ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2022-62

December 19, 2022

ALBERTA ENVIRONMENT AND PROTECTED AREAS

Case File Number 019713

Office URL: www.oipc.ab.ca

Summary: An individual made a request to Alberta Environment and Parks (now Environment and Protected Areas, the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for briefings to the Minister regarding the decision to rescind the document 'A Coal Development Policy for Alberta'.

The Public Body responded to the Applicant, informing them that it located four pages of responsive records. The Public Body ultimately provided access to these records with some information withheld under sections 22(1) and 24(1)(a).

The Applicant requested an inquiry into the Public Body's response.

The Adjudicator determined that the Public Body properly applied section 24(1) to most of the information withheld in the records, but ordered the Public Body to disclose some additional information to the Applicant, to which section 24 did not apply. The Adjudicator also ordered the Public Body to re-exercise its discretion to withhold information to which section 24(1) does apply.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss.1, 24, 71, 72

Authorities Cited: AB: Decision F2014-D-01, Orders 96-006 96-012, F2004-026, F2007-013, F2008-028, F2010-036, F2012-15, F2013-13, F2022-44

Cases Cited: *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10 (CanLII), *Ontario (Public Safety and Security) v. Criminal Lawyers' Association,* 2010 SCC 23 (CanLII)

I. BACKGROUND

[para 1] The Applicant made an access request on October 8, 2020, to Environment and Parks (now Environment and Protected Areas, the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for the following:

> *All briefings to the Environment and Parks Minister regarding the decision making process and decision to rescind the document 'A Coal Development Policy for Alberta', which may also be referred to as the '1976 Coal Policy' the 'Coal Policy' or any other name for this policy*

The timeframe for the request is Jan 1, 2019 to Jul 1, 2020.

[para 2] The Public Body informed the Applicant that it located four pages of responsive records, but that it was withholding the records in their entirety under sections 22(1) and 24(1)(a).

[para 3] The Applicant requested a review of the Public Body's response. As a result of the review, the Public Body decided to disclose page 4 of the records to the Applicant. The Public Body also provided access to some information on the remaining three pages of records, with some information withheld under sections 22(1) and 24(1)(a). The Applicant requested an inquiry into the Public Body's decisions.

II. RECORDS AT ISSUE

[para 4] The records at issue consist of the information withheld in three of the four pages of responsive records.

III. ISSUES

[para 5] The issues for this inquiry were set out in the Notice of Inquiry dated September 21, 2022, as follows:

1. Does section 22(1) of the Act (cabinet and treasury board confidences) apply to the information/records?

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

IV. DISCUSSION OF ISSUES

1. Does section 22(1) of the Act (cabinet and treasury board confidences) apply to the information/records?

[para 6] Section 22 of the FOIP Act authorizes a public body to withhold cabinet confidences. It states:

> *22(1) The head of a public body must refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees or of the Treasury Board or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees or to the Treasury Board or any of its committees.*
>
> *(2) Subsection (1) does not apply to*
>
> *(a) information in a record that has been in existence for 15 years or more,*
>
> *(b) information in a record of a decision made by the Executive Council or any of its committees on an appeal under an Act, or*
>
> *(c) information in a record the purpose of which is to present background facts to the Executive Council or any of its committees or to the Treasury Board or any of its committees for consideration in making a decision if*
>
> *(i) the decision has been made public,*
> *(ii) the decision has been implemented, or*
> *(iii) 5 years or more have passed since the decision was made or considered.*

[para 7] In Order F2008-028, the Adjudicator considered section 22 and said (at paras. 102-104, 108):

