

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2023-41**

October 11, 2023

**TOWN OF TWO HILLS**

Case File Number 018792

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

**Summary:** An individual made a request to the Town of Two Hills (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for specific records relating to particular bylaws, and records relating to a particular property.

The Public Body provided responsive records but withheld some information under section 17(1).

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

The Adjudicator determined that she had insufficient information to determine whether section 17(1) applies to the information withheld by the Public Body. The Adjudicator ordered the Public Body to review the records and make a new determination regarding the application of section 17(1).

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 17, 71, 72, *Municipal Government Act*, R.S.A. 2000, C. M-26, s. 1

**Authorities Cited: AB:** Orders F2006-030, F2008-028, F2010-009, F2010-30, F2015-17

**Cases Cited:** *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3

**I. BACKGROUND**

[para 1] An individual made an access request to the Town of Two Hills (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) as follows:

January 1st, 2010 to present:

1. All records associated with the Town of Two Hills (the Town) policies respecting the enforcement of Bylaw No. 2010-833 (To Regulate Burning within the Corporate Limits of the Town of Two Hills) and Bylaw No. 2018-978 (To Regulate and Control Unsightly and Dangerous Premises) (collectively, the Bylaws);
2. The minutes of any Town council meetings or other Town meetings where it considered the Bylaws;
3. The Town's policy for enforcing its [*sic*] any of its bylaws, including the Bylaws, and the rationale for such policy;
4. The Town's operational policy respecting enforcement of any of its bylaws, including the Bylaws; and
5. All records, including minutes, memoranda, letters, emails, or other documents relating to consideration by the Town of any environmental contamination, risk, damage, or loss on or from Plan [...], Block 4, Lot 1 (Municipal Address [...], Two Hills, Alberta) (the [named individual] Property).

August 1, 2017 to present

1. The minutes of any Town council meetings or other Town meetings where it considered any issues with the [named individual] Property, including minutes relating to the enforcement of any of the Town's bylaws, including the Bylaw, respecting the [named individual] Property;
2. All written and electronic communications, internal or external, with respect to [named individual] Property, including but not limited to communications with the owners or occupiers of the [named individual] Property or communications with other persons relating to complaints or concerns respecting the [named individual] Property;
3. All notes from or in relation to any meetings or telephone conversations with respect to the [named individual] Property;
4. All memoranda or other documents gathered or created in the process of considering any issues with the [named individual] Property, including any issues relating to the releasing of hydrocarbons, the burning of plastic coated wired (*sic*) and metals, and potential groundwater contamination;
5. All memoranda or other documents gathered or created in the process of determining whether to enforce the Bylaws with respect to the [named individual] Property.

[para 2] The Public Body responded to the Applicant, providing records responsive to the first four bullet points. The Public Body withheld all records responsive to the remaining points, citing section 17(1).

[para 3] The Applicant requested a review of the Public Body's response, and subsequently an inquiry.

[para 4] During the inquiry, the Public Body released records previously withheld in their entirety, with discrete items of information withheld under section 17(1).

## **II. RECORDS AT ISSUE**

[para 5] The records at issue consist of the portion of the records that have not been provided to the Applicant.

## **III. ISSUES**

[para 6] The issue for this inquiry set out in the Notice of Inquiry, dated May 11, 2023, is as follows:

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

In the Notice, the parties were instructed to address whether the records relate to a personal (or residential) property or a business property.

## **IV. DISCUSSION OF ISSUES**

[para 7] The Public Body did not provide an index of records with its initial submission, which is a requirement set out in the Notice of Inquiry. After several communications between the Public Body, the Applicant and the Registrar of Inquiries on this point, I sent a letter instructing the Public Body to provide the index by August 30, 2023.

[para 8] The Public Body provided the index as requested. The Public Body also provided me and the Applicant with a new copy of the records at issue at that time; in this copy, the Public Body disclosed most of the information in the records, with only discrete items of information withheld. The Public Body had previously withheld the records at issue in their entirety. The Public Body did not provide any explanation for its new decisions.

[para 9] Given the Public Body's new decisions regarding the application of section 17(1), I will consider only the information that continues to be withheld under that provision.

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

[para 10] Section 17 states in part:

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

...

