclosed.

[para 113] The information I find should be disclosed to the Applicant on this basis is recorded in **Table G**, on **Schedule A** to this Order.

#### *Opinions about a third party*

[para 114] There are several items of redacted information that contain a Public Body employee's opinion of a third party, who is not an employee of the Public Body. Such information is the personal information of that third party. The fact that the employee hold such an opinion is that employee's personal information. The names of the third parties are not present and no presumptions under section 17(4) arise. However, the fact that this information is generally irrelevant to the access request<sup>3</sup> and does not concern the Public Body's dealings with the Applicant or her son weighs in favour of withholding it. These are relevant circumstances under section 17(5).

[para 115] The information I find is correctly redacted on this basis is recorded in **Table H**, on **Schedule A** to this Order.

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<sup>3</sup> Sometimes, but not always, the Public Body flagged this information as non-responsive.

### *Opinions about the Public Body*

[para 116] Several of the redactions consist of an opinion about the Public Body itself, offered by an employee of the Public Body. A public body is not an individual under the Act, and so it has no personal information. Thus, opinions about it are not personal information. The fact that a specific individual holds the opinion is that individual's personal information. In the instances in which such opinions appear, the name of the individual making the opinion is present. Accordingly, the presumption that disclosure is an unreasonable invasion of personal privacy under section 17(4)(g)(i) applies.

[para 117] I find that none of the enumerated circumstances under section 17(5) applies here. I do not find that any other relevant circumstances weigh in favour of disclosure. I also consider that a person's opinion of their own employer can be a sensitive matter between them. This is a relevant factor weighing in favour of withholding such information.

[para 118] The information I find is correctly redacted on this basis is recorded in **Table I**, on **Schedule A** to this Order.

### **3. Information that is not personal information**

[para 119] The Public Body has redacted some information under section 17(1) that is not personal information. Since section 17(1) applies only to personal information, this information has been improperly withheld. I discuss the types of information improperly withheld below.

#### *Statements of the Public Body, its Operations, or Performance of Employment Duties*

[para 120] There are many instances where the Public Body has redacted statements under section 17(1) where its employees made statements that speak to the Public Body's proper operating procedures. At times, the statements are made without reference at all to another employee, or any personal evaluative component. At other times they indicate that a certain action was taken in the course of employment duties. They speak only to the standards that apply to employees of the Public Body, as they perform their duties. These are statements of the Public Body, and not the personal views of its employees. Accordingly, this information is not personal information and should be redacted under section 17(1).

[para 121] The information that I find is not personal information on this basis is recorded on **Table J** of **Schedule A** to this Order.

#### *Statements of Fact and Observations*

[para 122] Some of the redactions from the text messages are of a statement of facts, or a report about what an employee learned from someone else. None of this is personal

information. There is no evaluative or personal component that makes these statements a personal view or opinion; they are observations of things that have happened. These statements should not have been withheld under section 17(1).

[para 123] The information that I find is not personal information on this basis is recorded on **Table K of Schedule A** to this Order.

#### *Questions*

[para 124] Some of the redactions made in reliance on section 17 are inquiries about ongoing events or the people involved in them. While these questions ask for certain information, they do not contain personal information about anyone.

[para 125] The information that I find is not personal information on this basis is recorded on **Table L of Schedule A** to this Order.

#### *Other information that is not personal information*

[para 126] Lastly, there are some redactions under section 17(1) to information that is not personal information, but does not fit neatly into any of the above categories. This information lacks the personal and identifiable qualities that define “personal information.” Included in this category are pronouns and vague adjectives used to refer to unidentifiable individuals, and, on page 181, to recommendations.

[para 127] The information that I find is not personal information on this basis is recorded on **Table M of Schedule A** to this Order.

### **4. Information concerning law enforcement**

[para 128] The Public Body asserts that some information it withheld under section 17(1) is an identifiable part of a law enforcement record. Such information invites consideration of an additional presumption that disclosure is an unreasonable invasion of personal privacy under section 17(4)(b), reproduced below.

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

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

#### *Records at issue*

[para 129] The Public Body does not identify which pages attract law enforcement consideration. It states only that these considerations apply to records related to two investigations involving the Applicant and/or her son. The Public Body carried out both investigations. One investigation was a formal investigation, initiated by the

Superintendent of Schools and carried out by an investigator from the Staff Relations Unit. The other was an informal investigation conducted by the Principal of the school attended by the Applicant's son.

[para 130] The Public Body does not describe either investigation in depth. The supporting affidavit, sworn by its FOIP Coordinator, states only the following regarding the investigations at paragraphs 29 and 50:

The Principal advised me, and I do verily believe, that administrative investigations may be conducted by the Principal, or an Administrative Team. The administrative investigation may be formal or informal. Formal investigation reports are not written for each incident that is investigated.

\* \* \*

From my involvement in this process, I have learned that the Applicant made complaints to [her son's school], and to the Division, about the treatment of her son. One investigation was a formal investigation conducted by the Division. The investigation was initiated by the Superintendent of Schools, and carried out by the Division's Staff Relations Unit. As described in paragraph 29, the second investigation (into a separate incident) was conducted by the School Principal. The investigations determined that the complaints were unfounded.

[para 131] The "process" referred to by the FOIP Coordinator in the above passage is the process of responding to the Applicant's access request, and the review and inquiry of it that followed.<sup>4</sup>

[para 132] Without a description of either investigation from the Public Body, or clarification of which records relate to them, I have determined whether any records relate to an investigation from a review of the records themselves.

#### *Records related to the Informal Investigation*

[para 133] Regarding the informal investigation, it is not evident on the face of any of the records that they relate to that investigation. None of the records mention an informal investigation or an investigation by the Principal. The records do not provide any insight into what the Principal was investigating or the Principal's investigative process. Thus, I cannot conclude that any of the records are related to the informal investigation, and, as such, that section 17(4)(b) properly applies to any of them.

#### *Records related to the Formal Investigation*

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<sup>4</sup> Since the FOIP Coordinator was responsible for all aspects of responding to the FOIP request, including processing responsive records and providing them to the Applicant, I infer that aside from the brief discussion with the Principal mentioned in the Affidavit, the FOIP Coordinator's knowledge of the investigations came from the records themselves.

[para 134] Some of the redactions are of records that indicate they are related to the formal investigation.

[para 135] Pages 39 to 41 of the records consist of an investigation report concerning allegations that the Public Body's employees treated the Applicant's son in an abusive manner on several occasions. The investigation report was prepared by an investigator from the Staff Relations Unit. It specifies the incidents underpinning the allegations and lists six people that the investigator interviewed. I note that the precise time of the formal investigation was not specified, and the investigation report is undated. The records indicate that the investigation interviews all took place on February 23, 2017, and I infer that the investigation took place around that time.

[para 136] Pages 42 to 65 contain the investigator's questions for those interviewed, and pages 1018 to 1055 contain the investigator's notes of the answers given to those questions. I find that these pages are records of the formal investigation.

[para 137] Pages 39 to 65, 1026, 1030, and, 1038 to 1048 have already been released to the Applicant in full. Pages 1018 to 1025, 1027 to 1029, 1030 to 1037, and 1049 to 1055 were released to the Applicant with redactions under section 17(1). The pages with redactions to them are the records at issue under this heading.

[para 138] Since these pages relate to the formal investigation, I consider whether they are law enforcement records under section 17(4)(b).