> Where the Public Body applied section 22 to records requested by the Applicant, it did so because it believed that the information would reveal the substance of deliberations of the Executive Council - i.e., Cabinet. To fall within section 22(1) on this basis, a record must be generated for or received by Cabinet members or officials while taking part in the collective process of making government decisions or formulating government policy (Order 97-010 at para. 52).
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> The Public Body states that it "consulted with Executive Council on the records [to which it applied section 22(1)] and confirmed that the records at issue were provided to Cabinet". I am prepared to accept this assertion, even where the record itself does not indicate that members of Cabinet or its officials were the recipients of it, or that the record was prepared for them. For example, some documents appear to have been prepared for, or to have arisen out of, meetings of a caucus. Although Cabinet members are members of the government caucus, they are not the only members. A caucus is not a committee of the Executive Council. The reason that I nonetheless accept the Public Body's assertion that the records in question were sent to or prepared for Cabinet is that it is possible for documents prepared by or for, or given to, the government caucus to have also been provided to Cabinet for its information or consideration.
>
> Even where a record was submitted to Cabinet, section 22(1) only permits the withholding of information that would reveal the substance of deliberations by it. The term "substance" has its normal dictionary meaning of the essence, the material or essential art of a thing; "deliberation" means the act of weighing and examining the reasons for and/or against a contemplated action or course of conduct, or a choice of acts or means (Order 97-010 at para. 28). Section 22(1) does not

> extend to the withholding of information such as the names of persons who prepared the material, or the dates, or the topics of the deliberations, unless this information would in itself reveal the substance of the deliberations (Order F2004-026 at para. 33). I would add to this business contact information, as it does not normally reveal any substantive content.

[para 8] The Adjudicator in Order F2008-028 found that section 22 permits withholding information that would reveal the substance of deliberations by cabinet. He found that evidence establishing only that records were provided to cabinet was insufficient to ground the application of section 22. However, if it could be established that the information in question is advice intended for Cabinet, or some other information that reveals what was considered by Cabinet in making a decision the requirement that information reveal the substance of Cabinet deliberations would be met.

[para 9] The Adjudicator also considered the application of section 22(2)(c), which provides circumstances in which section 22(1) cannot apply. He said (at paras. 105-108):

> The Applicant raises the possibility that section 22(2)(c)(iii) of the Act applies, so as to make section 22(1) inapplicable to some of the information in the records at issue. Section 22(2)(c)(iii) states that section 22(1) does not apply to information in a record the purpose of which is to present background facts to Cabinet for consideration in making a decision if five years or more have passed since the decision was made or considered.
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> I thought about the possibility that section 22(2)(c)(iii) is not relevant in this inquiry because, at the time of the Public Body's response to the Applicant's access request in October 2003, five years had not yet passed since a relevant decision of Cabinet (as the decisions also date from 2003). I do not find that I have to address this, as the alternate section 22(2)(c)(i) applies in any event. Under section 22(2)(c)(i), section 22(1) does not apply to information the purpose of which is to present background facts to Cabinet for consideration in making a decision if the decision has been made public. At the time of the Applicant's access request, relevant decisions of Cabinet had already been made public.
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> In this inquiry, the relevant decisions of Cabinet to which section 22(2)(c)(i) applies are the decisions to formulate, draft and present Bill 27 and its related regulations in a set form with set content on behalf of the government. Bill 27 was made public when it was tabled as the *Labour Relations (Regional Health Authorities Restructuring) Amendment Act* and received first reading in the Legislature on March 11, 2003. A regulation in relation to Bill 27 was the *Regional Health Authority Collective Bargaining Regulation*, which was made public when it was published in the issue of the *Alberta Gazette* dated April 15, 2003. The content of Bill 27 and its related regulations were a reflection of Cabinet's decisions regarding their formulation and drafting, and these decisions were the ones being deliberated when the background facts were presented.
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> Section 22(2)(c) promotes more accountability for the decisions actually taken by Cabinet, by exposing the background facts on which they were based; this exception for background facts is considered crucial in opening up the information which forms the general basis on which Cabinet acted without exposing its deliberations (Order 97-010 at para. 39). Accordingly, any information that constitutes background facts presented for Cabinet's consideration in the formulation and drafting of either Bill 27 or its related

> regulations may not be subject to the exception to disclosure under section 22(1). The Public Body submits that none of the records at issue constitute background facts, but I disagree in some instances, as noted below.

Arguments of the parties

[para 10] The Public Body withheld four bullet points in pages 1-3 under section 22(1). Pages 1-3 comprise a briefing created for the Minister at the time. The Public Body has disclosed the headings and some background information in the records. Most of the information in these pages continues to be withheld.

[para 11] The Public Body indicates that the briefing was prepared by the Assistant Deputy Minister (ADM) of the relevant area within the Public Body, for the Minister.

