ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2024-24

July 18, 2024

PUBLIC SAFETY AND EMERGENCY SERVICES

Case File Number 026641

Office URL: www.oipc.ab.ca

Summary: An individual made an access request to Public Safety and Emergency Services (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for copies of the agendas and minutes of meetings, including all of the related notes, documents and attachments associated with these agendas and minutes, of the three most recent meetings of the Alberta Association of Chiefs of Police (AACP, or the Third Party).

The Public Body located responsive records and determined that information in the records contained information the disclosure of which could affect the AACP. The Public Body informed the AACP of the request, as well as its decision to give the applicant access to information in the records.

The AACP requested a review of the Public Body's decision. A review was conducted, and the AACP subsequently requested an inquiry, arguing that the records are not in the Public Body's custody or control within the terms of section 4 of the Act, and that section 17(1) requires the Public Body to withhold some information in the records.

The Applicant was invited to participate in the inquiry and agreed.

The Adjudicator determined that the records at issue are within the Public Body's custody or control. The Adjudicator also determined that section 17(1) does not apply to information in the records at issue.

Statutes Cited: AB: Designation and Transfer of Responsibility Regulation (AR 11/2023), *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 2, 4, 17, 71, 72, *Police Act*, R.S.A. 2000, c. P-17, ss. 3, 3.1

Authorities Cited: AB: Orders 2001-013, F2003-002, F2004-026, F2006-024, F2006-033, F2008-020, F2008-028, F2009-023, F2010-023, F2010-031, F2010-035, F2012-12, F2016-31, F2018-37, F2019-05, F2022-16, F2022-18, F2022-33, F2023-17, F2023-26, **BC**: Orders No. 41-1995, F15-61, **Ont**: Investigation Report 13-02, Orders MO-2408 PO-2836

Cases Cited: *University of Alberta v Alberta (Information and Privacy Commissioner)*, 2012 ABQB 247, *City of Ottawa v Ontario*, 2010 ONSC 6835

I. BACKGROUND

[para 1] On November 25, 2018, the Applicant made an access request to Public Safety and Emergency Services (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for the following:

> … copies of the agendas and minutes of meetings, including all of the related notes, documents and attachments associated with these agendas and minutes, of the three most recent meetings of the Alberta Association of Chiefs of Police (AACP).

[para 2] The Public Body located responsive records and determined that the records contained information the disclosure of which could affect the AACP (the Third Party). The Public Body informed the AACP of the request, as well as its decision to give the applicant access to information in the records.

[para 3] The AACP requested a review of the Public Body's decision. A review was conducted, and the AACP subsequently requested an inquiry, arguing that the records are not in the Public Body's custody or control within the terms of section 4 of the Act, and that section 17(1) requires the Public Body to withhold some information in the records.

[para 4] The Applicant was invited to participate in the inquiry and agreed.

[para 5] The Applicant provided both an initial and rebuttal submission. The Public Body provided an initial submission, but had nothing further to add in a rebuttal submission. The AACP relied on the submissions previously made in its request for review and request for inquiry, copies of which were provided to all parties with the Notice of Inquiry, in lieu of an initial submission. The AACP also provided a rebuttal submission.

II. RECORDS AT ISSUE

[para 6] The records at issue are comprised of the 70 pages identified by the Public Body as responsive to the Applicant's request. According to the Public Body's index of records, provided with its initial submission, the records are comprised of agendas, attachments to agendas and meeting minutes.

III. ISSUES

[para 7] The issues as set out in the Notice of Inquiry, dated February 22, 2024, are as follows:

1. Are the record(s) in the custody or under the control of the Public Body, as set out in section 4(1) of the Act?

2. 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?

IV. DISCUSSION OF ISSUES

Preliminary issue – additional issue raised by the Applicant

[para 8] In their initial submission, the Applicant argued that the AACP is a "*de facto* public body" and should therefore be subject to the FOIP Act.

[para 9] The Applicant provided a link to a 2014 public letter authored by the BC Information and Privacy Commissioner and addressed to the Minister responsible for BC's FOIP Act, recommending that the BC Association of Chiefs of Police (BCACP) and the BC Association of Municipal Chiefs of Police (BCAMCP) be included as public bodies under the BC FOIP Act[1]. In this letter, former BC Commissioner Denham sets out her rationale for undertaking a consultation process with respect to this issue; she said:

> I invited comments about this issue because the Associations appear to exert significant influence over law enforcement policy decisions in British Columbia without being subject to the same access laws as are other publicly funded organizations.

[para 10] Those Associations have since been added as public bodies in Schedule 2 of the BC FOIP Act.

[para 11] In the present case, even if the AACP were a public body under the FOIP Act, the Applicant made an access request to Alberta Public Safety and Emergency Services, which is the Public Body responding to that request. Therefore, the issue remains whether Alberta Public Safety and Emergency Services has custody or control of the records at issue such that it can respond to the Applicant's request with respect to those records.

[para 12] Whether or not the AACP should be characterized as a public body is not an issue before me. Had the Applicant made an access request to the AACP and argued that it was a public body under the FOIP Act, this question may have been relevant (see for example, Order F2022-16, which considered whether the Canadian Energy Centre Ltd. was a public body under the FOIP Act, such that it was required to respond to an access request under that Act).

[1] https://www.oipc.bc.ca/documents/public-comments/1546

[para 13] Given this, I am not addressing whether the AACP ought to be a public body under the FOIP Act. I will consider the Applicant's arguments on this point to the extent that they relate to the issues set out in the Notice of Inquiry.

1. Are the record(s) in the custody or under the control of the Public Body, as set out in section 4(1) of the Act?

[para 14] The purposes of the FOIP Act are set out in section 2 of the Act. The provisions relevant to this inquiry state:

> *2 The purposes of this Act are*
>
> *(a) to allow any person a right of access to the records in the custody or under the control of a public body subject to limited and specific exceptions as set out in this Act,*
>
> *(c) to allow individual, subject to limited and specific exceptions as set out in this Act, a right of access to personal information about themselves that is held by a public body,*
>
> *(e) to provide for independent reviews of decisions made by public bodies under this Act and the resolution of complaints under this Act.*

[para 15] An applicant's right of access is set out in section 6(1) of the Act:

> *6(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.*

[para 16] Section 4(1) excludes certain classes of information from the scope of the Act. The opening words of that provision are relevant to this inquiry:

> *4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*
>
> *...*

[para 17] Where a public body does not have custody or control of a record, an applicant does not have a right of access to that record under Part 1 of the Act. Further, the provisions set out in Part 2 of the Act, which protect personal information in the custody or control of a public body, also do not apply.

[para 18] The Act does not define custody or control. Early cases from this office equated custody with possession, as described in Order F2006-024 (at para. 18):

> In Order 2000-003, the Commissioner held that that physical possession of a record was sufficient to establish custody of that record. Furthermore, the Commissioner held that a legal right to control the record, over and above simple possession, is not relevant to a determination regarding custody. A legal right of control would be a criterion for control and not custody. The Commissioner held that the capacity or authority under which a person has possession of a record are also criteria for control and not custody.

