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OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2024-28

August 23, 2024

CITY OF EDMONTON

Case File Number 003479

Office URL: www.oipc.ab.ca

Summary: On May 13, 2016, an individual (the Applicant) made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the City of Edmonton (the Public Body) for certain information.

The Public Body located 75 pages of responsive records. On June 9, 2016, the Public Body informed the Applicant that it was providing him with access to the records, but was withholding some information in the records under sections 17(1) (disclosure harmful to personal privacy), 24(1) (advice from officials), and 27 (privileged information) of the FOIP Act. As well, it advised the Applicant that information in the records that did not respond to his request was marked NR as non-responsive. Finally, it informed the Applicant that CCTV footage from the time period of the request had passed its retention period and had been destroyed.

On June 17, 2016, the Applicant requested a review of the Public Body's decision to withhold the remaining information, as well as the adequacy of the search the Public Body conducted for responsive records.

The Commissioner confirmed the matter for an inquiry on May 2, 2017.

On June 30, 2017, the Public Body voluntarily disclosed some additional information in the responsive records to the Applicant.

Subsequently, on September 6, 2017, during the course of a judicial review proceeding commenced by the Applicant regarding the Public Body's decision to ban him from its facilities,

the Public Body was ordered by the Court to disclose some additional information in the responsive records to the Applicant.

On April 26, 2024, the Public Body disclosed further information to the Applicant, including the information it had withheld under section 24(1) of the FOIP Act.

The Adjudicator found that the Public Body had conducted an adequate search for responsive records and had met its duty to assist the Applicant under section 10(1) of the FOIP Act.

The Adjudicator found that the Public Body had properly identified information at the bottom of page 1 as non-responsive to the Applicant's access request and properly withheld this information.

The Adjudicator found that section 17(1) did not apply to an employee's work email address withheld by the Public Body and ordered the Public Body to disclose this to the Applicant. The Adjudicator ordered the Public Body to review the name of the individual on page 1 of the records and, if it was the name of an employee and not another third party, to disclose it to the Applicant, as there was no personal dimension which would require it to be withheld. The Adjudicator also ordered the Public Body to disclose the phone number that appeared on page 23, which was replicated on page 68, as it was not recorded information about an identifiable individual, and could not be withheld under section 17(1). The Adjudicator confirmed that the Public Body had properly applied section 17(1) to the rest of the information it had withheld under this section.

The Adjudicator found that if the Court had not already concluded that solicitor-client privilege applied to the information withheld on pages 71-73, and it therefore remained within the jurisdiction for this Office to decide, the Public Body had established that solicitor-client privilege applied to the information and therefore it could be withheld under section 27(1)(a).

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 10, 17, 27, 56(3), 71, and 72.

Statutes Cited: Federal: *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

Orders Cited: AB: Orders F2003-001, F2007-029, F2009-026, F2013-23, F2017-59, F2019-06, F2019-07, F2020-13, F2021-20, F2022-26, F2023-02, F2024-09, F2024-02, and F2024-12.

Decisions Cited: Federal: PIPEDA Report of Findings No. 2017-008.

Cases Cited: *Canada v. Solosky*, [1980] 1 S.C.R. 821, *Turgeon v. Edmonton (City)*, 1986 CanLII 1920 (AB KB), *Blank v. Canada (Minister of Justice)*, 2006 SCC 39, *Alberta v. Suncor Energy Inc.*, 2017 ABCA 221, *Waissmann v. Calgary (City)*, 2018 ABQB 131, *[Applicant] v. Edmonton (City) Police Service*, 2019 ABCA 272, *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10, and *Alberta Health Services v. Farkas*, 2020 ABQB 281.

I. BACKGROUND

[para 1] On May 13, 2016, an individual (the Applicant) made an access request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the FOIP Act) to the City of Edmonton (the Public Body) for the following information:

> All records related to incidents at recreation facilities since May 2006. Please exclude all records already provided in my prior request. Please include all records created subsequent to my last request and any things you may ban not included in the scope of the first request.

[para 2] The time period specified by the Applicant for his access request was "all records up until today, May 13, 2016".

[para 3] On May 30, 2016, the Public Body confirmed that it received the Applicant's access May 13, 2016 access request. It described the information he requested as follows:

> All records related to incidents at City recreation facilities involving [the Applicant]. This includes, but is not limited to:
>
> - communication between City departments
> - communication between the City and EPS
> - records provided to EPS and the timeline of when those records were provided
> - records that led to the decision to formally call EPS on March 31
> - records of the investigation that resulted in a letter of banning dated April 8
> - records of an April 25 meeting at 11am at Chancery Hall between Corporate Security, swimming pool management and police
> - records of an appeal meeting on April 27
> - records of a call from [TMG] on April 28
> - records of any follow-up with swimming pool staff or complaints in relation to the April 27 meeting
> - notes made by KG, NP, CS, SG, TMG, EE, swimming pool staff and any other City employee involved
> - internal investigation and incident reports, including any report from Corporate Security
> - records regarding an initial recommendation by EPS to issue a lifetime ban and subsequent EPS decision to lift recommendation to the lifetime ban
> - records regarding an EPS decision on April 25 to not participate in April 27 meeting
> - documentation of decision to issue letter of banning with regards to a March 10 or March 17 incident
> - documentation of why wording of letter of banning was changed and a revised letter resent on April 29 backdated to April 8
> - records of complaints or warnings issued prior to March 10
> - witness statements, handwritten notes and all records from any alleged complainant, including staff and patrons
> - video of Hardisty swimming pool steam room/sauna area or entrance door to steam room: March 10, 2016, 4:57pm – 8pm and March 17, 2016, 8:29 – 10 PM
>
> Time period: May 1, 2006 – May 13, 2016

[para 4] The Public Body further informed the Applicant that:

> This is the second FOIP request regarding this matter. If records have already been considered for the first FOIP request (2016-P-0134), they will not be considered as part of this request.