[para 12] The Public Body applied section 22(1) to the first three of four bullets under the "Timeline" heading, and the fourth of five bullets under the "Rationale" heading. The latter information was also withheld under section 24(1)(a). For the reasons discussed in the next section of this Order, I find that section 24(1)(a) applies to the information in the fourth bullet under the "Rationale" heading. Therefore, I need only consider the Public Body's application of section 22(1) to the information withheld under the "Timeline" heading.

[para 13] The Applicant argues that sections 22(2)(c)(i) and (ii) applies to any background facts in the records, as "[t]he decision about what to do with the 1976 Coal Policy was made public and implemented on May 15, 2020 with Alberta Energy Information Letter 2020-23. The decision in question was made public and implemented roughly five months before the initial request was filed" (initial submission at para. 9, footnotes omitted).

[para 14] The Public Body's submissions are brief. Its argument regarding the application of section 22(1) is as follows:

> The Public Body maintains its position that the information being withheld under Section 22(1) has been appropriately withheld. The record clearly states this is a Briefing Note providing confidential advice to the Minister of Environment & Parks. Given that the date of the record is before the decision to rescind the Coal Policy, which was made on June 1, 2020, this confidential advice was to inform the Minister for discussions and deliberations taking place at the Cabinet level on this issue and therefore, would reveal the substance of deliberations of the Executive Council or any of its committees. This Briefing Note also included information that was part of a larger decision-making process. Despite the applicant's assertion, the fact that a decision was subsequently made and implemented, does not automatically constitute all information about that decision to now be "background facts" and fall under section 22(2)(c). In fact, as the records disclosed to the applicant on January 28, 2022 show, the "Background" section of the Briefing Note containing the "facts" is not being withheld under section 22(1).

Application of sections 22(1) to the records

[para 15] The Public Body's argument makes a leap from the fact that the briefing was provided to the Minister before the decision was made to rescind the Coal Policy, to the idea that the information in the briefing must have been discussed "at the Cabinet level." The Public Body has not provided any information to support its implicit claim that the briefing – or the information contained in the briefing – was discussed at a Cabinet meeting. It seems to merely conclude from the content of the briefing that it must have been. The Public Body also states that the briefing includes information that was "part of a larger decision-making process", without elaboration. The fact that another department or public body may also have been involved in the decision does not lead to the conclusion that it was discussed by Cabinet.

[para 16] It is not clear why the Public Body withheld only four bullet points in the briefing under section 22(1). Possibly the Public Body is aware of what was discussed in a Cabinet meeting, but it has not provided any information to me on that point, aside from the mere assertions cited above.

[para 17] Even if section 22(1) applies to the information identified by the Public Body, I agree with the Applicant that section 22(2)(c) also seems applicable.

[para 18] The Public Body has argued that the mere fact that the decision in the briefing has been made public does not thereby transform the entire content of the briefing into background facts. I agree with this position; however, I do not interpret the Applicant's argument to be suggesting that it does have such an effect.

[para 19] The Public Body argues that it has not applied section 22(1) to any information under the "Background" heading. However, the existence of a "Background" heading does not mean that any information *not* located under that heading cannot be characterized as background facts.

[para 20] In my view, the three bullet points under the "Timeline" heading withheld under section 22(1) consist merely of background facts that do not reveal the substance of any deliberations of the Executive Council or its committees that may have occurred. Further, the first and third bullet points consist of information that is already known to the public, and was known to the public at the time of the Applicant's access request in October 2020. Disclosure of information that has already been made public can no longer *reveal* the type of information to which section 22(1) applies.

[para 21] I find that section 22(1) does not apply to the information withheld under that provision under the "Timeline" heading. As no other exception was applied to that information, I will order the Public Body to disclose it to the Applicant.

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

[para 22] The Public Body applied section 24(1)(a) to information in the records at issue. These 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

(ii) a member of the Executive Council, or

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

...

[para 23] The test for sections 24(1)(a) and (b), as stated in past Orders, is that the advice, recommendations etc. (section 24(1)(a)) and/or the consultations and deliberations (section 24(1)(b)) should:

1. be sought or expected, or be part of the responsibility of a person by virtue of that person's position,
2. be directed toward taking an action,
3. be made to someone who can take or implement the action. (See Order 96-006, at p. 9)

[para 24] In Order F2013-13, the adjudicator stated that the third arm of the above test was overly restrictive with respect to section 24(1)(a). She restated that part of the test as "created for the benefit of someone who can take or implement the action" (at paragraph 123).