[para 11] Section 17 is a mandatory exception: if the information falls within the scope of this exception, the Public Body must withhold it.

[para 12] Under section 17, if a record contains personal information of a third party, section 71(2) states that it is then up to the applicant to prove that the disclosure would not be an unreasonable invasion of a third party's personal privacy.

[para 13] Section 1(n) defines personal information under the Act:

*1 In this 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 14] Previous orders from this Office have found that section 17 does not apply to personal information that reveals only that the individual was acting in a formal,

representative, professional, official, public or employment capacity, unless that information also has a personal dimension (Order F2008-028, para. 54).

[para 15] Where this provision was applied to business contact information (such as work phone numbers of public body employees or business employees), it is not information to which section 17(1) can apply.

[para 16] Past Orders have found that a home or personal phone number or email address may constitute business contact information such that section 17(1) does not apply, if the contact information is regularly used for work purposes. In Order F2008-028, the adjudicator said (at paras. 60-61):

Given the foregoing, I find that disclosure of many of the telephone numbers, mailing addresses and e-mail addresses that the Public Body withheld would not be an unreasonable invasion of the personal privacy of third parties. This is where I know or it appears that the third party was acting in a representative, work-related or non-personal capacity and the telephone number, mailing address or e-mail address is one that the third party has chosen to use in the context of carrying out those activities. I point out that a home number, cell number or personal e-mail address (i.e., one not assigned by the public body or organization for which an individual works) may also constitute business contact information if an individual uses it in the course of his or her business, professional or representative activities. In this inquiry, where individuals include a cell number at the bottom of a business-related e-mail or other communication (as on pages 510 and 511), or where individuals send or receive business-related e-mails using what may be a personal e-mail address (as on pages 343 and 345, as well as throughout the records in relation to a communications consultant), I find that disclosure of the telephone number or e-mail address would not be an unreasonable invasion of personal privacy. Section 17 therefore does not apply.

There may sometimes be circumstances where disclosure of a home number or personal e-mail address that was used in a business context would be an unreasonable invasion of personal privacy and therefore should not be disclosed. For instance, on page 328, a home number is included along with a business number and cell number, leading me to presume that the home number is being included for the limited purpose of allowing a specific other person to contact the individual at a number other than the usual business or cell number. I therefore find that section 17 applies.

[para 17] Previous orders from this office have found that disclosure of an individual's name is not an unreasonable invasion of privacy within the terms of section 17 where the associated information reveals only that an individual was acting in a formal, representative, professional, official, public or employment capacity, unless that information also has a personal dimension (Order F2008-028, para. 54). Such information may have a personal dimension if there is associated information suggesting that an individual performing work-related or business responsibilities was acting improperly, there are allegations that the work-related act of an individual was wrongful, or disclosure of information is likely to have an adverse effect on the individual (see Orders F2006-030 at paras. 12, 13, and 16; F2008-020 at para. 28).

[para 18] In Orders F2010-009 and F2010-30, the adjudicators considered whether information about farming operations, including information about livestock, insurance grain yield, management, financial aid and other financial information, was personal information under the FOIP Act. In both cases, the information about farming operations included the names of individuals who owned or managed the operations. In Order F2010-009, the Adjudicator stated (at paras. 15 and 16):

On my review of all of the alleged disclosures by the Public Body, as just set out, I find that the Public Body did not disclose the Complainant's personal information. Under section 1(n), "personal information" is recorded information about an identifiable individual, which means a human being (Order 96-019 at para.67) acting in his or her natural capacity (Order F2002-006 at para.92). The Public Body cites the following passage:

The use of the term "individual" in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended "identifiable individual" to include a sole proprietorship, partnership, unincorporated association or corporation, it could and would have used the appropriate language to make it clear. The types of information enumerated under...the Act as "personal information" when read in their entirety, lend further support to [the] conclusion that the term "personal information" relates only to natural persons. [Order F2002-006 at para.92, citing Ontario Order P-16 (1988) at p.19.]