[para 19] In Order F2009-023, the adjudicator adopted the analysis from decisions of the Ontario Information and Privacy Commissioner's office, which found that 'bare possession' of records is not sufficient to find that they are in a public body's custody. Instead, a public body must have "some right to deal with the records and some responsibility for their care and protection" (see Ontario Order PO-2836). This latter interpretation is the current approach taken by this office in determining whether a public body has custody of records, as discussed below.

[para 20] In Order F2010-023, the adjudicator explained how 'custody with some right to possess the records' is distinct from control of the records, which has been described as the right to possess the record and regulate its use. She said (at para. 43):

> In section 6 of the FOIP Act, the word "custody" implies that a public body has some right or obligation to hold the information in its possession. "Control," in the absence of custody, implies that a public body has a right to obtain or demand a record that is not in its immediate possession.

[para 21] A public body may have both custody and control of records, but it needn't have; either custody *or* control is sufficient for the purpose of the FOIP Act.

[para 22] Past Orders have set out factors to help determine whether a public body has custody or control of requested records, including Order F2018-37, which states (at paras. 19-21):

> The phrase "custody or control" refers to an enforceable right of an entity to possess a record or to obtain or demand it, if the record is not in its immediate possession. "Custody or control" also imparts the notion that a public body has duties and powers in relation to a record, such as the duty to preserve or maintain records, or the authority to destroy them.
>
> Previous orders of this office have considered a non-exhaustive list of factors compiled from previous orders of this office and across Canada when answering the question of whether a public body has custody or control of a record. In Order F2008-023, following previous orders of this office, the Adjudicator set out and considered the following factors to determine whether a public body had custody or control over records:
>
> - Was the record created by an officer or employee of the public body?
> - What use did the creator intend to make of the record?
> - Does the public body have possession of the record either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?
> - If the public body does not have possession of the record, is it being held by an officer or employee of the public body for the purposes of his or her duties as an officer or employee?
> - Does the public body have a right to possession of the record?
> - Does the content of the record relate to the public body's mandate and functions?
> - Does the public body have the authority to regulate the record's use?

- To what extent has the record been relied upon by the public body?
- How closely is the record integrated with other records held by the public body?
- Does the public body have the authority to dispose of the record?

Not every factor is determinative, or relevant, to the issues of custody or control in a given case. …

[para 23] These factors were applied by the Court in *University of Alberta v Alberta (Information and Privacy Commissioner)*, 2012 ABQB 247 (*University of Alberta*), cited by the Public Body. They have also been applied and discussed in Orders from the Ontario Information and Privacy Commissioner's office and judicial reviews of those decisions.

[para 24] *City of Ottawa v Ontario*, 2010 ONSC 6835, is a decision of the Ontario Superior Court resulting from a judicial review of Order MO-2408 of the Ontario office. In that case, an employee of the City had used his City work email account to send and receive emails relating to his volunteer role with another organization. An access request was made for those emails. The adjudicator in Order MO-2408 found that the emails were in the custody or control of the City because the City had physical custody of emails on its server and also had control to regulate its email system. The Court overturned that decision.

[para 25] The Court reviewed the ten factors considered by the Ontario adjudicator in determining whether the City had control over the personal emails. These factors are the same as the ten factors used in past Orders of this office in determining control over records, listed above. The Court considered these factors in the context of the purpose of the access-to-information provisions in the Act, which is to facilitate democracy. It concluded that the City did not have custody such that the personal emails could be the subject of an access request. Applying the factors, the Court noted that while the City employee created some of the records, the records were not created in the course of his work duties. Other records were sent to the employee by an individual unrelated to the City. These records were not intended to be used for City business, and were not related to City business. The City *did* possess the records by virtue of the employee's use of the City email system but it did not have a *right* to possess the records. The City had some ability to regulate the record because it regulates its email system and the record was on the system. The City did not have the ability to regulate the record itself, outside of that email system.

[para 26] The Court also noted that it is not uncommon for employees to have or bring personal paper documents to their workplace. It stated that electronic documents are not different in this regard. It said (at paras. 37-38):

> It can be confidently predicted that any government employee who works in an office setting will have stored, somewhere in that office, documents that have nothing whatsoever to do with his or her job, but which are purely personal in nature. Such documents can range from the most intimately personal documents (such as medical records) to the most mundane (such as a list of household chores). It cannot be suggested that employees of an institution governed by freedom of information legislation are themselves subject to that legislation in respect of any piece of personal material they happen to have in their offices at any given time. That is clearly not contemplated as being within the intent and purpose of the legislation.

> The question then is whether information stored electronically should be treated any differently. I do not see any rational basis for making such a distinction.

[para 27] The Ontario Court discussed the fact that electronic records (unlike paper or tangible records) were subject to the City's "Responsible Computing Policy", which stated that the City had the right to access its IT assets and information, and to monitor their use. The Court found that this management of IT services did not amount to custody or control of the personal emails of the City employee, located on the City's servers. The Court noted (at para. 42):

> Employers from time to time may also need to access a filing cabinet containing an employee's personal files. That does not make the personal files of the employee subject to disclosure to the general public on the basis that the employer has some measure of control over them. The nature of electronically stored files makes the need for monitoring more pressing and the actual monitoring more frequent, but it does not change the nature of the documents, nor the nature of the City's conduct in relation to them. It does not, in my view, constitute custody by the City, within the meaning of the Act.

[para 28] This Ontario decision is cited by the Alberta Court of Queen's Bench in *University of Alberta*, cited above, a decision resulting from a judicial review of Order F2009-023. The Order related to whether the University had custody or control of emails sent or received by a professor in connection with his voluntary participation in a grant process for a federal program. In its judicial review of Order F2009-023, the Court found that the professor acting as a member of the Social Sciences and Humanities Research Council (SSHRC) selection committee was not doing so as part of his employment with the University. Therefore, the professor's emails were akin to the City employee's personal emails in *City of Ottawa*, and the University did not have custody or control of those emails for the purposes of responding to an access request under the FOIP Act. The Court also noted that the University's duty to maintain the security of its email system did not mean it has custody or control over all emails contained in that system.

[para 29] This analysis was applied more recently in Order F2022-18, which also related to emails to or from the Deputy Provost of a university in relation to their volunteer position of the grant selection committee of SSHRC. The adjudicator applied the analysis in *University of Alberta*, concluding (at para. 24):

> In this case, if the Public Body can be said to have custody or control over the records, it will be because the Deputy Provost had possession of them as part of his duties to the Public Body, such that the records relate to the Public Body's business. There is no other evidence suggesting that the Public Body has any involvement with or rights to possess the records beyond the fact that the Deputy Provost had them by virtue of his work on the SSHRC.