[para 25] In addition to the requirements in those tests, sections 24(1)(a) and (b) apply only to the records (or parts thereof) that reveal substantive information about which advice was sought or consultations or deliberations were being held. Information such as the names of individuals involved in the advice or consultations, or dates, and information that reveals only the fact that advice is being sought or consultations held on a particular topic (and not the *substance* of the advice or consultations) cannot generally be withheld under section 24(1) (see Order F2004-026, at para. 71).

[para 26] Bare recitation of facts or summaries of information also cannot be withheld under sections 24(1)(a) or (b) unless the facts are interwoven with the advice, proposals, recommendations etc. such that they cannot be separated (Order F2007-013 at para. 108, Decision F2014-D-01 at para. 48).

[para 27] As well, section 24(1)(a) does not apply to a decision itself (Order 96-012, at para. 31).

[para 28] The first step in determining whether section 24(1)(a) was properly applied is to consider whether a record would reveal advice, proposals, recommendations, analyses,

or policy options (which I will refer to as "advice etc.", section 24(1)(a)); and consultations or deliberations between specified individuals (section 24(1)(b)).

Arguments of the parties

[para 29] The Public Body withheld most of the information on pages 1-3 under section 24(1)(a). The Public Body has disclosed the headings and some background information in the records. As stated, these pages are comprised of a briefing created for the Minister at the time. The Public Body indicates that ADM who prepared the briefing has the responsibility for providing the type of advice in the briefing. The Public Body further states that the purpose of the briefing was to make decisions regarding the coal policy and "inter-related issues" and was made to the Minister who can implement the relevant actions or decisions.

[para 30] The Applicant argues that because section 24(1) does not apply to information that reveals only that advice was sought or given on a particular topic, the title of the briefing and the information under the "Purpose" heading should be disclosed.

[para 31] The Applicant also argues that information under the "Timeline", "Stakeholder Reaction", "Impact" and "Background" headings likely contain bare recitations of facts, to which section 24(1) does not apply.

[para 32] The Applicant argues that because decisions cannot be withheld under section 24(1), and because the Minister signed the briefing as having approved the recommendation, the information under the "Recommendation" heading must be disclosed.

[para 33] The Applicant argues that directions to staff cannot be withheld under section 24(1), and as the recommendation in the briefing was approved, the information under the "Implementation and Strategy" heading "became instructions from the Minister to staff and cannot be withheld" (initial submission, at para. 15).

Application of sections 24(1)(a) to the records

[para 34] I accept that the purpose of the briefing comprising pages 1-3 of the records is to provide advice to the Minister, and that it was authored by someone with the authority to provide that advice. Section 24(1)(a) applies to much of the information in the briefing.

[para 35] That said, I also agree with the Applicant that some information withheld under section 24(1)(a) is not information to which that section can apply, based on the tests discussed above.

[para 36] The Applicant has pointed out that because the Minister approved the recommendation in the briefing, the recommendation has become a decision, to which

section 24(1)(a) does not apply. This argument is relevant to the recommendation that became the Minister's decision, but not underlying analysis.

[para 37] There is one paragraph on page 1 of the records under the heading "Recommendation(s)." The information consists of a single sentence that sets out the recommendation made by the ADM. The rationale for the recommendation is found under other headings in the briefing; other options presented to the Minister are also contained under other headings. The information under the "Recommendation(s)" heading is simply the recommended action.

[para 38] The last page of the briefing contains the Minister's signature, approving the recommendation presented in the briefing.