The above makes a distinction between information about an identifiable individual in his or her natural or personal capacity and information about that individual's business, whether it happens to be a sole proprietorship, partnership, unincorporated association, corporation or any other type of entity. Even where an individual is the only person connected to a business, so that it might be argued that information about the business is also information about the individual, it has been concluded that there is no "personal information" within the definition set out in the Act (Order F2002-006 at paras. 90 and 93).

[para 19] The Adjudicator concluded in that case that the information about the complainant's farming operation was not personal information about the complainant.

[para 20] Order F2015-17 discussed whether information about fees owed by an individual who was running a business was personal information about the individual. In that Order, I determined that the fee related to a business being run by the individual, and therefore information about the fee was not the individual's personal information. I said (at paras. 13-14):

In this case, the Public Body's claim that the information about the Complainant's past membership with the Grazing Reserve is about the Complainant's agricultural business is supported by section 105 of the *Public Lands Act*, cited above. Although the Complainant's name appears in the email, it does so because he is a representative of the business. In other words, there is no personal dimension to the information in the email that it is personal information. I say this despite the fact that the records relate to alleged non-payment of membership dues, which could conceivably be taken as saying something negative about the Complainant as an individual. I conclude that this does not add a personal dimension to the information because the Complainant's membership in

the Grazing Reserve was in a commercial or business capacity and not a personal capacity. In other words, if membership fees were owed, they were owed by the Complainant as an organization, and not as an individual.

Further, I agree with the analysis in Order F2010-009, that there is an important distinction between information about an identifiable individual in his or her natural or personal capacity and information about that individual's business, whether it happens to be a sole proprietorship, corporation or otherwise. I find that, on the balance of probabilities, the information in the email (the information about membership fees owed or paid by his agricultural business) is not about the Complainant as an individual; rather, it is *about* an organization that is owned by the Complainant. Therefore, the FOIP Act does not govern the collection, use or disclosure of that information.

[para 21] In the Notice of Inquiry, I asked the parties to address whether the records at issue relate to a personal (or residential) property or a business property. As established by the cases I have cited above, the question of whether information is about an identifiable individual or a business is relevant to the question of whether section 17(1) applies to the information.

[para 22] In its August 11, 2023 submission, the Public Body states that the records at issue are "addressed to an individual and not a business." The Public Body provided a timeline of complaints that apparently relate to the property at issue in the Applicant's access request, as follows:

1. [Physical address] property in question owned by two private citizens
  - a. From May 13, 2013 to May 4, 2018 there were 3 complaints received regarding materials on the roadway.
  - b. October 8, 2019 the owners were directed to erect a fence surrounding their property. They complied.
  - c. March 18, 2020 -The Town received another complaint regarding materials on the roadway.
  - d. February 24, 2021-The Town received another complaint regarding materials on the roadway.
  - e. September 22, 2022 -Enforcement Order to 'gate' the property-this was not complied with and no further action has been done to date

The Public Body also notes that the Applicant's property is located next to the property at issue in the request.

[para 23] The Public Body further states (submission dated August 11, 2023):

To clarify the property in question, it is not a business although it is located in a commercial area in Two Hills. The owner of the property has not purchased a business licence for as long as he has owned this property. The issues are of a personal nature and the information requested is related to a person not a business and his property.

[para 24] This argument is not consistent with information in some of the records themselves, which I will discuss in greater detail below.

[para 25] As set out above, after providing its initial submission, the Public Body provided a new copy of the records at issue to me and the Applicant. In those new records, the Public Body disclosed most of the information in the records.

[para 26] The records are comprised of seven items of correspondence from the Public Body to the property owners. Page 40 is a Direction Notice, instructing the recipient to take the identified steps to remedy the condition of the identified property, which was in noncompliance with the Public Body's bylaws. The names and contact information of the recipients, the legal description of the land, and the identified step to be taken were withheld under section 17(1).

[para 27] Pages 41-42 are comprised of an Enforcement Order (EO) dated August 14, 2017, from the Public Body, to the property owners. This EO states in part (emphasis mine):

The Two Hills Town office has received a verbal and written complaint regarding your business loading scrap materials on the roadway and leaving metal shards, etc. that are embedding into the tires of passersby's. Below are the quoted sections of the Bylaw which will assist you in understanding how you are in contravention [redacted].