[para 5] The Public Body assigned file #2016-P-0183 to the Applicant's access request.

[para 6] The Public Body conducted a search and located 75 pages of responsive records. On June 9, 2016, the Public Body provided some records to the Applicant, but also withheld some information under section 17(1) (disclosure harmful to personal privacy), section 24 (advice from officials) and section 27(1)(a) (privileged information) of the FOIP Act. The Public Body also informed the Applicant that information that was non-responsive to his access request was marked NR and withheld as non-responsive. It further informed the Applicant that the CCTV footage he requested had passed its retention period and had been destroyed.

[para 7] On June 17, 2016, the Applicant submitted a Request for Review/Complaint form to this Office requesting the Commissioner review the Public Body's application of sections 17(1), section 24, and 27(1) to withhold responsive information. The Applicant also alleged that the search conducted by the Public Body for responsive records was not adequate or failed to locate records believed to exist.

[para 8] The Commissioner confirmed the matter for an inquiry on May 2, 2017.

[para 9] On June 30, 2017, the Public Body released some information on page 74 to the Applicant, but withheld some information pursuant to section 17(1). The Public Body released all of the information on page 75, to the Applicant.

[para 10] During this time, the Applicant had also commenced an application in the Alberta Court of Queen's Bench (now the Court of King's Bench) for judicial review of the Public Body's decision to ban him from the Public Body's recreation facilities. The Public Body and the Edmonton Police Service (the EPS) were named as the Respondents.

[para 11] As part of the judicial review proceedings, the Public Body submitted records to the Court, which included the 75 pages of responsive records that it had provided the Applicant in a redacted form, in response to his access request under the FOIP Act.

[para 12] The Applicant then brought a preliminary application before the Court in the judicial review proceeding, seeking an order directing the Public Body and the EPS to remove all redactions from their respective Certified Record of Proceedings.

[para 13] On September 6, 2017, the Court ordered the Public Body and the EPS to "each file an amended Certified Record of Proceedings without redactions for the names, job titles and signatures of the witnesses and complaint [sic] for all documents contained in the Certified Records of Proceedings including the records disclosed to [the Applicant] per the *Freedom of*

Information and Protection of Privacy Act, RSA 2000, c F-25. All other redactions in the Certified Records of Proceedings shall remain in place".[1]

[para 14] The Public Body provided the Applicant with the information in the records as ordered by the Court. It continued to withhold the information which the Court had not ordered it to disclose to the Applicant in the 75 pages of responsive records it had provided to the Applicant in response to his access request under the FOIP Act.

[para 15] The Commissioner re-delegated her authority to conduct this inquiry from a former adjudicator, to me.

[para 16] On April 26, 2024, the Public Body disclosed further information to the Applicant that it had previously withheld. It continued to withhold information in the 75 pages of responsive records under sections 17(1) and 27(1).

II. RECORDS AT ISSUE

[para 17] The Public Body provided me with a current copy of the 75 pages of responsive records showing the information that remains redacted after its subsequent disclosure of information on June 30, 2017, the disclosure pursuant to the Court Order, and the disclosure on April 26, 2024, to the Applicant. It also provided a current copy of the redacted records to the Applicant.

[para 18] The information at issue in this inquiry is the information that remains withheld in the 75 pages of responsive records by the Public Body under the FOIP Act. The inquiry will determine whether the Public Body properly applied the applicable section of the FOIP Act it asserted, to the information that remains withheld.

III. ISSUES

[para 19] The Notice of Inquiry, dated July 6, 2018 and prepared by the former adjudicator, states the issues for this inquiry as follows:

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

   In this case, the Commissioner will consider whether the Public Body conducted an adequate search for responsive record.

2. Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information in the records?

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

[1] Tab 1 of the Public Body's rebuttal submission: Order of Justice Gill pronounced September 6, 2017 (the Court Order).

4. Did the Public Body properly apply section 27(1)(a) to the Act (privileged information) to the information in the records?

Preliminary Matter – Scope of Inquiry

[para 20] The parties have previously been clearly informed that in this inquiry I will only be considering the information *which remains withheld* under the FOIP Act by the Public Body in the responsive records after all disclosures, voluntary and Court ordered, to the Applicant. In other words, I will *not* be reviewing whether information which has now been disclosed for any reason, was *originally* properly withheld under the FOIP Act by the Public Body.

[para 21] In its initial submission dated April 26, 2024, the Public Body advised that it was no longer relying on section 24 to withhold information from the Applicant, and released the information it had withheld under this section to the Applicant. Accordingly, the information withheld under section 24(1) is no longer at issue in this inquiry and section 24(1) does not need to be considered.

IV. DISCUSSION OF ISSUES

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

In this case, the Commissioner will consider whether the Public Body conducted an adequate search for responsive records.

[para 22] Section 10(1) of the FOIP Act states:[2]

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

[para 23] Recently, in Order F2024-12, the adjudicator summarized what section 10(1) requires of a public body. At paragraph 12, the adjudicator stated:

> [para 12] The duty to assist includes responding openly, accurately and completely, as well as conducting an adequate search. The Public Body bears the burden of proof with respect to its obligations under section 10(1), as it is in the best position to describe the steps taken to assist the applicant (see Order 97-006, at para. 7). An adequate search has two components in that every reasonable effort must be made to search for the actual records requested, and the applicant must be informed in a timely fashion about what has been done to search for the requested records (Orders 96-022 at para. 14; 2001-016 at para. 13; and F2007-029 at para. 50).

[2] The sections of the FOIP Act that are reproduced in this Order are the sections that appear in the version of the FOIP Act as it exists at the date of this Order. If a section referred to herein has been amended in a material way since the Public Body's original response to the Applicant on June 9, 2016, I have made note of it and have considered this in reaching my conclusions herein.