[para 30] This analysis has also been applied in situations involving complaints about a public body's collection, use or disclosure of personal information contained in an employee's personal records maintained on the public body's electronic systems. Order F2019-05 states (at paras. 43-44):

> As these Courts have stated, the ability to regulate personal documents stems from the public body's ability to regulate its systems and use of its systems. The ability to regulate is not tied to the document itself.
>
> Whether electronic or tangible, when an employee voluntarily stores personal information at the workplace and that information:
>
> - is for the personal use of the employee
> - is unrelated to the employee's work duties, and
> - is unrelated to the functions of the public body (i.e. is not personal information of the employee collected for human resources purposes)
>
> then the public body will generally not be found to have collected it within the terms of Part 2 of the Act.

[para 31] In Orders F2022-33 and F2023-17, I considered whether Alberta Justice had custody or control over emails sent by or to employees of that public body working in the Court Technology Services (CTS) area. The CTS employees are employed by the public body; however, the public body argued that these employees functionally reported to the courts with respect to the aspects of their duties to which the records at issue related. Based on the particular facts of that case, I accepted that CTS staff reported to the courts with respect to services provided to judges, justices and judicial staff.

[para 32] Because the CTS staff are administratively part of the public body, the public body had possession of the emails CTS sent or received, whether those emails related to functions performed for the courts or functions performed for the public body. The primary issue in the inquiry was whether the emails responsive to the applicant's access request were sent or received by CTS staff as part of their duties for which they reported to the courts, or as part of their duties for which they reported to the public body. If the former, the question was whether the fact that the public body had possession of the emails entailed that the public body had custody or control of them, for the purposes of responding to an access request.

[para 33] I found that many of the responsive records related to CTS duties for which they reported to the courts. I accepted that as the CTS staff reported to the courts with respect to services provided for the courts, that records relating solely to those services were in the custody and control of the courts, even if the public body had bare possession of them. Therefore, as courts are not subject to the FOIP Act, the applicant did not have a right of access to those records.

Parties' arguments

AACP

[para 34] The AACP argues that the records at issue are not in the Public Body's custody or control. The AACP characterizes the Applicant's access request as an attempt to "circumvent the statutory limits of the access mechanism described by Alberta's privacy legislation" because the

AACP is not subject to the FOIP Act. Rather it is a non-profit organization incorporated under the *Societies Act*, and subject to PIPA to the extent that it carries on a commercial activity.

[para 35] With respect to the factors set out in past cases regarding whether a public body has custody or control of requested records, set out above, the AACP argues that the Public Body does not have an enforceable right to possess the records or demand them from someone else; nor does it have duties over the records such as preserving them. In its request for inquiry, the AACP explains how the Public Body came into the possession of the records:

> The Bylaws of the AACP set out the various categories of membership available to people who wish to join the Association or attend its meetings. Among those categories is the category of "Honorary Members". Such members enjoy the opportunity to attend meetings of the AACP upon the Invitation of the President without the opportunity to exercise voting rights at any meeting. Persons eligible to become Honorary Members include (among others) the Solicitor General and the Deputy Solicitor General for the Province of Alberta, as well as the Assistant Deputy Solicitor General, Public Security Division, for the Province of Alberta. The individuals currently holding these offices hold Honorary Memberships in the AACP and were invited by the President to attend the last three meetings of the Association. Pursuant to section 14.4 of the Bylaws, they – along with all other Members of every category – were given copies of a draft agenda and the minutes of the last meeting. Presumably (in accordance with past practice), those records were provided by the President (or his delegate, the AACP's Executive Director) in digital format via email to each member's active professional email address. Importantly, the records were provided to those Honorary Members who hold offices at JSG (not JSG itself) for the purposes of their attendance and participation at the meetings of the AACP, not for the purposes of JSG, nor for the purpose of investing JSG with rights of any kind in relation to the records. Thus, while JSG may have "bare" possession of the records, since they were sent to the email addresses of JSG officers at their places of work, JSG does not have "custody or control" of the records in the sense required by the case law – that is, JSG has no enforceable rights to or duties in relation to the records.

[para 36] The AACP further argues

> [The AACP] does not conduct its business in the expectation that the records it generates will be accessible to the public via FOIP's access-to-information mechanisms. In the course of its dealings with various public bodies, the AACP sometimes provides records to those bodies understanding that the latter will assume custody or control of them; however, the agendas and minutes of meetings of the AACP are not records of that kind. When those Records are put in the hands of the AACP's members, it is not intended or understood that the members' various employers assume custody or control of them.

[para 37] It argues that while "specific agenda items and meeting minutes may relate to [the Public Body's] mandate and functions" this is not sufficient to grant the Public Body enforceable rights over the records. The AACP argues that the Public Body does not have authority to regulate the use of its agendas or meeting minutes, nor does it have authority to dispose of the records.

[para 38] The AACP mentioned that its bylaws require it to provide "the records in question" to its members, though it states that this fact is of minimal, if any, relevance. The AACP did not provide copies of its bylaws.

[para 39] In its rebuttal submission, the AACP argues that its members attend AACP meetings "as volunteers outside of their employment obligations with their respective employer" and that the business of the AACP is separate and distinct from the business of its members' employers (at para. 5).

[para 40] The AACP cites *University of Alberta* (discussed above), and argues that it applies here, as the records at issue do not relate to the business of the Public Body. It argues (rebuttal submission, footnotes omitted):

> 13. Likewise, the members of the Public Body did not attend the AACP meetings in their responsibilities or obligations to the Public Body. They also did not attend the AACP meetings to conduct the business of the Public Body. In fact, the Public Body has not provided any basis that its members attended AACP meetings within their responsibilities or obligations to the Public Body or attended AACP meetings to conduct the business of the Public Body. Instead, the Honorary Members were invited by the President to attend AACP meetings based on their presumed knowledge and expertise to advance and promote the business of the AACP.
>
> 14. That is, the records were provided to the Honorary Members for the sole purpose of their attendance and participation at the AACP meetings to conduct the business of the AACP, and not the business of the Public Body.
>
> 15. Similar to the decision in Order F2022-18, there is no evidence suggesting that the Public Body had any involvement with or rights to possess the records beyond the fact that the member of the Public Body received a copy by virtue of their position with the AACP.
>
> 16. The Public Body and the Investigator erroneously conflated the Public Body and the Honorary Member. Although the Honorary Member may have the right to obtain certain records of the AACP, the Public Body and other respective employers do not.

[para 41] The AACP acknowledges that some of the honorary members are appointed based on their positions with particular public bodies; however, they are appointed to "provide their knowledge and expertise to fulfill the objectives of the AACP, not their respective employer" (rebuttal submission, at para. 34). The AACP argues that the honorary members do not attend AACP meetings within their roles with the Public Body or to conduct Public Body business.