[para 28] The Public Body withheld the name and contact information of the recipients, along with the specific bylaw allegedly being contravened.

[para 29] Pages 43-44 are also comprised of an Enforcement Order, dated May 4, 2018, from the Public Body to the property owners. This EO is substantially similar in content to the EO described above. However, in this case, the Public Body withheld only the name and contact information of the recipients. It disclosed the particular bylaw at issue.

[para 30] Pages 45 and 46 consist of photos of the property at issue, which were disclosed to the Applicant.

[para 31] Pages 47-48 are comprised of an EO issued by the Public Body to the property owners, dated October 8, 2019, which is distinct from the EOs described above. The Public Body withheld the names and contact information of the recipients, the address and legal description of the property at issue under section 17(1). Unlike the EOs described above, this EO does not refer to the property as a business.

[para 32] Pages 49-50 are comprised of an EO dated March 18, 2020, from the Public Body to the property owners. This EO states, in part (my emphasis):

The Two Hills Town office has received a verbal and written complaint regarding your business loading on the roadway. Below are the quoted sections of the Bylaw which will



assist you in understanding how you are in contravention of the Traffic Bylaw No. 2019-988.

[para 33] In this EO, the Public Body disclosed the name and contact information of the recipients, withholding only the address and legal description of the property at issue.

[para 34] Pages 51-52 are comprised of an EO dated February 24, 2021 from the Public Body to the property owners, substantially similar to the one dated March 18, 2020. However, in this case, the Public Body withheld the names and contact information of the recipients along with the address and legal description of the property at issue.

[para 35] Page 53 is comprised of a letter dated September 2, 2022, from the Public Body to the property owners regarding the property. This letter does not refer to the property as relating to a business. The Public Body withheld the names and contact information of the recipients (except the postal code, which was disclosed), as well as the address and legal description of the property at issue.

[para 36] The rationale underlying the Public Body's severing decisions is unclear. The names and contact information of the recipients of the correspondence were withheld in most, but not all, instances; the relevant bylaw was withheld in some instances but not others; the steps to be taken by the recipients of the correspondence was withheld in one instance but not others. The Public Body's August 11, 2023 submission, which was exchanged with the Applicant, included the physical address of the property at issue in the Applicant's request; this information was withheld in the records at issue. Lastly, the Applicant's access request referred to the property at issue by the names of the property owners such that it seems reasonable to conclude that any responsive records relate to the property owners named in the request.

[para 37] The Public Body did not provide any explanation for its new decisions, so I do not know why the Public Body suddenly decided to provide the Applicant with copies of the records at issue, with only some redactions. In the Applicant's rebuttal submission, they point out that the disclosed portion of several letters in the records at issue refer to the business of the recipient. The Applicant argues:

In respect to the particular inquiry as to whether or not the records relate to a personal, residential or business property, we submit that the property operated for the purposes of a business. In particular, we understand that the [identified property] engages in burning activities in order to extract scrap metal from coated wire products, among other things. The purposes to these activities are for commercial benefit and not for any personal operations. The fact that the owners of the [identified property] have not bothered to purchase a business license is not relevant, but simply another example of these property owners failing to comply with applicable laws. The Town acknowledges and notes that the [identified property] is located "in a commercial area in Two Hills". Further, the Town's own Enforcement Orders (just produced yesterday) reference complaints "regarding your business" (emphasis added). The fact that the owners are individuals and not a corporate entity is not determinative to whether or not the operations constitute a personal undertaking or a business/commercial undertaking.

[para 38] The Public Body had an opportunity to address this argument and provide reasons for providing the records at issue with only some information redacted, in its rebuttal submission. However, the Public Body elected not to provide a rebuttal submission.

[para 39] It may be the case that at some point after providing its initial submission and before providing a redacted copy of the records, the Public Body determined that the information relates to a business rather than an individual in their personal capacity. Possibly, the Public Body determined that the recently disclosed information in the records did not identify an individual, even though the Applicant's access request includes the names of the individuals who own the relevant property. In this latter case, I would also have to assume that the Public Body erred in disclosing the name and contact information on pages 49-50 of the records at issue.