[para 24] At paragraph 66 in Order F2007-029, former Commissioner Work described the kind of evidence that assists a decision-maker to determine whether a public body has made reasonable efforts to search for records:

> [para 66] In general, evidence as to the adequacy of a search should cover the following points:
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> - The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request
> - The scope of the search conducted – for example: physical sites, program areas, specific databases, off-site storage areas, etc.
> - The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
> - Who did the search
> - Why the Public Body believes no more responsive records exist than what has been found or produced

[para 25] In its initial submission, the Public Body advised that as the persons who performed the primary search for records at the relevant department were no longer employed by the Public Body, there was no one available who possessed direct knowledge of the search in order to swear an affidavit.

[para 26] Previous Orders of this Office have stated that while a sworn statement about a public body's search activities carries more weight and is preferred in an inquiry over an unsworn statement, it is not mandatory (see, for example Order F2017-59 at paragraph 16). Either the search was adequate or it was not, and this does not change whether the public body's details about the search are given under oath or not.

[para 27] The Public Body advised that from a review of its records, a search for responsive records was initiated on May 26, 2016. The Public Body advised that its FOIP Assistant had sent e-mails to numerous individuals in the Community and Recreation Facilities division of the Citizen Services department, requesting that they conduct a search for responsive records using the scope of records requested by the Applicant in his access request.

[para 28] The Public Body further stated in its initial submission:

> 17. As detailed above, the Applicant made similar separate access requests for records as detailed in file numbers 003479, 005569, and 002962, as well as the Court of Queen's Bench action. Separate searches for records were conducted for each FOIP request.
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> 18. The Public Body submits that its search for responsive records in 2016 was adequate and there is no reason to believe that additional records exist.

[para 29] I understand the Public Body to be arguing that it conducted three separate searches in 2016 for records relating to incidents involving the Applicant at its facilities, and consequently, even if the search it conducted for records responsive to this *particular* access request (which was the Applicant's second access request) was not adequate, taking into account the three searches it has cumulatively done for responsive records, it has conducted an adequate search for records relating to incidents involving the Applicant at its facilities.

[para 30] In his access request dated May 13, 2016, the Applicant stated "Please exclude all records already provided in my prior request". Nonetheless, he appears to be arguing in his initial and rebuttal submissions that because other records were located in response to the first and third access requests he made to the Public Body about incidents at its facilities involving him, and he believes those records were responsive and should have been provided to him in response to *this* access request, the Public Body's search for responsive records to *this* access request was inadequate.

[para 31] The Applicant also appears to be arguing that because records, which he became aware of through his judicial review application in the Court of Queen's Bench (now King's Bench) involving the Public Body's decision to ban him from its facilities, were not disclosed to him in response to *this* access request, this was proof that the Public Body's search for responsive records to this access request was inadequate.

[para 32] It appears the Applicant may also be arguing that because the Public Body was ordered by the Court in the judicial review process to disclose *some* of the information it had initially withheld under the FOIP Act in the responsive records it located and provided to him in response to this access request, this means that the Public Body's search for responsive information was inadequate.

[para 33] The Applicant also complained that the Public Body had not created nor disclosed minutes it has or should have related to a meeting which occurred on April 25, 2016 between employees of the Public Body and a member of the EPS, and a meeting between the Applicant and an appeal panel of the Public Body which occurred on April 27, 2016, to hear the Applicant's appeal of the Public Body's ban of him.

[para 34] In its rebuttal submission, the Public Body stated:

> 5. In their Rebuttal dated May 24, 2024, the Applicant references records "released as a result of Justice Gill's court order." The date of the said court order was September 2017 and it required certain records to be unredacted, not the release of any new records. The attached Transcript of the relevant portions of the court application made on September 6, 2017 includes the terms of the court order.
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> Justice Gill Court Order – TAB 1
> Transcript of Application – TAB 2
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> 6. The Justice Gill court order arose out of a judicial review challenging a City of Edmonton administrative decision. A judicial review is a different process utilizing different legal tests for determining which records are producible, as opposed to a request for records under the FOIP Act; consequently, they can yield different results.

. . .

> 11. Furthermore, there is no legal obligation on the Public Body to create meeting minutes. The Public Body confirms that there are no such meeting minutes in its custody or control, as alleged by the Applicant in their Rebuttal Submission. The Public Body has disclosed at page 1 of the Additional Disclosure in its Initial Submission some handwritten notes that appear to reference the meeting described by the Applicant.

[para 35] If the Applicant is arguing that the Public Body's search for records responsive to *this* access request was inadequate because it located records in response to other similar access requests that he made, which he believes should have also been located for this access request, this does not automatically lead to the conclusion that the Public Body's search for responsive records to *this* access request was inadequate.

[para 36] Different language in another access request may give rise to other people, areas or departments being asked to conduct searches, and other records being located in that situation. Furthermore, more broadly worded requests tend to result in more responsive records than narrowly worded requests.

[para 37] If the Applicant is arguing that the Public Body's search for responsive records was inadequate because the Public Body produced *other records* in the judicial review proceedings, this also does not necessarily lead to the conclusion that the Public Body's search for responsive records to this access request under the FOIP Act was inadequate. As the Public Body correctly states in paragraph 6 of its rebuttal submission:

> . . . A judicial review is a different process utilizing different legal tests for determining which records are producible, as opposed to a request for records under the FOIP Act; consequently, they can yield different results.

[para 38] If the Applicant is arguing that the Public Body's *search* for responsive records was inadequate because the Court ordered the Public Body to disclose some information it had withheld *in the records it provided to him* in response to his access request under the FOIP Act, this argument does not make sense.

[para 39] The fact that the Court ordered the Public Body to disclose some information in the responsive records to the Applicant in the judicial review proceeding, which the Public Body had originally withheld from the Applicant under the FOIP Act, has nothing to do with whether the Public Body conducted an adequate search for responsive records to the Applicant's access request under the FOIP Act.

[para 40] Whether the Public Body *did an adequate search for* responsive records under the FOIP Act is an entirely different question from whether it *properly withheld information* in the responsive records under the FOIP Act.