*Is the information part of a law enforcement record?*

[para 139] “Law enforcement” is defined in section 1(h) of the Act, and includes investigations:

(h) “law enforcement” means

(i) *policing, including criminal intelligence operations,*

(ii) *a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or*

(iii) *proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred;*

[para 140] The Public Body submits that the investigation into the allegations against its employees is an “administrative investigation” under section 1(h)(ii). It relies on Order F2011-013 in support of its position. However, I have no need to consider the Public Body’s argument on this point. Even if the investigations are administrative

investigations, for the reasons set out below, I find that they did not carry the risk of a penalty or sanction, and as such, are not captured by the definition of “law enforcement.”

[para 141] Various orders of this Office have considered the terms “penalty” and “sanction.”

[para 142] Former Commissioner Clark considered the connection between penalties and sanctions and law enforcement in Order 2000-019 at paras. 64 to 66:

The Public Body’s submission says that the investigation was also under the *Public Service and Employee Relations Act* [sic] and the Collective Agreement, but says nothing further about that legislation or agreement. The Public Body’s affidavit says only that the investigation was under the section 25 of the *Public Service Act*. Therefore, I have considered only the *Public Service Act*.

The Public Body says that the sanction imposed as a result of the investigation was termination of employment.

In Order 96-006, which was decided before the definition of “law enforcement” was amended, I said that both “law” and “law enforcement” should encompass the notion of a violation of a statute or regulation. A breach of employment duties that would render an applicant subject to disciplinary action would not be a violation of “law” because those duties are not set out by a law that provides for penalties or sanctions if the duties are breached. A penalty or sanction would be imposed pursuant to conditions of employment rather than a “law”.

[para 143] An Adjudicator considered dictionary definitions of both terms in Order F2004-022 at para. 55:

This is further demonstrated when one examines the definitions of penalty and sanction found in *Black’s Law Dictionary* (St. Paul, Minnesota, West Corp., 1999) at pages 1153 and 1341 respectively:

Penalty. 1. Punishment imposed on a wrongdoer, esp. in the form of imprisonment or fine. Though usu. [sic].for crimes, penalties are also sometimes imposed for civil wrongs.

Sanction. 1. Official approval or authorization. 2. A penalty or coercive measure that results from failure to comply with a law, rule or order.

[para 144] The Director of Adjudication considered whether an investigation was a matter of law enforcement or could have led to penalty or sanctions in Order F2013-51 at paras. 46 to 49:

I note that the investigation conducted by the University of Calgary’s investigator was not an investigation conducted under human rights legislation. From the information available to me in the records, I infer that the University of Calgary’s investigation was intended to determine whether there was merit to the Applicant’s complaint. There is no evidence before me that this investigation was intended to enforce the law or could have led to a

penalty or sanction in order to enforce a law. I also note that in Order F2003-005, which dealt with records created in this earlier investigation, the Adjudicator held that the investigation was not a law enforcement investigation. The Adjudicator said (at para 68):

I do not accept that the records that relate to the Public Body's sexual harassment investigation are part of a law enforcement record. Order 2000-019 held that "law enforcement" should encompass the notion of a violation of "law". The sexual harassment investigation here at issue and resulting records were related to enforcement of the Public Body's sexual harassment policy. While this policy contains some references to provincial and federal human rights legislation, the Public Body's investigation was under the policy, not under the "law" which consists of human rights legislation.

In Order F2008-030, I considered whether investigations that were not themselves intended to ensure compliance with a law could be considered law enforcement investigations if they uncovered information that could then be referred to another body responsible for enforcing a law. I said:

I turn to whether section 1(h)(ii) of the Act (which defines "law enforcement") is met because an investigation by the director could, if he or she were to discover the elements of an offence in the course of conducting an investigation, lead to the imposition of a penalty or sanction. In this regard, I acknowledge that if the director were to discover facts which amounted to an offence, and were to refer the matter to the police, any investigation or proceeding that followed could lead to the imposition of penalties or sanctions. I also note that section 1(h)(ii) contemplates an investigation that could lead to a penalty or sanction imposed by another body to which the results of the investigation are referred. As well, I note that the director is empowered under the child welfare legislation to take whatever action he or she thinks is appropriate after concluding an investigation, which could conceivably be interpreted to include the power to refer the matter for a possible charge and prosecution, and that in any event, section 40(1)(q) of the Act permits public bodies to disclose personal information to assist in investigations from which a law enforcement proceeding is likely to result. Finally, I note that the child welfare legislation, both current and former, makes it an offence to willfully cause a child to be in need of protective services or intervention. Thus it is arguable that a director's investigation could meet the definition of "law enforcement" under section 1(h)(ii) of the Act by reference to all of these factors.

However, there is another possible interpretation of section 1(h)(ii), which is that it is limited such that the purpose of the administrative investigation must be to enforce compliance with a law, and does not cover an investigation which has other primary purposes but which might incidentally uncover an offence, which can then be referred to police for further investigation or prosecution. Under this interpretation, since a director's investigations are for the purpose of taking steps to protect children, and the uncovering of offences is not among the director's expressed duties, a director's investigation is not "law enforcement" under the Act. Support for this interpretation may be found in the fact that many statutory powers of investigation could lead to the incidental discovery of an offence, from which it would follow that all such statutory investigative powers are "law enforcement" under the Act - arguably a result that is broader than was intended.

In the foregoing order, I found that an interpretation of section 1(h)(ii) of the FOIP Act that would include statutory investigations that were not in and of themselves intended to enforce compliance with the law, would be overly broad. In the case before me, the investigation recorded in the first volume of records is not a statutory investigation. Rather, as noted above, it is an investigation as to whether there was any merit to the Applicant's complaint.

I agree with the Adjudicator in Order F2003-005 that the University of Calgary's investigation was not a law enforcement investigation within the terms of section 1(h) of the FOIP Act.

[para 145] The Public Body's argument that the formal investigation is a matter of law enforcement with the prospect of penalty or sanction relies on sections 33(1)(d) and 33(2) of the *Education Act*, S.A. 2012, C-0.3 (the *Education Act*). Sections 33(1)(d) and 33(2), state,

*33(1) A board, as a partner in education, has the responsibility to*

*(d) ensure that each student enrolled in a school operated by the board and each staff member employed by the board is provided with a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging,*

*(2) A board shall establish, implement and maintain a policy respecting the board's obligation under subsection (1)(d) to provide a welcoming, caring, respectful and safe learning environment that includes the establishment of a code of conduct for students that addresses bullying behaviour.*

[para 146] The Public Body states that school divisions must enforce the policies adopted under section 33(1)(d) by investigating complaints and imposing penalties, in the form of suspensions or termination of employees who act inappropriately.

[para 147] The Public Body also argues that sections 256(d) and 258 of the *Education Act* indicate that the formal investigation carried the possibility of a penalty or sanction. Section 256 of the *Education Act* states,

*256 No person shall*

- (a) disturb or interrupt the proceedings of a school,*
- (b) disturb or interrupt the proceedings of a school meeting or board meeting,*
- (c) loiter or trespass in a school building or on property owned by a board, or*
- (d) conduct themselves in a manner detrimental to the safe operations of a school.*

[para 148] Under section 258 of the *Education Act*, it is an offence to contravene section 256:

*258 Any person who contravenes section 86, 221 or 256 is guilty of an offence and liable to a fine of not more than \$1000.*

[para 149] Arguably the formal investigation in the present case would fall within the terms of section 256(d) – conduct detrimental to the safe operation of a school. However, pursuant to section 290, the *Education Act* did not come into force until September 1, 2019:

*290 This Act comes into force on September 1, 2019.*

[para 150] Since the *Education Act* did not come into force until well after the formal investigation took place, around February 23, 2017, its provisions do not operate to create the risk of a sanction or penalty arising from that formal investigation.