[para 39] Past Orders have found that because section 24(1) does not apply to a decision that has been made, it also cannot apply to recommendations that were clearly approved. For example, Order F2012-15 states (at paras. 156-157):

> Many of the records are memos from a management employee to a senior management employee setting out a request from the Affected Party for a change to a contract. The memos often include other information such as whether a similar request was approved in the past or general costs for similar items or services, and close with a recommendation for approval of the request. Based on my review of the records, I accept that many of these memos recommend a course of action and were created by an employee whose responsibility it is to make the recommendations for an employee who has the authority to take the action. I made the same finding regarding the few pages of briefing notes created for other senior-level employees of the Public Body. I find that section 24(1)(a) applies to the information severed in the recommendations in those records. (I will list the corresponding pages at the end of this section of the order)
>
> Many of these memos have been signed by the individual tasked with making the decision. The recommendation then, becomes the decision and section 24(1)(a) no longer applies, although it will continue to apply to any information properly characterized as analysis (I will list the corresponding pages at the end of this section of the order). Similarly, one page (page 3281) consists of an email that the employee sent to himself containing notes for an upcoming meeting with the Affected Party. The notes in the email indicate the message the employee intends to communicate to the Affected Party regarding a decision that has already been made.

[para 40] This analysis was applied in Order F2022-44, to recommendations that had been made to a decision-maker in a briefing note. In that case, as the case here, the briefing note was signed by the decision-maker, approving the recommendation. As the recommendation was approved by the Minister, the information under the "Recommendation" heading cannot be withheld under section 24(1)(a).

[para 41] As stated in Order F2012-15, this finding applies only to the decision that was made. Section 24(1)(a) still applies to the analysis in the briefing, and to recommendations or other options that were proposed but not accepted.

[para 42] The Applicant has also argued that the title of the briefing and information under the "Purpose" heading should be disclosed, as it likely reveals only that advice was sought on a particular topic.

[para 43] In this case, the records are responsive to a request for briefings regarding the decision to rescind the 1976 Coal Policy. From my review of the records, I agree that the title of the document does not appear to reveal anything more than the topic that the advice relates to. Nothing in the title of the briefing appears to reveal advice, recommendations, or analysis. Nothing in the Public Body's submissions indicates that it could reveal that type of information. The same can be said about the single bullet point under the "Purpose" heading. Given this, I find that section 24(1)(a) does not apply to this information.

[para 44] The Applicant also argues that information under the "Timeline", "Stakeholder Reaction", "Impact" and "Background" headings likely contain bare recitations of facts, to which section 24(1) does not apply.

[para 45] All of the information under the "Timeline" heading has been withheld; however, the first three bullets (of four) were withheld under section 22(1), and not section 24(1). The fourth bullet was withheld under section 24(1). The information in that bullet is properly characterized as advice to the Minister. Although it relates to the recommendation that was accepted by the Minister – and which therefore became the Minister's decision that cannot be withheld under section 24(1) – the last bullet under the "Timeline" heading includes additional information of the type to which section 24(1) can apply, which is not revealed in the recommendation. Therefore, section 24(1)(a) continues to apply even though the recommendation was approved.

[para 46] The Applicant argues because the Minister approved the recommendation in the briefing, the information under the "Implementation and Strategy" heading "became instructions from the Minister to staff and cannot be withheld" (initial submission, at para. 15). In my view, none of the information in the briefing can be characterized as directions to staff, regardless of whether the Minister approved the recommendation. The information contained in the briefing is better characterized as conceptual, and is insufficiently detailed to be put into action as it is written. This information is more properly characterized as analysis, as it provides a general overview of how the recommendation could be carried out, which provides greater context for the recommendation.

[para 47] Much of the information withheld under section 24(1)(a) in the briefing is information to which that provision applies. The information discussed at paragraphs 40 and 43 above, to which that provision cannot apply, accounts for approximately two bullet points in the briefing, as well as the title. As no other exception was applied to that information, I will order the Public Body to disclose it to the Applicant.

Exercise of discretion

[para 48] Section 24(1) is a discretionary exception. In *Ontario (Public Safety and Security) v. Criminal Lawyers' Association,* 2010 SCC 23 (CanLII), the Supreme Court of Canada commented on the authority of Ontario's Information and Privacy Commissioner to review a head's exercise of discretion.

[para 49] The Supreme Court of Canada confirmed the authority of the Information and Privacy Commissioner of Ontario to quash a decision not to disclose information pursuant to a discretionary exception and to return the matter for reconsideration by the head of a public body. The Court also considered the following factors to relevant to the review of discretion:

- the decision was made in bad faith
- the decision was made for an improper purpose
- the decision took into account irrelevant considerations
- the decision failed to take into account relevant considerations

[para 50] In Order F2010-036 the adjudicator considered the application of the above decision of the Court to Alberta's FOIP Act, as well as considered how a public body's exercise of discretion had been treated in past orders of this Office. She concluded (at para. 104):

> In my view, these approaches to review of the exercise of discretion are similar to that approved by the Supreme Court of Canada in relation to information not subject to solicitor-client privilege in *Ontario (Public Safety and Security)*.