[para 41] With respect to the Applicant's argument that the Public Body should have minutes of the meetings he references, the Public Body has advised that there are no such meeting

minutes in its custody or under its control, and the FOIP Act does not require it to create minutes if none were taken in the first instance.

[para 42] Previous Orders of this Office confirm the Public Body's position that there is no obligation in the FOIP Act to retroactively create minutes if they were not taken in the first instance (see, for example, Order F2017-59 at paragraph 15).

[para 43] Whether the Public Body *should have* taken minutes during the meetings the Applicant identifies, is outside the scope of my authority under the FOIP Act to determine.

[para 44] The Public Body also informed the Applicant in its response dated June 9, 2016, that the CCTV footage he had requested (of the Hardisty swimming pool steam room/sauna area or entrance door to steam room: March 10, 2016, 4:57pm – 8pm and March 17, 2016, 8:29 – 10 PM) had passed its retention period and had been destroyed.

[para 45] Whether the Public Body *should have* destroyed the CCTV footage is not an issue in this inquiry – only whether it searched for it, and whether it located it, and if not, why it did not locate it. The Public Body has answered these questions.

[para 46] The Public Body has described the search it conducted to respond to the Applicant's access request. I note that the Public Body has submitted that the Applicant has made additional access requests for similar information and it has provided responsive records to these access requests, one of which was the subject of an inquiry which resulted in Order F2024-02. As well, the Public Body produced records in the judicial review proceeding commenced by the Applicant relating to the Public Body's ban of him from its facilities.

[para 47] Given that the Public Body has conducted three separate searches in response to three different access requests by the Applicant for records relating to incidents involving the Applicant at its facilities, I accept why the Public Body believes there are no further records responsive to the Applicant's access request.

[para 48] The Applicant's arguments do not persuade me that any further records exist and would be located were the Public Body to conduct a fourth search for records about incidents involving him at its facilities during the time period he specified in his access request.

[para 49] Previous Orders of this Office have stated that the FOIP Act requires a public body to conduct an *adequate* search, not a *perfect* search (see, for example, Order F2013-23 at paragraph 18).

[para 50] In addition, previous Orders of this Office have said that where a public body later finds a record that is responsive to an access request, this does not automatically lead to the conclusion that the public body did not make every reasonable effort to locate that record in the first instance (see, for example, Order F2003-001 at paragraph 40).

[para 51] Even if I were to find that the Public Body did not conduct an adequate search for this *particular* access request, given the search it conducted for responsive records to this access

request, and the fact that it has conducted two additional separate searches for information involving incidents involving the Applicant at its facilities, I find that the Public Body has at this point conducted an adequate search for records of incidents involving the Applicant at its facilities during the time frame specified by the Applicant in this access request, and met its duty to assist the Applicant under section 10(1) of the FOIP Act.

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

[para 52] Section 17(1) of the Act states:

> *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 53] For section 17(1) to apply, the withheld information must first be found to be personal information and second, the disclosure of the information must be determined to be an unreasonable invasion of the third party's personal privacy.

[para 54] Section 17(1) is a mandatory exception: if the information falls within the scope of the exception, it must be withheld.

[para 55] In Order F2019-07 the Adjudicator discussed section 17 and explained the analysis that is to be undertaken when information is withheld under section 17(1), as follows:

> [para 22] Section 17 does not say that a public body is never allowed to disclose third party personal information. It is only when the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy that a public body must refuse to disclose the information to an applicant under section 17(1). Section 17(2) (not reproduced) establishes that disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.
>
> [para 23] When the specific types of personal information set out in section 17(4) are involved, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. To determine whether disclosure of personal information would be an unreasonable invasion of the personal privacy of a third party, a public body must consider and weigh all relevant circumstances under section 17(5), (unless section 17(3), which is restricted in its application, applies). Section 17(5) is not an exhaustive list and any other relevant circumstances must be considered.
>
> [para 24] Section 17(1) requires a public body to withhold information once all relevant interests in disclosing and withholding information have been weighed under section 17(5) and the conclusion is reached that it would be an unreasonable invasion of the personal privacy of a third party to disclose his or her personal information.
>
> [para 25] Once the decision is made that a presumption set out in section 17(4) applies to information, it is necessary to consider all relevant factors under section 17(5) to determine whether it would, or would not, be an unreasonable invasion of a third party's personal privacy to disclose the information.

> [para 26] However, it is important to note that section 17(1) is restricted in its application to personal information. Before a public body may apply section 17(1), it must first determine whether the information in question is personal information or that it is likely to be so. In this case, I must consider whether the information to which the Public Body has applied section 17(1) is personal information.

[para 56] Where a record contains personal information of a third party, section 71(2) places the burden on the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy. Section 71(2) states:

> *(2) Despite section (1), if the record or part of the record that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.*

[para 57] Accordingly, in determining whether section 17(1) applies, the first question that must be answered is whether the information that remains withheld by the Public Body in the 75 pages of responsive records consists of personal information of a third party.

Is the withheld information personal information of a third party?

[para 58] 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 59] The definition of "personal information" under section 1(n) is non-exhaustive. Other information not enumerated in section 1(n) can also be found to be personal information under the FOIP Act.

[para 60] Section 1(r) of the Act provides the following definition of "third party":

1 In this Act,

(r) "third party" means a person, a group of persons or an organization other than an applicant or a public body;

[para 61] The Public Body located 75 pages of records responsive to the Applicant's access request.