[para 42] The AACP further argues that it may revoke the membership of any honorary member, such as Public Body employees, at its sole discretion. The AACP also argues that it could amend its bylaws to require a member to return or destroy certain records. The AACP argues that the honorary members and/or the Public Body would not have any recourse if the AACP were to undertake such actions, which indicates that the Public Body does not have custody or control of the records.

[para 43] The AACP also argues that the Public Body is conflating Public Body employees who are honorary members of the AACP with the Public Body itself. It argues (rebuttal submission at para. 31):

> Although the Honorary Member may have the right to obtain certain records of the AACP, the Public Body does not. For instance, the Public Body could not demand a copy of a record on its own or even on behalf of an Honorary Member. It is only the Honorary Member who has such a right of access.

[para 44] The AACP states that "it is difficult to imagine how the Public Body would have relied on the agendas and meeting minutes" and that the Public Body bears the burden of proof with respect to showing that the Public Body has relied on the records at issue.

Public Body

[para 45] The Public Body described the AACP bylaws as follows (initial submission, at pages 4-5):

> For context, and based on the AACP bylaws, there are four classes of Member, including Active Members, Associate Members, Associate Corporate Members, and Honorary Members. The articles establish that each class of Member enjoys the full responsibilities and privileges associated with membership, except for the right to vote at meetings, which are limited to Active Members.
>
> According to article 3.4.1. of the AACP bylaws, Honourary Members could include the Solicitor General, Deputy Solicitor General, Assistant Deputy Minister of the Public Security Division, President of the Alberta Association of Police Governance, retired Active Members of the AACP, and any person who, in the opinion of the Members, would further the objectives of the AACP.

[para 46] The Public Body made submissions on the factors set out in past Orders to help determine whether a public body has custody or control of requested records. With respect to the first factor, the Public Body acknowledges that the records at issue were created by the AACP and not an employee of the Public Body.

[para 47] With respect to the second factor, which asks what use the creator intended to make of the records, the Public Body argues that the honorary members of the AACP from the Public Body do not attend the meetings in a personal capacity, but rather as representatives of the Public Body. Therefore, the records were used by Public Body employees in the course of their duties.

[para 48] Regarding the third factor, which asks whether the Public Body has possession of the record either because it was voluntarily provided by the creator or provided for a mandatory statutory or employment requirement, the Public Body acknowledges that there is no statutory requirement or employment requirement that obliges the AACP to provide a copy of agendas etc. to the Public Body. However, the Public Body states that articles 14.2 and 14.5 of the AACP Bylaws require that notices of meetings and meeting minutes be provided to all members. The Public Body argues:

> As such, the Public Body is of the view that the AACP is required by their own bylaws to provide these agendas to Honorary Members where they are invited to or intended to attend a meeting. While the invitation to attend may be voluntary, once that invitation is extended, the Public Body understood that the AACP would circulate the agenda to Honorary Members in advance of such meetings. Failing to provide an agenda in advance of a meeting would not be consistent with the

> bylaws. If, for example, the Assistant Deputy Minister of the Public Service Division changes jobs, the bylaws would appear to require that their successor, as the "new" Honorary Member, instead receive the agendas to a meeting to which they are invited.

[para 49] The Public Body states that the fourth factor is not applicable as the Public Body has possession of the record at issue.

[para 50] With respect to the fifth factor, which asks whether the Public Body has a right to possess the records, the Public Body's arguments are similar to those relating to the third factor. Specifically, it states that Public Body employees who are honorary members of the AACP are entitled to the agendas and meeting minutes by virtue of the AACP's bylaws, which required that notices and meeting minutes be provided to all members.

[para 51] The sixth factor asks whether the contents of the records relate to the Public Body's mandate and functions. The Public Body argues that Public Body employees who are honorary members may make presentations to the AACP which would be reflected in the agenda and presumably the meeting minutes.

[para 52] The Public Body also points to sections 3 and 3.1 of the *Police Act*, which state:

> *3 The Government of Alberta is responsible for ensuring that adequate and effective policing is maintained throughout Alberta.*
>
> *3.1 The Minister may, subject to the regulations,*
> *(a) establish standards for*
> *(i) police services,*
> *(ii) police commissions,*
> *(ii.1) the Oversight Board, and*
> *(iii) policing committees,*
> *(a.1) establish priorities for policing in the province, and*
> *(b) ensure that standards are met.*

[para 53] The Public Body states that two of the AACP's core functions are:

- developing and advocating for best practices and standards in the interest of policing, public safety and community well-being, and
- advising Alberta Justice and Solicitor General on policing standards and training.

[para 54] The Public Body argues (initial submission at pages 7-8):

> The Public Body assumes Honorary Members would be participating because of the overlap between the core functions of AACP and the general mandate and responsibility of the Public Body.
>
> This is not analogous to the circumstances in City of Ottawa v Ontario (Information and Privacy Commissioner), 2010 ONSC 6835 where an employee is working for the City of Ottawa and, on personal time, volunteering with a Children's Aid society in a purely personal capacity.

[para 55] Regarding authority to regulate the use of the records at issue (factor seven), the Public Body states that it is not aware of any limitations in the AACP's bylaws or elsewhere that restrict how Public Body employees can use the records.

[para 56] The Public Body states that the eighth factor, the extent to which the records are relied upon by the Public Body, is of limited relevance. However, the Public Body also states that it would be reasonable to expect Public Body employees who are honorary members of the AACP to rely on agendas, meeting minutes etc. in preparing for meetings they are invited to.

[para 57] With respect to the ninth factor, which asks how closely the records are integrated with other records of the Public Body, the Public Body states that the records at issue are integrated with other records of the Public Body. It reiterates the point that Public Body employees who are honorary members are members due to their positions with the Public Body and not in a personal capacity. It further states that if a Public Body employee who is an honorary member were to leave their employment with the Public Body and be replaced by a different individual, that new individual would "presumably become the Honorary Member, not the individual who formerly occupied this position." The Public Body states that therefore, its custody of the records at issue is not analogous to the Public Body having custody of personal emails sent to or from a work email address.

[para 58] Finally, with respect to the last factor, whether the Public Body has authority to dispose of the records, the Public Body argues that it has authority to dispose of the records at issue. The Public Body states that it is not aware of any limitations imposed by the AACP bylaws or other instruments on is ability to dispose of the records.

Applicant

[para 59] The Applicant refers to the AACP's argument that when it disseminates the records at issue to its members, it does not intend for them to become accessible under the FOIP Act, arguing that this expectation is unreasonable in the circumstances where the records are being provided to Public Body employees.

[para 60] With respect to the AACP's argument that it understands that some of the records it provides to public bodies will fall within the custody or control of those public bodies but not the agendas and meeting minutes, the Applicant states that it is not clear from the AACP's submissions the types of records and circumstances in which records provided by the AACP to a public body would and would not fall within the custody or control of that public body. The Applicant further states that it is unclear who determines which records provided by the AACP to a public body would fall within the public body's custody or control.