[para 40] Possibly the Public Body continues to believe that the information in the records at issue is personal information to which section 17(1) applies but determined that the factors set out in sections 17(4) and (5) weigh in favour of disclosure. If this is the case, I do not know what factors in section 17 the Public Body considered in its determination to continue to withhold discrete items of information in the records.

[para 41] In any event, I do not have sufficient information in this case to determine whether the records at issue relate to an individual acting in a personal capacity, or if they relate to a business. The Public Body states that the records are addressed to an individual and therefore contain personal information; however, businesses act through individuals (employees or owners) so the fact that correspondence is addressed to an individual is not determinative of the matter.

[para 42] The Public Body has stated that the relevant property is located in a commercial area, but that it is not a business. The Public Body's rationale for this conclusion seems to be that the property owners have not applied for a business license.

[para 43] The Public Body's Business License Bylaw (Bylaw No. 2014-947) requires businesses within municipality to have a valid license to operate a business, where "business" has the same meaning as that set out in the *Municipal Government Act*, R.S.A. 2000, C. M-26 (MGA). The MGA defines "business" as follows:

*1(1)(a.1) "business" means*

- (i) a commercial, merchandising or industrial activity or undertaking,*
- (ii) a profession, trade, occupation, calling or employment, or*
- (iii) an activity providing goods or services,*

*whether or not for profit and however organized or formed, including a co-operative or association of persons;*

[para 44] A business needn't be licensed to fall within this definition. Therefore, the fact that a business has not applied for a license does not mean that it is not operating as a business.

[para 45] Further, as stated above, the Public Body referred to the recipients of its correspondence as a "business" in many of the letters.

[para 46] That said, the Public Body has stated that the correspondence does not relate to a business. I cannot completely discount this argument without knowing the factual underpinnings for it, which the Public Body has not provided.

[para 47] In my view, the Public Body is in the best position to determine whether the information in the records at issue relates to individuals acting in their personal or professional capacity. I will therefore order the Public Body to make this determination again, with a view to the guidance provided in this Order.

[para 48] As noted, the Public Body's current application of section 17(1) to the information in the most recent copy of the records seems inconsistent, and it is difficult to work out the Public Body's rationale. Given this, if the Public Body determines that all or some of the information that continues to be withheld is personal information to which section 17(1) can apply, the Public Body is to review the factors set out in section 17(2) – (5) and make a new decision regarding the application of section 17(1).

[para 49] If the Public Body determines that the withheld information consists of (in whole or in part) personal information to which section 17(1) applies, the Public Body should keep in mind its obligations under section 30(1)(b) of the Act, which requires the Public Body to give written notice to individuals whose personal information the Public Body is considering giving access to.

[para 50] In *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 (Merck Frosst), the Supreme Court of Canada considered when affected parties must be notified under a section of the federal *Access to Information Act* (ATIA) similar to section 30 of the FOIP Act. The Court determined that that third parties need not be notified of an access request in the following circumstances: where the exception to access clearly applies to information in the records at issue, such that the information will not be disclosed to the applicant under the FOIP Act, or where it is clear that the exception to access does not apply to the information in the records at issue such that it must be disclosed. Where it is unclear whether section 17(1)-(5) ultimately weighs in favour of, or against disclosure and where evidence from the third party could provide insight into the application of the exception, the third party ought to be consulted by the Public Body. This is the case for all personal information to which section 17(1) can apply.

## V. ORDER

[para 51] I make this Order under section 72 of the Act.

[para 52] I have insufficient information to determine whether section 17(1) applies to the information that continues to be withheld in the records at issue. I order the Public Body to review the records and make a new determination regarding the application of section 17(1), as set out in paragraphs 47-50 of this Order.

[para 53] I order the Public Body to provide a new response to the Applicant, providing additional information in the records to the Applicant or explaining why it decided to withhold information under section 17(1), as applicable.

[para 54] 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. If the Public Body is required to provide notice under section 30 of the Act and if the timelines set out in sections 30 and 31 of the Act prevent the Public Body from providing a final decision to the Applicant regarding section 17(1), the Public Body may comply by notifying me and the Applicant of the current status of the notification process. The Public Body must, at minimum, have taken steps to locate and contact third parties, and have provided notice under section 30.

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Amanda Swanek  
Adjudicator