[para 62] The Public Body has disclosed all of the information on these pages to the Applicant, with the exception of the information described by the Public Body in its Revised Schedule A – Index of Records, provided to me and to the Applicant on June 24, 2024 as follows:

Page	**Description**	**Applicable Section of FOIP Act**	**Information Withheld**
1	Handwritten notes	17(1) and Non-responsive	Name Handwritten notes about unrelated matter on bottom 5 lines of page
15	E-mail with personal name and e-mail address	17(1)	E-mail address
23	E-mail with cell phone number of third party	17(1)	Phone number
28	E-mail with employee's personal information	17(1)	Employee personal information
48	E-mail with other customer name	17(1)	Name
53	E-mail with information about other customer	17(1)	Name
58	E-mail with third party's name and e-mail address	17(1)	E-mail address
61	E-mail with information about another customer	17(1)	Name
68	E-mail with cell phone number of third party	17(1)	Phone number
71-73	Incident report	27(1)(a), 27(1)(b)(iii)	Privileged information for the City Solicitor
74	Incident report	17(1)	Phone number, date of birth, address

[para 63] To be clear, none of the information the Public Body withheld under section 17(1) is personal information about the Applicant. It is all information about someone else that the Applicant seeks to have disclosed to him.

[para 64] Some of the information the Public Body has withheld under section 17(1) is information about an employee. I will consider whether this information is personal information which can be withheld under section 17(1).

[para 65] In Order F2009-026, the adjudicator considered whether an employee of a public body could be considered a "third party" for the purpose of section 17(1). She stated:

> [para 11] If information is about employees of a public body acting in a representative capacity the information is not personal information, as the employee is acting as an agent of a public body. As noted above, the definition of "third party" under the Act excludes a public body. In Order 99-032, the former Commissioner noted:
>
> > The Act applies to public bodies. However, public bodies are comprised of members, employees or officers, who act on behalf of public bodies. A public body can act only through those persons.
>
> In other words, the actions of employees acting as employees are the actions of a public body. Consequently, information about an employee acting on behalf of a public body is not information to which section 17 applies, as it is not the personal information of a third party. If, however, there is information of a personal character about an employee of a public body, then the provisions of section 17 may apply to the information. I must therefore consider whether the information about employees in the records at issue is about them acting on behalf of the Public Body, or is information conveying something personal about the employees.

[para 66] Similarly, in Order F2023-02, the adjudicator stated:

> [para 27] 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. In other words, in the absence of a personal dimension, information cannot be withheld under section 17(1).

[para 67] With this in mind, I will review the information withheld by the Public Body.

Page 1

[para 68] Page 1 is a page of handwritten notes made by an employee of the Public Body. On page 1, the Public Body withheld an individual's name. The Public Body disclosed the words "– outside of sauna" that appear with the redacted name. The Public Body did not say, and it is not clear if it is the name of an employee, or the name of another third party.

[para 69] If the name is the name of an employee, I do not see the name appearing in a personal capacity versus an employment capacity. Nor do I see anything in the information that has a personal dimension about the employee, versus information about the employee acting in their employment capacity. Following the previous Orders mentioned above, in this context, section 17(1) would not apply to the employee's name.

[para 70] I will order the Public Body to determine if the withheld name is the name of an employee and if so, to disclose it to the Applicant.

[para 71] If the name redacted on page 1 is *not* the name of an employee but another third party, it is the third party's personal information under section 1(n)(i) of the FOIP Act and I will discuss below whether the Public Body has properly withheld it from the Applicant.

[para 72] The Public Body also withheld information at the bottom of page 1 on the basis that it was non-responsive and contained a third party's name. The Public Body stated that the third party's name was protected by section 17(1) and asserted that disclosure of the non-responsive information may cause harm to the third party.

[para 73] Although the issue about whether the Public Body properly withheld this information on the basis that it was non-responsive to the Applicant's access request was not identified as a formal issue in this inquiry, as the Public Body has addressed it in its initial submission, I will consider it. Submissions on this issue from the Applicant are not necessary or required since the Applicant has no idea what the information is that has been identified by the Public Body as being non-responsive.

[para 74] In Order F2024-12, the adjudicator discussed how public bodies should properly characterize information as non-responsive. At paragraphs 9 and 10, the adjudicator stated:

> [para 9] Past Orders of this office have discussed how public bodies should properly characterize information as non-responsive. Information must be considered in the context of the record as a whole, in determining whether it is separate and distinct from the remainder of the record. In Order F2018-75, I noted examples of records that might have separate and distinct information (at para. 57):
>
> > An example of 'separate and distinct' might be distinct emails in an email chain. Another example relates to police officers' notebooks, which often contain notes on unrelated incidents on a single page. In response to an access request for police records relating to one incident, the part of the notebook page that relates to a different incident might be non-responsive. Another example is where a personal note is added to a work email, such as a note referencing a medical absence, holiday or so on. Where the personal note does not have any relation to the remainder of the email or to the access request, it might be non-responsive.
>
> [para 10] In this case, the records at issue consist of police investigation records, relating to a complaint made by the Applicant to the Public Body. The information severed as non-responsive relates to cases that do not involve the Applicant. I agree that this information is

> separate and distinct from the information relating to the Applicant's complaint. As such, it is not related or responsive to the Applicant's request.

[para 75] The notes withheld at the bottom of the page appear to have been made on a different day and appear to relate to a matter that does not involve the Applicant, but someone else. I agree that this information is separate and distinct from the information relating to the Applicant's access request that has been released to him on this page, and is non-responsive.

Page 15

[para 76] On page 15 of the responsive records, the Public Body withheld an individual's email address. The Public Body released all of the other information contained in the email, including the individual's first initial and last name where it appeared in the "From" line.

[para 77] From the content of the email, it appears to me that this individual is, or was at the time, an employee of the Public Body, who used their personal email address to send the email to another employee of the Public Body.

[para 78] Recently, in Order F2022-26, the adjudicator discussed whether, when an individual uses their personal email address for work purposes, the personal email address is no longer "personal information" about the individual, and therefore can *not* be withheld under section 17(1) of the FOIP Act.