[para 151] The predecessor legislation to the *Education Act* in force at the time of the investigation in February 2017 was the *School Act*, R.S.A. 2000, c. S-3 (*the School Act*). While the *School Act* listed the same three prohibitions against disruptive conduct as those in section 256 (a) to (c), and made violation of them an offence, it did not include the same prohibition against conduct detrimental to the safe operation of a school that now appears in section 256(d) of the *Education Act*.

[para 152] The *School Act* did impose the same obligation to provide a safe and caring environment for students as that in s. 33(1)(d) of the *Education Act*. Section 45.1(1) of the *School Act* stated,

*45.1(1) A board has the responsibility to ensure that each student enrolled in a school operated by the board and each staff member employed by the board is provided with a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging.*

*(2) A board shall establish, implement and maintain a policy respecting the board's obligation under subsection (1) to provide a welcoming, caring, respectful and safe learning environment that includes the establishment of a code of conduct for students that addresses bullying behaviour.*

[para 153] I note that the Public Body's assertion that it must investigate complaints and impose penalties under the type of policy described above was made with reference to the *Education Act*. However, as the provisions of the two pieces of legislation impose identical obligations, I will consider the Public Body's arguments as they would apply to the *School Act*.

[para 154] For the following reasons, I find that the Public Body has not established that there was a possibility of penalty or sanction in the formal investigation.

[para 155] While there may have been personal repercussions for the employees involved in these investigations, it seems to me that those repercussions - suspension or termination - are the sort that an employer imposes upon an employee as a matter of job

performance. I agree with former Commissioner Clark in Order 2000-019 that these types of repercussions do not amount to law enforcement.

[para 156] I also consider that had the investigation found wrongdoing on the part of the accused employees, the matter may have escalated to the Police as a criminal matter, and consequently result in penalty or sanctions. I agree with the Director of Adjudication in Order F2013-51, that these circumstances fall outside of the ambit of “law enforcement” and that including them would result in an overly broad definition of “law enforcement.” I add that including these circumstances in the definition of “law enforcement” would have the effect of “deputizing” civil servants who may be involved in “administrative investigations” even though their roles do not involve anything resembling law enforcement otherwise. Clear language would have to be present in the Act to support such an interpretation.

[para 157] Accordingly, while information redacted on pages 1018 to 1037 and 1049 to 1055 are related to the formal investigation, they are not part of a law enforcement record, and the presumption against disclosure under section 17(4)(b) does not apply to them. I now consider whether information on these pages was properly withheld pursuant to the rest of section 17(1).

[para 158] Under section 17(1), the Public Body redacted its employee’s answers to the investigator’s questions in their entirety, applying section 17(1) in a blanket fashion. It appears that the Public Body considered that the mere fact that a statement was made in the context of an investigation makes the statement, or the fact that a certain person made it, personal information. This is not the case.

[para 159] The Public Body’s employees took part in the investigation as matter of their employment duties. The fact that they made any particular statement is a matter of performance of their duties, and as such is not their personal information. See Order F2009-026 at paras. 10 to 11. This principle also extends to opinions about an applicant that are formed as a result of dealing with the applicant in the course of employment duties, when the opinion is given as matter of employment duties, such as answering the investigator’s questions. As stated by the Adjudicator in Order F2009-026 at paras. 14 to 17:

The employee brought an incident that took place in the course of her employment to the attention of the Public Body’s security office. As the records at issue indicate that the Applicant has knowledge of the incident described in the records at issue, and is aware of the employee’s role in the incident, it would not be possible to provide the Applicant with his own personal information, without also providing information about the employee. The question becomes whether the information about the employee is personal information, or information about the employee as a representative of the Public Body.

Not only do I find that the employee’s knowledge of the incident arose from her duties as an employee, but I find that reporting the incident to the security office and making a statement about the incident was also part of her duties as an employee. All of her dealings with the Applicant were done as an employee of the Public Body and decisions made in

relation to his requests were made with the authority of the Public Body. This finding is supported by the employee's reported statement referring to "enforcing guidelines", which appears in paragraph 1(e) of page 2 of the records at issue.

Under section 1(n) of the Act, cited above, an opinion held about an individual is the personal information of the subject of the opinion. However, the fact that an individual holds an opinion about another individual can be information about the individual who has formed the opinion. In Order F2006-006 the Adjudicator noted:

A third party's personal views or opinions about the Applicant - *by that reason alone* - are expressly not their personal information under section 1(n)(ix). However, the identification of the person providing the view or opinion may nonetheless result in there being personal information about him or her. Section 1(n)(ix) of the Act does not preclude this conclusion, as that section only means that the content of a view or opinion is not personal information where it is about someone else. In other words, the *substance* of the view or opinion of a third party about the Applicant is not third party personal information, but the *identity* of the person who provided it is third party personal information.

In this case, the opinion formed about the Applicant is based on the employee's experience providing services to the Applicant on behalf of the Public Body, and on a conversation that took place between the Applicant and the employee regarding the Public Body's guidelines. Further, review of the records at issue indicates that this opinion was given to the security office so that the security office could assess the situation and take any steps that office considered necessary. I find that the opinion was also provided by the employee in a representative capacity, as part of her employment duties.

As I find that the information in the records at issue about the employee is about her as a representative of the Public Body, I find that section 17 does not apply to that information.

[para 160] I agree with the Adjudicator in Order F2009-026.

[para 161] Accordingly, section 17(1) does not apply in blanket fashion to the answers given to the investigator. As with the Public Body's other redactions under section 17(1), it must be applied to individual pieces of personal information. The result is that much of the information redacted from these pages should be disclosed to the Applicant.

[para 162] There is some information on these pages that is personal information, of the same types discussed earlier. This information is described in the headings below:

#### *Student Educational History*

[para 163] For the same reasons given earlier regarding student education history, I find that all information on page 1047 was properly redacted under section 17(1).

### *Staff Employment History*

[para 164] For the same reasons given earlier regarding staff employment history, I find that the information in **Table N of Schedule A** to this order has been properly redacted.

### *Personal Opinions about other Employees*

[para 165] For the same reasons given earlier regarding personal opinions about other employees, I find that the information in **Table O of Schedule A** to this order has been properly redacted.

### *Statements of the Public Body, its Operations, or Performance of Employment Duties; Statements of Fact and Observations; Opinions*

[para 166] For the same reasons given earlier regarding statements of the Public Body, its operations, performance of employment duties, statements of fact and observations, and opinions given as part of employment duties, I find that the information recorded in **Table P of Schedule A** to this Order is not personal information.

## **ISSUE C: Did the Public Body properly apply section 20(1) of the Act (disclosure harmful to law enforcement) to the information in the records?**

[para 167] The Public Body no longer relies on section 20(1) to withhold records.

[para 168] The only redactions to page 826 were made under section 20, which the Public Body now states it will provide to the Applicant.

[para 169] The Public Body also initially used section 20 to redact information on pages 726, 1018 to 1025, 1027 to 1029, 1030 to 1037, and 1049 to 1055. Since the Public Body no longer relies on section 20, I find that it has not established that this information was properly withheld under it.

## **ISSUE D: Did the Public Body properly apply section 24(1) of the Act (advice from officials) to the information in the records?**

[para 170] The Public Body withheld information under sections 24(1)(a) and 24(1)(b)(i) of the Act. Those sections state,

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

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

*(b) consultations or deliberations involving*

(i) officers or employees of a public body,

[para 171] What type of information is considered advice under section 24(1)(a) was discussed in Order F2013-13 at paras. 121 to 123:

In Order 96-006, the former Commissioner established a test to determine whether information is advice, recommendations, analyses or policy options within the scope of section 24(1)(a). He said:

Accordingly, in determining whether section 23(1)(a) [now section 24(1)(a)] will be applicable to information, the advice, proposals, recommendations, analyses or policy options (“advice”) must meet the following criteria.