[para 61] The Applicant also argues that it is not for the AACP to determine whether a Public Body employee retains the records or uses the records in the course of their employment duties. The Applicant argues that these employees attend the meetings as part of their employment duties and are therefore likely required by the Public Body to maintain the records as they relate to their employment duties.

[para 62] The Applicant disagrees with the AACP's argument that the Public Body has not provided sufficient evidence to show that it has relied on the records at issue. The Applicant argues that the Public Body's submission that its employees rely upon the records in the course of their work duties is sufficient.

[para 63] The Applicant argues that the analysis in *University of Alberta* does not support the AACP's argument. They state (rebuttal submission at pages 2-3):

> The case discusses examples such as a lawyer from a public body who's involved with the Law Society, and an accountant from a public body who does the audit for a non-profit society, where these people are allowed "time off" from their public duties to participate in these activities.
>
> These are excellent examples. And I'm in agreement: If an off-duty police chief or Justice Ministry staff member joins the YMCA Board, that does not automatically make all of the minutes of the nonprofit YMCA Board meetings subject to the *FOIP Act*. However, if fifty sitting police chiefs and RCMP commanders and Justice ministry staff members organize their own meeting, on paid public time, to discuss policing issues and make policing decisions relevant to their public work—this is an entirely different matter. And the situation before this Inquiry is not only "more like" the latter situation—it literally IS the latter situation.

[para 64] The Applicant also refutes the AACP's argument that the contents of the records at issue do not relate to the Public Body's mandate. The Applicant argues (rebuttal submission at page 3):

> Basically, just because a large number of public employees get together and declare their meetings to be "off the record," this does not mean that they legally are off the record—or should be allowed to be off the record if the question comes before the OIPC.

[para 65] In arguing that the AACP ought to be considered a public body under the FOIP Act, the Applicant notes that the AACP's website describes its core functions. Four of these functions stated on the AACP's website, highlighted by the Applicant, include[2]:

- Develop and advocate for best practices and standards that promote excellence in policing, public safety, and community well-being.
- Influence decision makers on issues impacting community safety (and policing).
- Provide a trusted platform for discussion and networking among public safety and police leaders from across Alberta.
- Advise Alberta Emergency Services and Public Safety on policing standards and training.

[para 66] The Applicant refers to a decision of the BC OIPC in which an applicant made an access request to the Victoria Police Department for records relating to the BC Association of Chiefs of Police and the BC Association of Municipal Chiefs of Police (Order F15-61). In that

[2] https://aacp.ca/#aacp-core

decision, the adjudicator referred to a decision of the BC Registrar of Lobbyists (BC ORL) wherein the Registrar determined that the members of these Associations were acting in their official work capacities when engaged in activities of the Associations (Investigation Report 13-02).

[para 67] Investigation Report 13-02 resulted from a complaint made to the ORL that members of the BC Association of Chiefs of Police (BCACP) and the BC Association of Municipal Chiefs of Police (BCAMCP) were engaged in lobbying activities and that the two Associations ought to be required to register as lobbyists under the BC *Lobbyist Registration Act* (LRA).

[para 68] In submissions to the Deputy Registrar, the BCACP and BCAMCP noted that the *LRA* does not apply to employees of a municipal, provincial and federal government bodies acting in their official capacities, under section 2(1) of that Act. The Associations argued that their members are employees of those bodies and are acting in their official capacities in their role with the Associations. The BCACP President cited the following from its constitution as support that he was acting in an official capacity when performing activities for the BCACP:

> The Association has as its objectives:
>
> a. Encouraging and developing co-operation among all its members in the pursuit of and attainment of their goals.
> b. Promoting a high standard of ethics, integrity, honour and conduct.
> c. Fostering uniformity of police practices.
> d. Encouraging the development and implementation of efficient and effective practices in the prevention and detection of crime.
> e. Effectively communicating problems and concerns to the appropriate levels of authority.

[para 69] The Deputy Registrar agreed that the Associations are exempt from the requirement to register as lobbyists as they are employees of relevant government bodies acting in their official capacities. He found (at paras. 23, 24):

> when police chiefs are participating in their umbrella organizations, they are not ceasing to act as federal and local government employees or police chiefs. When they participate in their organizations, the police chiefs are doing so fundamentally and precisely because they are police chiefs, and because they recognize that cooperation between police chiefs is one key aspect of their work as police chiefs employed and paid by the federal and local governments in question.
>
> …
> It seems clear that, if an individual police chief, as a local government or federal employee, is exempt from the LRA when he or she communicates with public office holders, the situation does not change because police chiefs are speaking together on issues of concern that relate to legitimate questions of policing and on which an individual police chief could otherwise "lobby" without being required to register.

[para 70] The complainant in that case had also raised a concern that in response to an access request under BC's FOIP Act, the complainant was informed that records in the possession of the police chiefs relating to their participation in the Associations were not subject to the FOIP Act.

The Deputy Registrar also addressed this concern, finding that if the Associations do not have to register as lobbyists because their members are government employees acting in their official capacities, then they should not be able to claim at the same time, that records relating to the Associations in the possession of a police service by virtue of the police chief's participation in the Association are not subject to access under BC's FOIP Act.

[para 71] The Deputy Commissioner also noted that since the complainant's initial complaint, the various police services agreed to process the complainant's access requests made under BC's FOIP Act, accepting that the records are in the police services' custody and control.

Analysis

[para 72] I agree with the analyses in the cases discussed above, and will apply those analyses here. The fact that the records at issue are on the Public Body's electronic systems, or are maintained at the Public Body's physical location, is not determinative of whether the Public Body has custody or control of the records. As discussed in the case law above, 'bare possession' of records is not sufficient to find that a public body has custody of those records. A public body must also have some right to possess the records, in order to have custody of the records.

[para 73] Before turning to the list of factors set out in past Orders, I will address the AACP's argument that it is not subject to the FOIP Act, and therefore this access request amounts to an attempt to circumvent the scope of the FOIP Act.

[para 74] I addressed a similar argument in Order F2012-12. In that case, a public body had argued that information about organizations should not be accessible under the FOIP Act because the organizations are themselves subject to PIPA, and that information would not be accessible under PIPA. I said (at paras. 49-50):

> PIPA addresses only an individual's access to his or her own personal information in the custody or control of an organization. That right of access is subject to the exceptions in the Act, and an overarching principle of reasonableness. In comparison, FOIP provides a right of access to *all* information in the custody or control of a public body, subject only to the exclusions and exceptions in the Act.
>
> Further, both section 6(1) and section 16 of the FOIP Act clearly contemplate the ability to request access to an organization's business information in the custody or control of a public body (if, for example, the organization was a contractor of the public body), yet PIPA does not allow an individual to request access to that same information directly from that organization. In other words, it is entirely reasonable that an individual may be able to request access to information under the FOIP Act that he or she could not request under PIPA.