[para 51] In *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10 (CanLII) (*EPS*), the Court provided detailed instructions for public bodies exercising discretion to withhold information under the Act. The Court said (at para. 416)

> What *Ontario Public Safety and Security* requires is the weighing of considerations "for and against disclosure, including the public interest in disclosure:" at para 46. The relevant interests supported by non-disclosure and disclosure must be identified, and the effects of the particular proposed disclosure must be assessed. Disclosure or non-disclosure may support, enhance, or promote some interests but not support, enhance, or promote other interests. Not only the "quantitative" effects of disclosure or non-disclosure need be assessed (how much good or ill would be caused) but the relative importance of interests should be assessed (significant promotion of a lesser interest may be outweighed by moderate promotion of a more important interest). There may be no issue of "harm" in the sense of damage caused by disclosure or non-disclosure, although disclosure or non-disclosure may have greater or lesser benefits. A reason for not disclosing, for example, would be that the benefit for an important interest would exceed any benefit for other interests. That is, discretion may turn on a balancing of benefits, as opposed to a harm assessment.

[para 52] It further explained the weighing of factors at paragraph 419:

> …If disclosure would enhance or improve the public body's interests, there would be no reason not to disclose. If non-disclosure would benefit the public body's interests beyond any benefits of disclosure, the public body should not disclose. If disclosure would neither enhance nor degrade the public body's interests, given the "encouragement" of disclosure, disclosure should occur. Information should not be disclosed only if it would run counter to, or degrade, or impair, that is, if it would "harm" identified interests of the public body.

[para 53] Lastly, the Court described burden of showing that discretion was properly exercised (at para. 421):

> I accept that a public body is "in the best position" to identify its interests at stake, and to identify how disclosure would "potentially affect the operations of the public body" or third parties that work with the public body: EPS Brief at para 199. But that does not mean that its decision is necessarily reasonable, only that it has access to the best evidence (there's a difference between having all the evidence and making an appropriate decision on the evidence). The Adjudicator was right that the burden of showing the appropriate exercise of discretion lies on the public body. It is obligated to show that it has properly refrained from disclosure. Its reasons are subject to review by the IPC. The public body's exercise of discretion must be established; the exercise of discretion is not presumptively valid. The public body must establish proper non-disclosure. The IPC does not have the burden of showing improper non-disclosure.

[para 54] In its initial submission, the Public Body states (at page 2):

> As the decision to rescind the coal policy has since been revoked, the Government of Alberta is again engaging Albertans in discussions regarding the issue of a modern coal policy. Therefore, should this information be disclosed, it could reasonably be expected to harm this ongoing engagement process. Section 24 of the FOIP Act allows for officials of public bodies to participate candidly in the analysis of issues, and in the advice and recommendation process. Disclosure of this information could reasonably be expected to adversely affect the candor of officials, which would in turn negatively affect the integrity and confidentiality of the decision making process.

[para 55] I agree that the factors above are relevant considerations in exercising discretion to withhold information in the briefing. However, the Public Body's explanation does not include any indication that it considered factors weighing in favour of disclosure, such as any public interest in disclosure, or interest the Applicant may have in disclosure.

[para 56] I will order the Public Body to re-exercise its discretion to withhold information in the records to which section 24(1)(a) applies, with a view to the guidance provided by the Court in *EPS*.

V. ORDER

[para 57] I make this Order under section 72 of the Act.

[para 58] I find that section 22(1) does not apply to the information withheld under that provision as described at paragraph 12 of this Order. I order the Public Body to disclose that information to the Applicant.

[para 59] I find that section 24(1) does not apply to the information described at paragraphs 40 and 43 of this Order. I order the Public Body to disclose that information to the Applicant.

[para 60] I find that section 24(1) applies to the remaining information to which the Public Body continues to apply that provision. However, I order the Public Body to re-exercise its discretion to apply that provision, in accordance with the guidance in this Order.

[para 61] I further order the Public Body to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

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Amanda Swanek
Adjudicator