[para 79] At paragraphs 19 - 27 of Order F2022-26, the adjudicator stated:

> [para 19] 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 20] 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 can apply.
>
> [para 21] The Public Body has mostly disclosed contact information for public body employees; however, in a few instances, the Public Body withheld contact information under section 17(1). For example, in Documents 19, 52, 61, 83, 102, 111, email addresses or cell phone numbers are withheld, even though they appear to relate to public body employees, and they appear in the context of the employees performing their work duties. From the context of the records, it appears that these email addresses or cell numbers are the individuals' personal contact information; many emails indicate that public body employees were emailed at both their work addresses and personal addresses. The Public Body has withheld only the contact information that appears to be personal. The Public Body has confirmed this in its initial submission.
>
> [para 22] As well, the Public Body has withheld contact information of some individuals who appear to be acting in a professional capacity for third party businesses or associations (at Documents 96, 111, 133). In its initial submission, the Public Body states that it applied section 17(1) only to personal contact information.

[para 23] 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, 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 238, 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 that the usual business or cell number. I therefore find that section 17 applies.

[para 24] More recent Orders of this Office have accepted that where public body employees use their personal contact information for occasional work use, section 17(1) can apply to that contact information. Order F2020-36 states (at para. 63):

> The fact that public body employees offer to be reached via a personal number or email in a particular situation does not make that number or email business contact information. In the cases described above, it seems clear that the personal contact information was not being offered for long-term or ongoing business contact purposes. I find that section 17(1) can apply to this information; this finding is consistent with past Orders (see Orders F2020-03 at para. 42, F2020-16 at para. 23).

[para 25] I agree with the above analyses, that a personal phone number, email address, or home address can become business contact information if it is used routinely for that purpose, such that section 17(1) does not apply. However, where personal contact information is provided for ad hoc communications, it remains information to which section 17(1) can apply. This is true of private sector employees as well as public body employees.

> [para 26] In most cases, the Public Body has withheld personal contact information where it is being used as an alternative method of contact (as opposed to routinely for work purposes). However, there are some instances in which section 17(1) cannot apply.
>
> [para 27] In one instance, the Public Body has withheld the name of a public body employee along with their personal email address, in Document 95. While the email address is personal, the email relates to the individual's work duties. Therefore section 17(1) can apply to the email address, but not the individual's name.

[para 80] There is only one instance in the responsive records where this individual's personal email address appears. There is no evidence before me to establish that if this individual was an employee of the Public Body, they regularly used their personal email address for work purposes.

[para 81] Accordingly, following the rationale discussed in the Orders above, I find that in this case, if the individual was an employee of the Public Body, section 17(1) can apply to the employee's personal email address located at page 15 of the records, and is their personal information.

[para 82] If the individual was not an employee of the Public Body, the personal email address of the individual is their personal information under section 1(n) of the FOIP Act.

Pages 23 & 68

[para 83] The Public Body withheld a cell phone number where it appeared in an email on page 23. With the exception of the cell phone number, the Public Body released all of the information in the email to the Applicant. Page 68 is a duplicate of page 23.

[para 84] The email was sent by an employee of the Public Body. The employee provided his cell phone number to the employee to whom he sent the email.

[para 85] In its initial submission, the Public Body stated:

> 34. There is a phone number on pages 23 and 68 that is withheld pursuant to section 17(1). This phone number was used by a City of Edmonton employee until 2019. The employee is no longer with the City. The phone number has since been reassigned to an unknown third party and is no longer used by the City of Edmonton. The Public Body therefore maintains the redaction under section 17(1) as it is unable to determine the effect of the disclosure. In addition, disclosure of the information is now irrelevant for the purposes of this inquiry as the employee has left the City.

[para 86] In order for information to be "personal information" under section 1(n) of the FOIP Act, it must be "recorded information about an identifiable individual". As the phone number in this case has been reassigned to an *unknown* third party, it is no longer associated with an "identifiable individual". As a result, the phone number is not personal information under the FOIP Act. As it is not personal information, section 17(1) does not apply to it, and it cannot be withheld under section 17(1). As a result, I will order the Public Body to disclose the phone number to the Applicant.

Page 28

[para 87] The Public Body withheld certain information in an email about an employee on page 28. The Public Body disclosed everything else in the email to the Applicant, including the employee's name.

[para 88] I have reviewed the information withheld about the employee and find that it conveys something personal about the employee and is the employee's personal information under section 1(n) of the FOIP Act.

Page 48

[para 89] The Public Body withheld a third party's name and information relating to that individual on page 48. The information has a personal component and I find the third party's name and the other information to be personal information about the third party under section 1(n) of the FOIP Act.

Page 53

[para 90] The Public Body withheld a third party's name on page 53. The third party's name is their personal information under section 1(n) of the FOIP Act.

Page 58

[para 91] The Public Body withheld an e-mail address on page 58. The Public Body disclosed all of the other information in the email, including the sender's name, to the Applicant. The sender is an employee of the Public Body.

[para 92] It is not clear and the Public Body did not explain why it withheld this employee's email address when it disclosed the work email addresses of all of the other employees where they appeared in the records.

[para 93] The employee's work email address does not have a personal dimension and is not personal information about the employee. It cannot be withheld under section 17(1) of the FOIP Act. I will order the Public Body to disclose the employee's email address to the Applicant.

Page 61

[para 94] The Public Body withheld the name and other information about a third party on page 61. The information has a personal dimension. I find the third party's name and other information about the third party to be their personal information under section 1(n) of the FOIP Act.

Page 74

[para 95] The Public Body withheld the phone number, birthdate and address of a third party. This is the third party's personal information under section 1(n) of the FOIP Act.

Would the disclosure of the personal information be an unreasonable invasion of the third parties' personal privacy?

[para 96] Where I have determined that the information withheld by the Public Body is personal information, I will now determine whether the disclosure of this information would be an unreasonable invasion of the third party's personal privacy.

[para 97] Section 17(2) of the Act sets out the situations in which a disclosure of personal information *is not* an unreasonable invasion of a third party's personal privacy.

[para 98] In his rebuttal submission, the Applicant argued that section 17(2)(e) applied to any personal information about employees withheld by the Public Body in the responsive records.

[para 99] Section 17(2)(e) states:

> *17(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if*
>
> . . .
>
> *(e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council,*
>
> . . .