The [advice, proposals, recommendations, analyses and policy options] should:

1. be sought or expected, or be part of the responsibility of a person by virtue of that person’s position,
2. be directed toward taking an action,
3. be made to someone who can take or implement the action.

The three part test adopted by the former Commissioner Clark in Order 96-006 is intended to assist in determining when advice, proposals, recommendations, analyses or policy options are *developed by or for a public body* within the terms of section 24(1)(a).

The third branch of the test, as it was stated by the former Commissioner, appears open to the interpretation that advice, proposals, recommendations, analyses, and policy options” must *be made to someone* who can take or implement the action”, in other words, that information will not fall under section 24(1)(a), unless the advice, proposals, recommendations, analyses, and policy options in question are actually provided or “made” to the decision maker. However, in my view, such an interpretation would be overly restrictive.

The intent of section 24(1)(a) is to ensure that internal advice and like information may be *developed* for the use of a decision maker without interference. This purpose would not be achieved if information otherwise falling under section 24(1)(a) were automatically producible prior to the decision maker actually receiving it, or in cases where a public body elected to follow another course and the advice did not ultimately reach the decision maker. So long as the information described in section 24(1)(a) is developed by a public body or for the benefit or use of a public body or a member of the Executive Counsel, by someone whose responsibility it is to do so, then the information falls under section 24(1)(a) regardless of whether the individual or individuals ultimately responsible for making a decision receives it. The third arm of the test should therefore be restated as “created for the benefit of someone who can take or implement the action” to better accord with the language and purpose of section 24(1)(a), and I will review the information to which the Public Body has applied section 24(1)(a) with that in mind.

[para 172] What sort of information constitutes consultations or deliberations under section 24(1)(b)(i) was discussed in Order F2012-10 at para. 37:

A consultation within the terms of section 24(1)(b) takes place when one of the persons enumerated in that provision solicits information of the kind subject to section 24(1)(a) regarding that decision or action. A deliberation for the purposes of section 24(1)(b) takes place when a decision maker (or decision makers) weighs the reasons for or against a particular decision or action. Section 24(1)(b) protects the decision maker's request for advice or views to assist him or her in making the decision, and any information that would otherwise reveal the considerations involved in making the decision. Moreover, like section 24(1)(a), section 24(1)(b) does not apply so as to protect the final decision, but rather, the process by which a decision maker makes a decision.

[para 173] The Adjudicator in Order F2018-16 set out the test for whether information is captured under section 24(1)(b) at paras. 30 to 32:

The test for the application of section 24(1)(b) of the Act is that the information must be:

1. sought or expected, or be part of the responsibility of a person, by virtue of that person's position;
2. directed toward taking an action; and
3. made to someone who can take or implement the action.

(Order 2007-021 at para 67)

The third part of this test has been restated by the Court of Queen's Bench in *Covenant Health v. Alberta (Information and Privacy Commissioner)*, 2014 ABQB 562. The Court stated:

The Commissioner prefers a much narrower approach. Her preferred approach limits the scope of the undefined terms by these limitations: "To fall within section 24(1)(b) the consultations or deliberations must be (i) sought or expected to be part of the responsibility of a person, by virtue of that person's position, (ii) directed toward taking an action, and (iii) made to someone who can take or implement the action". *Alberta Justice and Attorney General*, Order F 2007-021, para 67. This definition is too restrictive. It is not consistent with the rest of the paragraphs in s. 24(1) which are drawn in broad language. There is no basis to insist that one of the persons in the group has the authority to "take or implement an action".

(Court of Queen's Bench in *Covenant Health v. Alberta (Information and Privacy Commissioner)*, 2014 ABQB 562 at para 143, footnote 87)

Therefore, it is not a requirement that someone in the consultation group has the authority to take or implement an action....

[para 174] The Public Body did not argue that any particular item of redacted information meets the applicable tests under section 24(1), only that the information

redacted under these sections is of the type to which they apply. Accordingly, where it is evident from the redacted information that it meets one of the tests, I find that it is captured under section 24(1).

[para 175] At times, the Public Body withheld information from a page under only one of sections 24(1)(a) and 24(1)(b)(i), and at other times it redacted the same information under both. I discuss information redacted under each section, and under both sections, below.

*Information redacted under Section 24(1)(a) alone*

[para 176] Information that consists of advice and recommendations about how to handle various situations involving the Applicant and/or her son, or what steps may be taken to avoid similar situations in the future was correctly redacted under section 24(1)(a).

[para 177] The information I find is captured under section 24(1)(a) on this basis is recorded in **Table Q**, in **Schedule A** to this Order.

*Information redacted under section 24(1)(a) that is captured under section 24(1)(b)*

[para 178] In several instances, the Public Body withheld information under section 24(1)(a) when the information is properly captured under section 24(1)(b). This occurred with respect to information withheld under section 24(1)(a) on pages 323, 363, 364, 365, 740, 741, and 896.

[para 179] The reverse situation occurred in Order F2013-17; in that Order the Public Body withheld information under section 24(1)(b) that was captured under section 24(1)(a). Regarding that situation, the Adjudicator stated (at para. 83):

Each exception to disclosure recognizes that in some circumstances a public interest in withholding the information may outweigh the right of access. Section 24(1)(a) recognizes that there is a public interest in protecting a public body's ability to obtain frank advice and recommendations. I see no reason to deprive the Public Body from the protection created by section 24(1)(a), simply because it refers only to section 24(1)(b), when its reasons for applying section 24(1)(b) would support the application of section 24(1)(a).

[para 180] I find the reasoning from Order F2013-17 applies here. To mirror the language used by the Adjudicator in Order F2013-17, I see no reason to deprive the Public Body from the protection created by section 24(1)(b), simply because it refers only to section 24(1)(a) regarding these records. The Public Body was clearly intent on withholding information under both sections where either was applicable. Accordingly, while I do not find that the information withheld from these pages is captured under section 24(1)(a), I consider that it is captured under section 24(1)(b), and will deal with it accordingly.

*Information redacted under section 24(1)(b) alone*

[para 181] As discussed earlier, redactions to pages 28, 34, 35, and 120 were initially made under section 27 in response to the access request, but, are now made under section 24(1)(b). I consider these pages here.

[para 182] As discussed, I also find information redacted from pages 323, 363, 364, 365, 740, 741, and 896 are captured under section 24(1)(b), even though they were withheld under section 24(1)(a). I consider these pages here as well.

[para 183] The information captured under section 24(1)(b) on these pages consists of requests for advice or a weighing of reasons for or against taking an action.

[para 184] The information I find is captured under section 24(1)(b) on this basis is recorded in **Table R**, on **Schedule A** to this Order.

*Information redacted under sections 24(1)(a) and 24(1)(b) together*

[para 185] At times, the information withheld under both sections is captured under one section, but not the other. At other times, the withheld information consists of information captured under one of the sections intermingled with that captured under the other. For clarity, I set out which pieces of information were captured under which section(s) below.

[para 186] Where I find information was captured under one or both sections, my reasons are the same as those given when I discuss sections 24(1)(a) and 24(1)(b) separately.

*Information captured under section 24(1)(a) but not 24(1)(b)*

[para 187] The information I find is captured under section 24(1)(a), but not section 24(1)(b) on this basis is recorded in **Table S**, on **Schedule A** to this Order.

*Information captured under section 24(1)(b) but not 24(1)(a)*

[para 188] The information I find is captured under section 24(1)(b), but not section 24(1)(a) on this basis is recorded in **Table T**, on **Schedule A** to this Order.