[para 75] One of the purposes of the FOIP Act is to provide a right of access to information in the custody or control of a public body, including information that relates to other entities that the public body deals with, if the public body has custody or control of that information (section 2(a)). If this were not the case, exceptions to access in the FOIP Act for information provided to public bodies by other entities (for example, section 16, which applies to confidential business information of third parties) would serve no function. The fact that the AACP is subject to other

legislation that regulates its collection, use and disclosure of personal information (PIPA) does not affect the Applicant's right of access under the FOIP Act.

[para 76] I will next consider the factors for determining custody or control, set out in past cases and discussed above.

Was the record created by an officer or employee of the public body?

[para 77] The parties agree that the records at issue were not created by an officer or employee of the Public Body. This weighs against finding the Public Body has custody or control of the records.

[para 78] The arguments of the parties regarding the second and sixth factors are interrelated so I will consider those factors together.

What use did the creator intend to make of the record?

Does the content of the record relate to the public body's mandate and functions?

[para 79] In some of the cases discussed above, the information at issue arose from public body employees using the public body's computer and electronic systems for purposes other than their work duties. In this case, the AACP argues that the honorary members attend meetings as volunteers, outside their employment duties with the Public Body.

[para 80] The Public Body, which employs these individuals, states that these individuals are participating in the AACP meetings as part of their job duties. I find this more persuasive than the AACP's position that they are not acting within their job duties.

[para 81] Further, elsewhere in its submissions, the AACP acknowledges that certain individuals are invited to become honorary members of the AACP based on their job position, for example, the Solicitor General, Deputy Solicitor General and Assistant Deputy Solicitor General, Public Security Division. The functions of the AACP set out in its website, cited above, indicate that Public Body employees invited to participate as honorary members are invited because of the role they hold with the Public Body. Specifically, the AACP website states that it advises this Public Body "on policing standards and training", and influences decision makers on issues impacting community safety and policing.

[para 82] The AACP argues that the agendas and meeting minutes are provided to these members, but not the Public Body itself. It further argues that the Public Body conflates the Public Body employees who are honorary members with the Public Body itself.

[para 83] Public bodies can act only through their employees (see Orders F2006-033, F2010-035, F2023-26). If an employee of a public body has custody or control of a record as a result of the performance of their work duties for the public body, then the public body for whom that employee works has custody or control of that record. This is consistent with the precedent discussed in this Order regarding when a public body has custody or control of a record that an

employee possesses by virtue of their job duties as opposed to for a personal purpose or another purpose unrelated to their employment with the public body. It is difficult to imagine how a public body would come to have custody or control of a record as contemplated under the FOIP Act, if not by virtue of an employee having obtained or created it. Therefore, I do not accept the AACP's argument that the Public Body is erroneously conflating employees with the Public Body itself. If a Public Body employee collected the records at issue in the course of performing their job duties with the Public Body then the Public Body has collected those records for the purpose of the FOIP Act.

[para 84] While the AACP acknowledges that some of the honorary members are appointed based on their positions with particular public bodies, it argues that they are appointed to "provide their knowledge and expertise to fulfill the objectives of the AACP, not their respective employer" (rebuttal submission, at para. 34).

[para 85] The AACP also states that in dealing with various public bodies, it understands that some records provided to public bodies by the AACP will thereby be under the custody or control of the relevant public body but that the records at issue (agendas and meeting minutes) are not records of that type. The Applicant argues that the AACP hasn't provided any distinction between records that it agrees would fall in the custody or control of a public body because they were provided to that public body, and records that would not.

[para 86] I understand the AACP's argument to be that it did not intend for Public Body employees invited to participate in AACP meetings as honorary members to use the agendas and meeting minutes provided to those members for their job duties with the Public Body.

[para 87] It may be the case that the AACP means to argue that the situation here is akin to the situation in Orders F2022-33 and F2023-17 discussed above, in which Court Technology Services (CTS) employees of Alberta Justice reported to another body (the Courts) with respect to specific work duties, and therefore the records relating to those work duties for the Courts were not in the custody or control of Alberta Justice, even though they were located in Justice's electronic systems. In other words, AACP may be arguing that even if Public Body employees participate in the AACP as part of their work duties, these employees do not report to the Public Body with respect to the AACP participation.

[para 88] However, the situation in Orders F2022-23 and F2023-17 are distinguishable from the facts here. In the former cases, there were formal agreements between Alberta Justice and the Courts delineating the responsibilities of the Courts and Alberta Justice with respect to court and judicial records. CTS employees reported to the Courts and not to Alberta Justice with respect to services provided to the Courts for which the Courts had responsibility according to the agreements.

[para 89] In this case, no party argues that the Public Body employees who are honorary members of the AACP report to the AACP when they participate in AACP meetings. There is nothing before me that suggests the Public Body employees in any way report to the AACP similar to the way in which CTS employees reported to Alberta Justice for specified functions, and to the Courts for other specified functions. Therefore, unlike in Orders F2022-33 and F2023-

17, there is no indication that these Public Body employees have a hybrid reporting structure such that records relating to their participation in the AACP are within the AACP's custody or control, rather than the Public Body's.

[para 90] I have noted that the functions of the AACP include advising the Public Body on policing standards and training, and influencing decision makers on issues impacting community safety and policing.

[para 91] The Public Body argues that the functions of the AACP overlap with the responsibilities of the Public Body. The Public Body has pointed out that the *Police Act* expressly states that the Government of Alberta is responsibility for ensuring adequate and effective policing throughout the province. The Minister responsible for the *Police Act* is authorized under that Act to establish policing standards and ensuring those standards are met. The Designation and Transfer of Responsibility Regulation assigns responsibility for the *Police Act* to the Minister of Public Safety and Emergency Services.

[para 92] I agree that the mandate of the Public Body overlaps with the stated functions of the AACP. It would appear that having Public Body employees as honorary members furthers these goals of the AACP.

[para 93] I note that a 2018 publication of Alberta Justice and Solicitor General (as it then was) entitled "Alberta Provincial Policing Standards, April 2018" expressly refers to having received advice from the AACP in setting standards for the lawful application of force. It states at page 61[3]:

> Police services are required to provide members with an understanding of the legal parameters for the lawful application of force. In approving use of force techniques and applications, the Ministry receives advice from both the Alberta Association of Chiefs of Police (AACP) and the RCMP.

[para 94] It seems clear that the AACP advises the Public Body on matters of policing. It is reasonable to conclude that the AACP intends for the Public Body employees participating in AACP meetings as honorary members to incorporate what they learn from the meetings into their roles with the Public Body. This, in turn, indicates that the AACP invites employees of the Public Body to participate in meetings as honorary members for the purpose of influencing those employees, among other purposes, which would only be effective if those employees take the information provided by the AACP, including at meetings, and incorporate that information in performing their work duties.