[para 100] None of the information withheld by the Public Body about its employees falls within section 17(2)(e) so the Applicant's argument that section 17(2)(e) applies fails.

[para 101] The Public Body submitted that none of the subsections of section 17(2) applied and I agree.

[para 102] Section 17(3) provides that the disclosure of personal information under subsection (2)(j) is an unreasonable invasion of personal privacy if the third party whom the information is about has requested the information not be disclosed.

[para 103] None of the information withheld by the Public Body is information to which section 17(2)(j) applies. Accordingly, section 17(3) does not apply in this case.

[para 104] Section 17(4) of the Act sets out the situations in which a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy.

[para 105] The Applicant argued that section 17(4)(b) applied in this case. Section 17(4)(b) states:

> *(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
>
> . . .
>
> *(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation,*

[para 106] The Applicant argued that he required the redacted personal information about other people in the responsive records for the purpose of a separate complaint he says he made to this Office that the Public Body collected, used and disclosed his personal information in contravention of the FOIP Act, and for the purpose of a separate request he says he made asking this Office review the Public Body's decision not to change the personal information it has collected about him in its records.

[para 107] Law enforcement is defined in section 1(h) of the Act as follows:

> *1 In this Act,*
>
> . . .
>
> *(h) "law enforcement" means*
>
> *(i) policing, including criminal intelligence operations,*
>
> *(ii) a police, security or administrative investigation, including the complaint giving rise to the investigation that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or*
>
> *(iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred;*

[para 108] As noted by the adjudicator in Order F2019-06 at paragraph 39:

> [para 39] The phrase in section 17(4)(b), "except . . . to dispose of the law enforcement matter or continue an investigation", means that the particular disclosure contemplated, to the particular individual or organization, must be necessary to dispose of the matter or continue an investigation . . .

[para 109] In this case, the Public Body has not argued that section 17(4)(b) applies. In other words, the Public Body has not argued that pursuant to section 17(4)(b), the disclosure of the

third parties' personal information is presumed to be an unreasonable invasion of their personal privacy because their personal information is an identifiable part of a law enforcement record.

[para 110] In its rebuttal submission the Public Body stated:

> 16. The Public Body disputes that the 75 pages of records at issue in the within Inquiry are law enforcement records, as defined by the FOIP Act, since inquiries before the OIPC do not lead to a penalty or sanction. It is important to note that, to the best of the Public Body's knowledge, there are no current law enforcement proceedings against the Applicant.

[para 111] It is not clear why the Applicant is arguing the presumption under section 17(4)(b) *does not* apply when the Public Body has not argued that *it does*. Had the Public Body asserted that section 17(4)(b) applied, then the Applicant could make the argument that he is making here – that disclosure was necessary to dispose of the law enforcement matter or to continue an investigation.

[para 112] Since the Public Body has not argued that section 17(4)(b) applies to create a presumption against disclosure, the Applicant's arguments that the second criteria set out in section 17(4)(b) are applicable to rebut the presumption, are not relevant. He is arguing that a presumption which the Public Body *never said existed*, doesn't exist.

[para 113] Since the Public Body is not relying on the presumption against disclosure under the first part of section 17(4)(b), it is not necessary for me to consider the Applicant's arguments regarding the application of the second part of section 17(4)(b).

[para 114] The Public Body submitted that section 17(4)(g) applied to the information withheld under section 17(1).

[para 115] Section 17(4)(g) of the Act states:

> *(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
>
> . . .
>
> *(g) the personal information consists of the third party's name when*
>
> *(i) it appears with other personal information about the third party, or*
>
> *(ii) the disclosure of the name itself would reveal personal information about the third party,*

[para 116] I find that section 17(4)(g)(i) or (ii) applies to the personal information of the individuals withheld on pages 15, 23, 28, 48, 53, 61, 68, and 74 and accordingly, disclosure of their personal information is presumed to be an unreasonable invasion of their personal privacy.

[para 117] If the name withheld on page 1 is the name of a third party, then I find that the presumption under section 17(4)(g)(i) also applies to this information. If the name withheld on page 1 is the name of an employee, I have already found above that it is not personal information and cannot be withheld under section 17(1).

[para 118] Section 17(5) states that in determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including those set out in sections 17(5)(a) – (i).

Section 17(5) Analysis

[para 119] Section 17(5) of the Act states:

> *(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether*
>
> *(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,*
>
> *(b) the disclosure is likely to promote public health and safety or the protection of the environment,*
>
> *(c) the personal information is relevant to a fair determination of the applicant's rights,*
>
> *(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,*
>
> *(e) the third party will be exposed unfairly to financial or other harm,*
>
> *(f) the personal information has been supplied in confidence,*
>
> *(g) the personal information is likely to be inaccurate or unreliable,*
>
> *(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and*
>
> *(i) the personal information was originally provided by the applicant.*

[para 120] The Public Body advised that it considered the factors set out in section 17(5) of the FOIP Act. It determined that none of these factors weighed in favour of disclosing the personal information of the third parties, and therefore, the disclosure of the redacted portions of the records would be an unreasonable invasion of the applicable third party's personal privacy.

[para 121] Once it is determined that the withheld information is personal information about a third party, under section 71(2) of the FOIP Act, the burden to prove that disclosing the third party's personal information would not be an unreasonable invasion of the third party's personal information is on the applicant. Section 71(2) states:

> *71(2) Despite subsection (1), if the record or part of the record that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.*

[para 122] In his rebuttal submission, the Applicant argued that sections 17(5)(c) of the FOIP Act applied.

[para 123] The Applicant argued that the personal information of the third parties was relevant to the fair determination of his rights with respect to a complaint he made to this Office that the Public Body had collected, used and disclosed *his personal information* in contravention of the FOIP Act, and to a review he asked this Office to conduct of the Public Body's decision not to correct personal information *about him* in its records.