*Information captured under sections 24(1)(a) and 24(1)(b)*

[para 189] Information captured under both sections consists of advice and consultations or deliberations intertwined with each other.

[para 190] The information I find is captured under sections 24(1)(a) and (b) on this basis is recorded in **Table U**, on **Schedule A** to this Order.

## ***Information not captured under section 24(1)***

### ***Information not aimed at taking an action***

[para 191] The Public Body has withheld information under sections 24(1)(a) and 24(1)(b) which does not meet the test that applies for those sections. In many cases, the information withheld was not directed at taking an action, which is the second branch of the test for either section. This information consists of statements of fact, observations of ongoing events, feelings, opinions, and commentary on past events. The common thread running through all of them is that while the Public Body construes them as advice, it is evident that none of this discussion was aimed at taking an action. The withheld statements appear to have been made to no end other than to make a point in furtherance of idle conversation. Such points are only commentary on what has happened, without any suggestion about what to do next. They are not advice, consultations or deliberations. Accordingly, they do not constitute the type of information captured under section 24(1)(a) or (b).

[para 192] The information I find is not captured under sections 24(1)(a) or (b) on this basis is recorded in **Table V**, on **Schedule A** to this Order.

### ***Decisions***

[para 193] Section 24 protects the decision-making process, but not decisions themselves. (See Order 96-012 at paras. 31 and 37). The Public Body has redacted several items of information that are records of decisions made, rather than information designed to help make a decision.

[para 194] The information I find is not captured under sections 24(1)(a) or (b) on this basis is recorded in **Table W**, on Schedule A to this Order.

### ***Exercise of Discretion***

[para 195] Since section 24(1) is a discretionary exception to disclosure, a public body must demonstrate that it properly exercised its discretion when deciding to withhold information under it. Beyond merely determining that section 24(1) applies, a public body must consider whether to withhold information under it. The approach to this exercise, and what sort of evidence regarding it is preferred at inquiry, was described in Order F2004-026 at paras. 46 and 47:

In my view a Public Body exercising its discretion relative to a particular provision of the Act should do more than consider the Act's very broad and general purposes; it should consider the purpose of the particular provisions on which it is relying, and whether withholding the records would meet those purposes in the circumstances of the particular case. I find support for this position in orders of the British Columbia Information and Privacy Commissioner. Orders 325-1999 and 02-38 include a list of factors relevant to the exercise of discretion by a public body. In addition to "the general purposes of the legislation (of making information available to the public) the list includes "the wording of

the discretionary exception and the interests which the section attempts to balance". It strikes me as a sound approach that the public body must have regard to why the exception was included, and whether withholding the information in a given case would meet that goal.

In this case, the Public Body did, in its second submission, engage in an extensive discussion about the purposes of section 24. It said this was to allow persons having the responsibility to make decisions to freely discuss the issues before them in order to arrive at well-reasoned decisions, and that the Head should exercise the discretion to withhold documents where disclosure would defeat the purpose of this section. I am persuaded the Head was mindful of these policy goals, and withheld the records to ensure they would be met. These policy goals apply to section 24 generally and to section 24(1)(e) in particular. This explanation, together with the fact that additional records were disclosed on the second review, leads me to conclude the Head exercised his discretion under section 24(1)(e) properly. (I note, however, that I do not have an affidavit from the Head of the Public Body that explains the basis for his exercise of discretion. In my view, direct evidence from the Head on this point would be preferable to assertions to the same effect in the Public Body's written submission.)

[para 196] In the present case, the Public Body has not provided any statements about how it exercised discretion to withhold information under section 24(1). Accordingly, I cannot conclude that it exercised its discretion properly. My review of the records at issue suggests that the Public Body applied section 24(1) liberally, both to information that falls within it and much that does not. I consider that the Public Body may have adopted a blanket approach to redacting information under section 24(1), applying it to any and all information that may be captured under it. If that is the case, then the Public Body has fettered its discretion and applied it improperly. In the absence of any evidence to the contrary, I find this to be the case. I agree with the External Adjudicator in Order F2017-61 at para. 150 on this point; she wrote:

This makes it impossible to see how the s. 24 exceptions have been applied to the information on the pages. For the pages of records where the s. 24 exceptions have been consistently claimed, there is still no evidence as to how the exceptions have been applied. The Public Body's sparse submissions with respect to how it exercised its discretion for all 35 pages where the s. 24 exceptions have been claimed, including pages 210 and 211, are deficient resulting in me being unable to assess whether it has exercised its discretion properly. This lack of evidence as to how the Public Body exercised its discretion leads to a conclusion that the Public Body fettered its discretion by adopting a blanket assertion as to the application of the s. 24 exceptions (Refer to para. 33 above citing Suncor at para. 34)

[para 197] I find that the Public Body exercised its discretion improperly.

#### **ISSUE E: Did the Public Body properly identify non-responsive information?**

[para 198] Almost universally, information that was flagged as non-responsive was also correctly redacted as staff or student personal information under section 17(1). In a few places, information was only redacted as non-responsive. I have reviewed this information and agree that it is non-responsive. It refers to matters that are not part of the subject matter of the access request.

[para 199] However, there are several items of information redacted as non-responsive that are responsive to the access request. The access request was broad, seeking all records related to the Applicant and her son. While these records do not mention the Applicant and her son directly, they discuss topics that clearly concern or involve the Applicant and her son.

[para 200] Information identified as responsive to the access request but withheld as unresponsive is recorded on **Table X of Schedule A** to this order.

## V. ORDER

[para 201] I make this Order under section 72 of the Act.

[para 202] I order the Public Body to release further information to the Applicant. The information to be disclosed is that which was withheld in the initial response to the access request, but is not captured under the section used to redact it, was improperly labelled as nonresponsive, and opinions about the Applicant or her son to which the Applicant is entitled. This information is recorded in **Table Y of Schedule A** to this Order.

[para 203] I order the Public Body to reconsider its use of discretion to redact any information under section 24(1) and to provide the Applicant with any further information that it finds should be released. The reconsideration of the application of section 24(1) concerns only existing applications of it, and is not an invitation to redact further information.

[para 204] I order the Public Body to provide the Applicant with a description of how it exercised its discretion to redact any information under section 24(1) upon reconsideration.

[para 205] After disclosing the information in **Table Y of Schedule A** to this Order, and after disclosing any further information as a result of reconsidering the application of section 24(1), I order the Public Body to do the following in order to address its failure to respond to the access request accurately:

- Review all pages of the records to identify information that remains withheld on one page of the records, but is disclosed on another.
- Remove redactions to information that remains withheld on one page but is disclosed on another, and provide the Applicant with updated pages reflecting the change.

[para 206] I order the Public Body to provide confirmation in writing to me and the Applicant that it has complied with this order within 50 days of receiving it.

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John Gabriele  
Adjudicator  
/bah

## **SCHEDEULE “A” to ORDER F2020-23**

### ***Description of Redacted Information***

In cases where all redactions to a page under a particular section are correct or incorrect, I refer to the redactions on a page as a whole, simply by referring to the page number.

In cases where some information on a page was redacted correctly, but other information was redacted incorrectly, I describe each item of information individually. Since the records contain a myriad of different formats, I have employed several different methods to describe the location of information on a page as follows:

- **By reference to other, unredacted information on the page.**
- **By reference to line number on a page.** In these cases, the line number references the line the redacted text appears on by counting the number of lines down from the top of the page.
- **By reference to a block of redacted information.** In these cases, the Public Body has redacted information in several places on a page by blocking out the text with a blank box. On these pages, I have counted the blocks of redacted information according to the order in which they appear as a person reads the text on that page. (top to bottom of page, left to right on each line), and refer to them by number accordingly. For example, where there are three blocks of redacted information on a page, the third block of redacted information encountered as one reads the page is the “third block of redacted information.”
- **By reference to a text box.** A large number of the records at issue are print-outs of text messages. Each text message is framed in its own box (a “text box”), and the boxes are stacked one on top of the other. I refer to each text box by number, starting at the top of the page with the “first text box”, and count further text boxes, as the second, third, fourth, and so on, as they appear beneath it. For clarity, even if the top text box is only a partial text box or just a sliver of the bottom boarder of a text box, it is still counted as the first text box on the page.