[para 95] In my view, the facts set out in Investigation Report 13-02 of the BC Registrar of Lobbyists are similar to the facts in this case, and the analysis in that Report is applicable here. Unlike in the *University of Alberta* case, the information before me leads me to conclude that Public Body employees who are honorary members of the AACP are acting within their job duties with the Public Body when participating in AACP business. Moreover, I conclude that the

[3] https://open.alberta.ca/dataset/65be10e5-1d1a-4fa8-a807-d68af51965a3/resource/872e08e4-e6d0-4d43-ad4b-db8fb689e338/download/policing-standards-2.1-april-30-2018.pdf

Public Body employees are not merely attending the meetings as part of their job duties, but that their participation in the meetings instructs their work with the Public Body.

[para 96] I agree with the Applicant that where the AACP disseminates records to Public Body employees acting in the course of their duties with the Public Body, the AACP does not seem to have any authority to dictate which records provided to Public Body employees can be used in the course of their employment with the Public Body, and which cannot. In other words, there seems to be no reasonable basis for the AACP's belief that meeting agendas and minutes provided to Public Body employees as honorary members would not be used by the Public Body employees in the course of their job duties.

[para 97] These factors weight in favour of finding that the Public Body has custody or control of the records.

[para 98] The third and fifth factors are also related and I will discuss them together.

> Does the public body have possession of the record either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?
>
> Does the public body have a right to possession of the record?

[para 99] The Public Body argues that the AACP's bylaws require it to provide agendas and meeting minutes to honorary members. It argues this weighs in favour of finding the Public Body has custody or control.

[para 100] The AACP argues that it is not required to invite Public Body employees to participate in the AACP as honorary members. The AACP notes that it could rescind this membership, which would mean that it is no longer required to provide agendas and meeting minutes to those Public Body employees. The AACP also argues that it could amend its bylaws to remove the requirement to provide agendas and meeting minutes to honorary members, or to require a member to return or destroy certain records.

[para 101] As stated, I do not have a copy of the AACP's current bylaws, but both the Public Body and AACP agree that the bylaws require that all members be given copies of meeting agendas and minutes. The Public Body has stated that there are currently no limits in the bylaws on the use that members can put to these records and the AACP does not dispute this.

[para 102] Whether the AACP can amend its bylaws as it argues is not relevant to current circumstances. As such, I will not comment on whether the AACP could regulate the use of records provided by the AACP to Public Body employees who are attending meetings as part of their job duties with the Public Body. It does seem entirely within the AACP's control to determine whether it will continue to invite Public Body employees to any AACP meetings, though I note that many, if not most, of the members of the AACP seem to participate as part of their job duties with other public bodies.

[para 103] In any event, I have determined that the Public Body employees participating in AACP meetings are doing so as part of their job duties with the Public Body. While the AACP was not required to invite the Public Body employees to be honorary members, once it did, its bylaws required it to provide the agendas and meeting minutes to those employees. This weighs in favour of finding that the Public Body has custody or control of those records.

[para 104] The fourth factor is applicable only where the public body does not have possession of the record; as such it is not relevant here.

[para 105] The seventh and tenth factors are related and I will discuss them together

Does the public body have the authority to regulate the record's use?

Does the public body have the authority to dispose of the record?

[para 106] The AACP did not provide any support for its argument that the Public Body does not have authority to regulate the use of its agendas or meeting minutes, or authority to dispose of the records.

[para 107] The Public Body reiterates that it is not aware of any limitations in the AACP's bylaws or elsewhere that restrict how Public Body employees can use the records, or its ability to dispose of the records.

[para 108] It may be the case that the AACP is confusing the Public Body's ability to regulate the use of copies of the agendas and meeting minutes in its possession, with those in the possession of the AACP. I accept that the AACP is responsible for creating the agendas and meeting minutes; however, this does not mean that no other body can have custody or control of the copies in their possession.

[para 109] The AACP has not provided any evidence to support its argument that the Public Body lacks authority to dispose of, or otherwise control the use of the copies of the agendas and meeting minutes in its possession. For example, nothing before me indicates that the Public Body is prohibited from copying or disseminating those records.

[para 110] I find that this factor weighs in favour of the Public Body having custody or control of the records.

To what extent has the record been relied upon by the public body?

[para 111] The Public Body states that the eighth factor, the extent to which the records are relied upon by the Public Body, is of limited relevance. However, the Public Body also states that it would be reasonable to expect Public Body employees who are honorary members of the AACP to rely on agendas, meeting minutes etc. in preparing for meetings they are invited to.

[para 112] The AACP argues that it is unable to imagine how the Public Body employees rely on the agendas or meeting minutes.

[para 113] The AACP's position is not persuasive when weighed against the Public Body's submissions that the Public Body employees who participate in AACP meetings as honorary members are doing so as part of their job duties with the Public Body. As the Public Body points out, it seems reasonable to assume that the employees would rely on a meeting agenda to prepare for an upcoming meeting.

[para 114] It also seems reasonable to assume that an employee would review and rely on meeting minutes where the topic relates to their job duties.

[para 115] I find that this factor weighs in favour of the Public Body having custody or control of the records.

How closely is the record integrated with other records held by the public body?

[para 116] The Public Body states that the records at issue are integrated with other records of the Public Body. The Public Body's arguments indicate that were a Public Body employee who is an honorary member to leave their position with the Public Body, the AACP agendas and meeting minutes they obtained as part of their role would be retained by the Public Body as they relate to Public Body business. In other words, the employee would not take the records with them as they might with any personal records they had maintained on the Public Body's electronic systems.

[para 117] I find that this factor weighs in favour of the Public Body having custody or control of the records.

Conclusion

[para 118] I find that the Public Body has custody or control of the records at issue. It appears from the copy of the records provided to me by the Public Body that it has already taken steps to review the records and make decisions about access, which are awaiting the outcome of this inquiry. I will order the Public Body to complete the work it has undertaken to respond to the Applicant.

2. 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 119] The AACP has argued that section 17(1) applies to much of the information in the records at issue, as it references several individuals by name and in the context of other information about them such as their job title, membership with the AACP, contributions made to AACP committees, remarks made during AACP meetings and employment information.

[para 120] The Public Body has argued that section 17(1) does not apply to the information in the records at issue as the AACP argues, as this information relates only to the performance of work duties.

[para 121] The Applicant states that it is possible that private citizens may be invited to join AACP meetings, in which case it may be appropriate to withhold personal information about such individuals. However, it is not appropriate to withhold information about members acting in a professional capacity.

[para 122] 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 123] Section 17 is a mandatory exception: if the information falls within the scope of the exception, it must be withheld.

[para 124] 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 125] 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 126] Many past Orders of this Office state that the disclosure of the names, contact information and other information about public body employees, that relates only to the employees acting in their professional capacities is not an unreasonable invasion of personal

privacy under section 17(1) (see Orders 2001-013 at paras. 89-90, F2003-002 at para. 62, F2008-028 at para. 53) unless that information has a personal dimension in the circumstances. This principle has been applied to information about employees of public bodies as well as other organizations, agents, sole proprietors, etc. and individuals otherwise acting in a professional capacity (Orders F2008-028, F2016-31).