### **TABLE A – referred to on page 17**

#### *Names appearing with Personal Information*

[para 207] I find that all of the information redacted under section 17(1) from the following pages was correctly redacted:

**Pages:** 19, 189, 209, 214, 245, 248, 249, 251, 261, 285, 286, 290, 291, 292, 293, 294, 296, 302, 304, 305, 312, 313, 317, 318, 319, 320, 321, 326, 328, 329, 334, 335, 336, 339, 342, 343, 350, 358, 362, 363, 364, 365, 367, 368, 369, 372, 373, 374, 375, 376, 377, 378, 380, 381, 382, 384, 387, 388, 389, 391, 393, and 794.

[para 208] I find the following pieces of information were also correctly redacted:

<b>Page Number</b>	<b>Description of Information</b>
35	First line of text (sentence fragment) under header
66	First block of redacted information
252	Information in first text box
262	Information in the fourth and fifth text boxes
276	Information in the eighth text box
301	Pictures
307	Telephone number and pictures
308	Telephone number and pictures
309	Telephone number and pictures
311	Telephone number and pictures
314	Telephone number and pictures
315	Telephone number and pictures
323	Pictures
324	Telephone number
325	Pictures
327	Pictures
330	Pictures
331	Pictures
332	Pictures, Information in the first text box
337	Telephone number and pictures
338	Pictures, telephone number, information in first text box
340	Telephone number and pictures
341	Telephone number and pictures
344	Pictures, telephone number, information in third and fifth text boxes
345	Telephone number and pictures
346	Telephone number and pictures
347	Telephone number and pictures
348	Telephone number and pictures information in fifth, sixth, and seventh text boxes
349	Telephone number and pictures
351	Telephone number and pictures
352	Telephone number and pictures
353	Telephone number and pictures
354	Telephone number and pictures
356	Telephone number and pictures
357	Telephone number and pictures
367	Telephone number and pictures
371	Telephone number
383	Telephone number
995	First sixteen words of the first paragraph in the third text box
996	First sixteen words of the first paragraph in the third text box

**TABLE B – referred to on page 17**

*Student Educational History*

[para 209] I find that all of the information redacted under section 17(1) from the following pages was correctly redacted:

**Pages:** 24, 37, 38, 68, 76, 79, 80, 82, 83, 102, 105, 110, 113, 114, 115, 122, 123, 132, 133, 134, 144, 145, 152, 171, 179, 180, 185, 193, 194, 196, 212, 213, 274, 420, 421, 536, 727, 729, 733, 735, 736, 737, 738, 739, 753, 763, 764, 781, 782, 786, 790, 791, 795, 796, 797, 801, 802, 805, 809, 811, 812, 819, 820, 827, 828, 833, 834, 838, 839, 840, 841, 842, 858, 859, 860, 868, 872, 886, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 938, 935, 937, 939, 942, 943, 951, 952, 953, 955, 966, 967, 973, 974, 981, 985, 987, 990, 991, 993, 997, 1001, and 1009.

[para 210] I find the following pieces of information were also correctly redacted:

<b>Page Number</b>	<b>Description of Information</b>
23	Second block of redacted information
31	First block of redacted information
32	First block of redacted information
36	Second and third blocks of redacted information
181	Name of another student appearing after the name of the Applicant's son in the fifth paragraph from the bottom of the page
270	Information in third text box
275	Information in first text box
276	Information in fourth and fifth text boxes
279	Information in the third, fourth, fifth, and sixth text boxes
312	Information in first text box
324	Information in first text box
344	Information in first text box
360	Information in fourth text box
366	Information in third text box
406	First block of redacted information; First two words of the second block of redacted information
725	Information redacted from rows 3, 7, and 10 of the chart
726	Information redacted from row 7 of the chart
748	Second block of redacted information
751	Second, third, and fourth blocks of redacted information

**TABLE C – referred to on page 17**

*Medical information and staff employment history*

[para 211] I find that all of the information redacted under section 17(1) from the following pages was correctly redacted:

**Pages:** 34, 39, 209, 282, 291, 292, 390, and 396.

[para 212] I find the following pieces of information were also correctly redacted:

<b>Page Number</b>	<b>Description of Information</b>
31	Second block of redacted information
32	Second block of redacted information
35	Information in the second full paragraph
66	Second, third, and fourth blocks of redacted information
97	Fourth, fifth and sixth blocks of redacted information
106	Information redacted from second paragraph

**TABLE D – referred to on page 17**

*Other third party Personal Information*

[para 213] I find that all of the information redacted under section 17(1) from the following pages was correctly redacted:

**Pages:** 69, 70, 98, 106, 107, 113, 271, 322, 385, 398, 777, 682, and 816.

[para 214] I find the following pieces of information were also correctly redacted:

<b>Page Number</b>	<b>Description of Information</b>
97	Second and third blocks of redacted information; Seventh through thirteenth blocks of redacted information; all information redacted in the second and third paragraphs
259	Information in the second text box
338	Information in fourth text box
383	Information in third text box
725	Information at the bottom of the page, outside of the chart.
726	Information redacted in the first two rows of the chart
817	Fourth redacted block of information
851	First two blocks of redacted information

**TABLE E – referred to on page 20**

*Personal Views or Opinions not about Others*

[para 215] I find that all of the information redacted under section 17(1) from the following pages was correctly redacted:

**Pages:** 200, 269, 280, 281, 303, 394, and 994.

[para 216] I find the following pieces of information were also correctly redacted:

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<b>Page Number</b>	<b>Description of Information</b>
35	Sixth sentence of the first full paragraph
255	Information in sixth and seventh text boxes
256	Information in second and third text boxes
257	Information in second and third text boxes
262	Information in sixth and seventh text boxes
263	Fourth sentence in the third text box; First sentence in the fourth text box
264	Sixth and seventh sentences in the fourth text box
265	Information in the third text box
267	Information in the fourth, and seventh text boxes
268	Information in the second, eighth and tenth text boxes
275	Information in the third text box
279	Information in the second text box
287	Information in the second, third, and fourth text boxes
298	Information in the sixth and tenth text boxes
299	Information in the third, seventh, eighth, ninth, and tenth text boxes
300	Fourth sentence in the third text box, information in the fourth and fifth text boxes
315	Information in the second text box
323	Information in the sixth text box
324	Information in the third text box
325	Second, third, and fifth sentences in the third text box, information in the fourth text box
327	Information in the first, second, third, and fourth text boxes
345	Information in the second, third, and fourth text boxes
347	Third sentence in the fourth text box, information in the fifth text box
348	Information in the second text box
349	Second, third, and fourth sentences in the fourth text box
351	Information in the sixth text box
352	Information in the first and second text boxes
356	Fourth sentence in the second text box; First sentence in the third text box
357	Sixth and seventh sentences in the third text box
397	Second, third, and fourth sentences in the fourth text box
965	Last sentence on the page
995	Information in the second text box; The last 17 words of the first paragraph, and all of the second paragraph in the third text box
996	Information in the second text box; The last 17 words of the first paragraph, and all of the second paragraph in the third text box

**TABLE F – referred to on Page 21**

*Personal Views and Opinions about other Employees*

[para 217] I find that all of the information redacted under section 17(1) from the following pages was correctly redacted:

**Pages:** 6, 7, 162, 260, 310, and 395.

[para 218] I find the following pieces of information were also correctly redacted:

<b>Page Number</b>	<b>Description of Information</b>
35	Fifth sentence of the first full paragraph
181	Third paragraph from the bottom of the page, describing staff feelings
252	Information in the second text box
253	Information in the first text box, redactions to lines 1, 2, 4, 5, and 6 of the second text box
263	First sentence of the fifth text box
264	Information in the second text box
275	Information in the fifth text box
276	Information in the third text box
300	Second sentence of the third text box
314	Second sentence of the first text box; information in the second, third, fourth, and sixth text boxes
330	Information in the third text box
340	Second sentence of the first text box; information in the second, third, fourth, and sixth text boxes
349	Information in the second text box
355	Information in the second text box
356	Information in the fourth text box
357	First sentence in the first text box; Fifth sentence in the third text box
397	Information in the second text box

**TABLE G – referred to on page 24**

*Opinions about the Applicant and her Son*

[para 219] I find that all of the information redacted under section 17 on the following pages is opinion about the Applicant or her son that should be disclosed.

**Pages:** 217, 238, and 240.

[para 220] I find that the following pieces of information should be disclosed to the Applicant:

<b>Page Number</b>	<b>Description of Information</b>
35	Fourth sentence of the first full paragraph

197	First redacted block of information; Second and third sentences of the second redacted block of information
264	Information in the fifth and sixth text boxes
265	Information in the second text box
301	Information in the first and third text boxes
307	Information in the third and sixth text boxes
314	First sentence in the first text box; information in the fifth text box
331	Information in the third text box
332	Information in the second text box
337	Information in the first text box
340	First sentence in the first text box; information in the fifth text box
341	Information in the third and fourth text boxes
354	Information in the first text box
357	Information in the fourth text box
400	Information in the first text box

**TABLE H – referred to on page 24**

*Opinions about a third party*

[para 221] I find the following pieces of information were correctly redacted:

<b>Page Number</b>	<b>Description of Information</b>
23	First and third blocks of redacted information
253	Information redacted from lines 10, 11, and 12 of the second text box

**TABLE I – referred to on page 25**

*Opinions about the Public Body*

[para 222] I find the following pieces of information were correctly redacted:

<b>Page Number</b>	<b>Description of Information</b>
268	Information in the ninth text box
301	Information in the second text box
337	Second, third, fourth, and fifth sentences in the second text box
353	Second, third, fourth, and fifth sentences in the third text box
354	Information in the second text box
400	Information in the second text box

**TABLE J – referred to on page 25**

*Statements of the Public Body, its Operations, or Performance of Employment Duties*

[para 223] I find that all information redacted under section 17(1) on the following pages is not personal information.

**Pages:** 216, 745, 755, 760, and 847.

[para 224] I find the following pieces of information are also not personal information:

<b>Page Number</b>	<b>Description of Information</b>
35	Name and title under the second full paragraph
197	First sentence and last three words of the second block of redacted information.
263	Second and third sentences of the fifth text box
264	Information in the third text box; second, third, fourth, and fifth sentences in the fourth text box
300	Third sentence in the third text box
325	Fourth sentence of the third text boxes
331	Information in the fourth and fifth text boxes
337	First sentence of the second text box
345	Information in the sixth text box
346	Information in the second and fifth text boxes
347	Fourth sentence of the fourth text box
349	Fifth sentence of the fourth text box
353	First sentence of the third text box
357	Second sentence of the first text box; information in the second text box; First, second, third, and fourth, sentences of the third text box
371	Information in the first text box
406	Second block of redacted information, except for the first two words
748	First block of redacted information
751	First block of redacted information

**TABLE K – referred to on page 26**

*Statements of Fact and Observations*

[para 225] I find that all information redacted under section 17(1) on the following pages is not personal information.

**Pages:** 85, 149, 254, and 278.

[para 226] I find that the following pieces of information are also not personal information:

<b>Page Number</b>	<b>Description of Information</b>
35	First, second, third, seventh, and eighth sentences of the first full paragraph
255	Information in the first and fifth text boxes
256	Information in the first text box
257	Information in the first text box
263	Second, third, and fourth sentences of the fourth text box
267	Information in the first and fifth text boxes

268	Information in the fourth and seventh text boxes
279	Information in the first text box
298	Information in the eighth and ninth text boxes
299	Information in the fifth and sixth text boxes
300	Information in the sixth text box
311	Information in the second text box
315	Information in the first text box
345	First block of redacted information in the sixth text box
347	Second and fifth sentences of the fourth text box
349	Information in the first text box; First sentence of the fourth text box
355	Information in the first text box
356	Second, third, and fourth sentences of the third text box
397	Information in the first text box; Information in the third text box; First sentence of the fourth text box
965	All information except for the last sentence
995	Information in the first text box
996	Information in the first text box

### TABLE L – referred to on page 26

#### *Questions*

[para 227] I find that the following pieces of information are not personal information:

Page Number	Description of Information
263	Fifth sentence of the third text box
311	Information in the fifth text box
327	Information in the fifth text box
331	Information in the first and second text boxes
345	Information in the fifth text box
347	Information in the third text box
356	Fifth sentence of the second text box

### TABLE M – referred to on page 26

#### *Other information that is not personal information*

[para 228] I find that all information redacted under section 17(1) on the following pages is not personal information.

**Pages:** 11, 783, 809, 815, 817, 849, 945, and 979.

[para 229] I find that the following pieces of information are not personal information:

Page Number	Description of Information
181	All information except reference to third party student (noted above)
851	Third, fourth, fifth, and sixth blocks of redacted information

## TABLE N – referred to on page 35

### *Staff Employment History*

[para 230] I find the following pieces of information were correctly redacted under section 17(1):

Page Number	Description of Information
1018	Answers to the first two questions
1031	Information on second and fourth lines
1034	First sentence on the fourteenth line
1049	Answers to first two questions

## TABLE O – referred to on page 35

### *Personal Opinions about other Employees*

[para 231] I find the following pieces of information were correctly redacted under section 17(1):

Page Number	Description of Information
1022	Last sentence on the page
1023	Last sentence on the page
1033	Last three words on the twentieth line

## TABLE P – referred to on page 35

### *Statements of the Public Body, its Operations, or Performance of Employment Duties; Statements of Fact and Observations; Opinions*

[para 232] I find that all of the information redacted under section 17(1) on the following pages is not personal information:

**Pages:** 1019, 1020, 1021, 1024, 1025, 1027, 1028, 1029, 1032, 1035, 1036, 1037, 1050, 1051, 1052, 1053, 1054, and 1055.

[para 233] I also find that the following pieces of information are not personal information:

Page Number	Description of Information
1018	Answer to the third question
1022	All information except for the last sentence on the page
1023	All information except for the last sentence on the page
1031	All information except for information on the second and fourth lines
1033	All information except the last three words on the twentieth line
1034	All information except the first sentence on the fourteenth line

1049	Answer to the third question
------	------------------------------

### **TABLE Q – referred to on page 38**

*Information redacted under Section 24(1)(a) alone*

[para 234] I find that all information redacted under section 24(1)(a) alone on the following pages information is captured under section 24(1)(a):

**Pages:** 7, 19, 99, 100, 104, 111, 112, 113, 114, 115, 116, 123, 124, 125, 145, 146, 153, 154, 155, 163, 171, 180, 181, 182, 185, 193, 198, 213, 247, 280, 281, 318, 370, 401, 402, 403, 404, 405, 406, 407, 408, 410, 411, 417, 418, 419, 420, 421, 783, 790, 791, 792, 793, 802, 803, 827, 829, 830, 855, 856, 857, 860, 869, 891, 892, 932, 970, 971, and 976.