[para 127] In other words, in the absence of a personal dimension, information cannot be withheld under section 17(1). The rationale for this approach was set out in Order F2004-026 by former Commissioner Work, citing precedent from Ontario's Information and Privacy Commissioner. Commissioner Work said (at para. 109, footnotes omitted):

> The question of whether the recorded activities or work product of employees is information about them has been thoroughly canvassed in Ontario decisions that relate to the definition of "personal information" in the Ontario legislation. These decisions are summarized in Order P-1409, which states:
>
> > To summarize the approach taken by this office in past decisions on this subject, information which identifies an individual in his or her employment, professional or official capacity, or provides a business address or telephone number, is usually not regarded as personal information. This also applies to opinions developed or expressed by an individual in his or her employment, professional or official capacity, and information about other normal activities undertaken in that context.
>
> The Ontario position is that the latter such information is not personal in nature and is not about the employees, hence is not their personal information. Order R-980015 offers a policy rationale for this approach (at paragraphs 38 to 41), which includes the following comments:
>
> > … the rationale for the distinction between personal information and information that relates to a person's employment, professional and official government capacity also relates to the integrity of the regime establishing the public's rights of access and government's disclosure obligations. Without this distinction, the routine disclosure of information by government … could be greatly impeded as institutions sought to meet statutory notice and process obligations meant to apply only to "personal information" deserving of this kind of protection. This could, in turn, become an obstacle to access to information pertaining to the business of government which, of necessity, is conducted by individuals in the public service.
> >
> > …
> >
> > … It would also be contrary to one of the fundamental purposes of the Act, that "necessary exemptions from the right of access should be limited and specific", to interpret personal information so broadly as to encompass records subject to other exemptions which have been carefully crafted to establish appropriate boundaries for protecting government's confidentiality interests and defining its disclosure obligations.

[para 128] There are other discretionary exceptions in the FOIP Act that may apply to professional opinions provided by public body employees or other individuals acting in a professional capacity, such as section 24(1) (advice to officials). Such exceptions would not have

meaning if professional opinions were required to be withheld as personal information of the opinion-giver.

[para 129] That said, past Orders of this office have also found there to be a personal dimension to information about an employee's work duties in some circumstances, such as where it appears in the context of allegations of wrongdoing (e.g. investigations into the conduct, disciplinary proceedings, etc.). In Order F2010-031 the Adjudicator stated:

> Information about an individual's performance of work duties may be personal information in a context where it is suggested or alleged that the individual has acted improperly or wrongfully (Order F2008-020, para. 28).

[para 130] In its submissions made with its request for review and request for inquiry, the AACP did not address the past precedent of this office with respect to the application of section 17(1) to information about individuals acting in a professional capacity. Nor did it provide any arguments in its rebuttal submission in response to the arguments of the Public Body and Applicant on this point.

[para 131] The records at issue are comprised of agendas, attachments to agendas and meeting minutes. Neither the Public Body nor the AACP have identified any individual referenced in the records as individual acting in a personal or private capacity. From my review of the records, I conclude that the information about individuals contained in the records relates to those individuals acting in a professional capacity.

[para 132] While the Public Body has argued in its initial submission that section 17(1) does not apply to information in the records, its index of records at Attachment 5 of its initial submission (titled "Index of Records by Page Number") indicates that section 17(1) was applied to information on pages 16, 26, 34, and 39 of the records. A different index of records at Attachment 6 (titled "Index of Records by Section") indicates that section 17(1) has been applied to information on pages 22 and 34 only.

[para 133] The records themselves show that the Public Body has applied section 17(1) to one item of information appearing on page 22 and repeated on page 34. There is no indication in the records that section 17(1) was applied to any information on pages 16, 26 or 39. As the page numbers in the index at Attachment 6 correlate with the records, I conclude that the references to section 17(1) having been applied to pages 16, 26 and 39 of the records in Attachment 5 are in error. I will consider only the Public Body's clear application of section 17(1) to the item of information on pages 22 and 34. This item of information consists of the date on which a particular member of the AACP took on a specified role.

[para 134] In Order F2008-020, the adjudicator considered the application of section 17(1) to information about police officers contained in a report of an internal investigation into an allegation of police misconduct. The adjudicator found that section 17(1) can apply to employment start dates and length of service relating to the officers, as information relating to their employment history.

[para 135] In BC Order No. 41-1995, former Commissioner Flaherty rejected the idea that an employee's start date is necessarily employment history information such that it has a personal dimension. The Commissioner noted that decisions from the Ontario Information and Privacy Commissioner's office finding that hiring dates are employment history having a personal dimension, dealt with information in severance arrangements with former employees. The BC Commissioner found that those circumstances were materially different from a mere start date for employment. He said (at para. 30):

> I agree with the Manual's basic interpretation that employment history includes information about an individual's work record. I emphasize the word "record" because in my view this incorporates significant information about an employee's performance and duties. I do not think that the singular fact of an employee's start date is a part of his or her record, as used in this context.

[para 136] I agree with the BC Commissioner's analysis. Whether an employment start date (relating to paid employment or a volunteer position) has a personal dimension will depend upon the context in which it appears. The length of an employee's service appearing in a record of a disciplinary matter or termination notice may have a personal dimension. Similarly, the start and end dates relating to all of an individual's past jobs, such as may be found in a resume, may have a personal dimension.

[para 137] In this case, the date on which the named AACP member took on the specified role appears in meeting minutes that record a status update being given by that member as part of this role. The date on which this member started in this role appears to have been given in order to provide context for the status update; specifically, to delineate the timeframe for the data that was used for the update.

[para 138] In this context, I find that the date appearing on pages 22 and 34 that identifies when the AACP member took over a particular role is not part of the member's employment history record such that it could be characterized as having a personal dimension. Therefore, I find that section 17(1) does not apply.

[para 139] More broadly, I have already found that the information in the records referring to individuals relates to them acting in their professional capacities. I cannot locate information in the records that has a personal dimension such that section 17(1) could apply. The AACP has not referred to any particular information in the records that it believes has a personal dimension; nor has it provided any reason for me to find that the past precedent of this office, discussed above, should not apply to this information.

[para 140] I find that the information in the records at issue relating to individuals is not information to which section 17(1) can apply.

V. ORDER

[para 141] I make this Order under section 72 of the Act.

[para 142] I find that the records at issue are within the custody or control of the Public Body.

[para 143] I find that section 17(1) does not apply to information in the records.

[para 144] The Public Body appears to have completed many or most of the steps required to process the Applicant's request. I order the Public Body to complete its response to the Applicant as required by the Act.

[para 145] I further order the Public Body to notify me and the Applicant 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