[para 235] I also find the following pieces of information are captured under section 24(1)(a):

<b>Page Number</b>	<b>Description of Information</b>
880	Bottom block of redacted information

### **TABLE R – referred to on page 39**

*Information redacted under section 24(1)(b) alone*

[para 236] I find that all information redacted under section 24(1)(b) alone on the following pages is captured under section 24(1)(b):

**Pages:** 120, 323, 351, 352, 363, 364, 365, 370, 740, 741, 786, and 896.

[para 237] I also find the following pieces of information are captured under section 24(1)(b):

<b>Page Number</b>	<b>Description of Information</b>
28	Fifth sentence in the e-mail.

### **TABLE S – referred to page 39**

*Information captured under section 24(1)(a) but not 24(1)(b)*

[para 238] I find that all information redacted under sections 24(1)(a) and (b) on the following pages is only captured under section 24(1)(a):

**Pages:** 9, 37, 180, 187, 351, and 352.

[para 239] I also find the following pieces of information is captured only under section 24(1)(a):

<b>Page Number</b>	<b>Description of Information</b>
152	Fourth block of redacted information

**TABLE T – referred to on page 39**

*Information captured under s. 24(1)(b) but not 24(1)(a)*

[para 240] I find that all information redacted under sections 24(1)(a) and (b) on the following pages is only captured under section 24(1)(b):

**Pages:** 122, 123, 147, 179, 371, 995, and 996.

**TABLE U - referred to on page 39**

*Information captured under sections 24(1)(a) and 24(1)(b)*

[para 241] I find that all information redacted under sections 24(1)(a) and (b) on the following pages is captured under sections 24(1)(a) and (b):

**Pages:** 6, 38, 119, 162, 197, 200, and 406.

[para 242] I also find the following pieces of information are captured under sections 24(1)(a) and (b):

<b>Page Number</b>	<b>Description of Information</b>
152	First block of redacted information

**TABLE V – referred to on page 40**

*Information not aimed at taking an action*

[para 243] I find that all information redacted from the following pages under section 24(1) is not captured under it:

**Pages:** 4, 5, 11, 12, 13, 15, 17, 26, 34, 35, 140, 148, 149, 186, 203, 204, 217, 238, 240, 264, 265, 267, 279, 287, 298, 299, 300, 307, 310, 311, 314, 315, 324, 327, 331, 332, 337, 340, 341, 345, 346, 347, 349, 353, 354, 355, 356, 357, 394, 397, 400, 726, 915, and 965.

[para 244] I also find the following pieces of information are not captured under section 24(1):

<b>Page Number</b>	<b>Description of Information</b>
9	First two blocks of redacted information
28	All information except the fifth sentence of the e-mail.
358	Pictures of person making a text message
880	Middle block of redacted information

**TABLE W – referred to on page 40**

*Decisions*

[para 245] I find that all information redacted under section 24(1) on the following pages is not captured under it:

**Pages:** 874 and 882.

[para 246] I also find the following pieces of information are not captured under section 24(1):

<b>Page Number</b>	<b>Description of Information</b>
880	Top block of redacted information

**TABLE X – referred to on page 42**

*Responsive information redacted as non-responsive*

[para 247] I find that all of the information labelled “non-responsive” on the following pages is responsive, and should not have been redacted on that basis.

**Pages:** 35, 153, 275, 345, 346, and 975.

[para 248] I find the following pieces of information are also responsive and should not have been redacted as non-responsive:

<b>Page Number</b>	<b>Description of Information</b>
257	Information in the first text box
275	Information in the third text box

[para 249] Regarding the information in the first text box on page 257, it was redacted as non-responsive, however the same information was redacted on page 256 as personal information under section 17(1). For the same reasons given for page 256, the same information on page 257 is not personal information.

[para 250] Regarding the information on page 275, it was also redacted under section 17(1) and 24(1) on page 324, but not marked as non-responsive.

**TABLE Y – referred to on page 42**

[para 251] This table sets out information that I order disclosed to the Applicant. It is the culmination of all of the decisions in the tables above. Information that was redacted improperly under one section or as non-responsive, but were properly withheld under another section or as non-responsive, has been taken into account; since it remains withheld properly, I do not order it disclosed in the tables below.

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[para 252] I find that all information on the following pages was improperly withheld and should be disclosed to the Applicant:

**Pages:** 4, 5, 11, 12, 13, 15, 17, 26, 85, 140, 148, 149, 186, 203, 204, 217, 238, 240, 254, 278, 745, 755, 760, 809, 815, 817, 826, 847, 849, 874, 882, 945, 979, 1019, 1020, 1021, 1024, 1025, 1027, 1028, 1029, 1032, 1035, 1036, 1037, 1050, 1051, 1052, 1053, 1054, and 1055.

[para 253] I find that the following information was improperly withheld and should be disclosed to the Applicant:

<b>Page Number</b>	<b>Description of Information</b>
9	First and second blocks of redacted information
28	All information except the fifth sentence of the e-mail
34	Fourth block of redacted information
35	All information except the following: The first line of text (sentence fragment) under header; Fifth and sixth sentences in the first full paragraph; Information in the second full paragraph
97	First block of redacted information
255	Information in the first and fifth text boxes
256	Information in the first text box
257	Information in the first text box
263	Fifth Sentence of the third text box; Second, third, and fourth sentences of the fourth text box; Second and third sentences of the fifth text box
264	Information in the third text box, second, third fourth, and fifth sentences of the fourth text box; Information in the fifth and sixth text boxes
265	Information in the second text box
267	Information in the first and fifth text boxes
268	Information in the fourth and seventh text boxes
279	Information in the first text box
298	Information in the eighth and ninth text boxes
299	Information in the fifth and sixth text boxes
300	Third sentence in the third text box; Information in the sixth text box
301	Information in the first and third text boxes
307	All information except for pictures and telephone numbers
311	All information except for telephone numbers and pictures
314	First sentence in the first text box; Information in the fifth text box
315	All information except the following: Information in the second text box; Pictures
325	Fourth sentence of the third text box
327	Information in the fifth and sixth text boxes
331	All information except for the pictures
332	Information in the second text box

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337	All information except pictures and telephone number; the second, third, fourth, and fifth sentences of the second text box,
340	First sentence in the first text box; information in the fifth text box
341	Information in the third and fourth text boxes
345	Information in the fifth and sixth text boxes
346	All information except for telephone number and pictures
347	All information except for telephone numbers and pictures
349	Information in the first text box; First and fifth sentences of the fourth text box
353	First sentence of the third text box
354	Information in the first text box
355	Information in the first text box
356	Fifth sentence of the second text box; Second, third, and fourth sentences of the third text box
357	All information except the following: telephone number and pictures; First sentence in the first text box; Fifth, sixth and seventh sentences in the third text box
397	All information except the following: Information in the second text box; Second, third, and fourth sentences in the fourth text box
400	Information in the first text box
748	First block of redacted information
817	First, second, third blocks of redacted information
851	Third, fourth, fifth, and sixth blocks of redacted information
880	Top and Middle blocks of redacted information
965	All information except for the last sentence on the page
1018	Answer to the third question
1022	All information except for the last sentence on the page
1023	All information except for the last sentence on the page
1031	All information except for information on the second and fourth lines
1033	All information except the last three words on the twentieth line
1034	All information except the first sentence on the fourteenth line
1049	Answer to the third question