Section 17(5)(c)

[para 124] As noted by the adjudicator in Order F2023-02 at paragraph 50, four criteria must be fulfilled in order for section 17(5)(c) to apply:

> [para 50] Section 17(5)(c) weighs in favour of disclosure where the personal information is relevant to a fair determination of the Applicant's rights. Four criteria must be fulfilled for this section to apply:
>
> (a) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds;
>
> (b) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed;
>
> (c) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
>
> (d) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing. (Order F2008-012 at para. 55, Order F2008-31 at para. 112)

[para 125] Assuming the Applicant made a complaint that the Public Body collected, used and disclosed his personal information in contravention of the FOIP Act, and that complaint is active at some stage in this Office, the Applicant has not explained how *the personal information of the third parties* that remains withheld by the Public Body:

i) has any bearing on or is significant to the determination of his complaint that the Public Body collected, used and disclosed *his personal information* in contravention of the FOIP Act, and

ii) is required in order to prepare for the proceeding or to ensure an impartial hearing into his complaint that the Public Body had collected, used and disclosed *his personal information* in contravention of the FOIP Act.

[para 126] Accordingly, assuming there is an active complaint before this Office by the Applicant that the Public Body collected, used and disclosed *his personal information*, I find that section 17(5)(c) does not apply in favour of disclosing the third parties' personal information to him.

[para 127] The Applicant further argued in his rebuttal submission that section 17(5)(c) was relevant to a fair determination of his separate request that this Office review the Public Body's decision not to correct his personal information in records he received from the Public Body.

[para 128] Again, assuming that the Applicant made a request for a review of the Public Body's decision not to correct the Applicant's personal information in its records under the FOIP Act, which is active at some stage in this Office, the Applicant has not explained how *the personal information of the third parties* that remains withheld by the Public Body:

i) has any bearing on or is significant to the review of the Public Body's decision regarding his request to have *his personal information* corrected under the FOIP Act, and

ii) is required in order to prepare for the proceeding or to ensure an impartial hearing into the determination of his rights as they relate to his correction request of *his personal information* under the FOIP Act.

[para 129] Accordingly, assuming there is an active request for review before this Office of the Public Body's decision not to correct *the Applicant's personal information* in its records, I find that section 17(5)(c) does not apply in favour of disclosing the third parties' personal information to the Applicant.

[para 130] In summary, I find that *the third parties' personal information* that has been withheld by the Public Body in the responsive records is not relevant to, or required for any complaint the Applicant has made to this Office that the Public Body collected, used or disclosed *his personal information* in contravention of the FOIP Act, or to any review the Applicant has requested by this Office of the Public Body's decision not to correct *his personal information* in its records under the FOIP Act.[3]

[3] I also note that in the event that the Applicant's separate complaint before this Office about the Public Body's collection, use and disclosure of his personal information, or his separate request for review before this Office of the Public Body's decision regarding his request that it correct his personal information, is no longer active or ongoing for any reason, then the requirement identified at paragraph 50 in Order F2023-02 that "the right is related to a

[para 131] I have found above that section 17(4)(g)(i) or (ii) applies to the personal information of the third parties withheld by the Public Body and therefore disclosure of this information is presumed to be an unreasonable invasion of the third parties' personal privacy.

[para 132] I find that there are no factors in section 17(5) that weigh in favour of disclosing the third parties' personal information to the Applicant.

[para 133] I find that the Applicant has failed to prove on a balance of probabilities, that the disclosure of the third parties' personal information to him would not be an unreasonable invasion of their personal privacy as required by section 71(2) of the Act.

[para 134] Where I have determined that the withheld information is personal information, I confirm the Public Body's decision to withhold the personal information of the third parties pursuant to section 17(1) of the Act.

3. Does section 27(1)(a) (privileged information) apply to information in the records?

[para 135] Section 27(1)(a) of the FOIP Act states:

> *27(1) The head of a public body may refuse to disclose to an applicant*
>
> *(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege,*
>
> . . .

[para 136] The Public Body disclosed certain information on pages 71-73 to the Applicant and withheld the balance of the information under section 27 (Privileged Information) of the FOIP Act. In its Exchanged Index of Records, the Public Body described pages 71-73 as an "Incident report".

[para 137] As previously noted, the Applicant sought to have the Public Body's decision to ban him from its facilities judicially reviewed by the Court. The Public Body provided the Court with the 75 pages of responsive records as part of its Certified Record of Proceedings in the judicial review.

[para 138] In the course of those proceedings, the Applicant sought to have all of the redacted information in the responsive records disclosed to him. This included the information withheld by the Public Body on pages 71-73 on the basis of litigation privilege and solicitor-client privilege. Accordingly, the Court had to determine whether any of the information the Public Body withheld from the Applicant pursuant to the FOIP Act, was relevant to, and had to be disclosed to the Applicant for the purpose of the judicial review proceeding.

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proceeding which is either existing or contemplated, not one which has already been completed" in order for section 17(5)(c) to apply, has also not been met.

[para 139] With its rebuttal submission, the Public Body provided me with a copy of the Court's decision regarding the information the Court ordered it to disclose in the responsive records to the Applicant for the purpose of his judicial review application.

[para 140] In the Court's Order, it stated, in part:[4]

> 1. The City and EPS shall each file an amended Certified Record of Proceedings without redactions for the names, job titles, and signatures of the witnesses and complaint [sic] for all documents contained in the Certified Records of Proceedings including the records disclosed to [the Applicant] per the *Freedom of Information and Protection of Privacy Act,* RSA 2000, c F-25. All other redactions in the Certified Records of Proceedings shall remain in place.

[para 141] The Court did not require the Public Body to disclose any of the information it withheld on pages 71-73 on the basis of litigation privilege and solicitor-client privilege, to the Applicant. The Court stated that the only information the Public Body was required to disclose to the Applicant in the records were the "names, job titles, and signatures of the witnesses and complaint [sic]". All other redactions in the Certified Records of Proceedings, which therefore included the redacted information on pages 71-73, were to remain in place for the purpose of the judicial review.

[para 142] The Court did not make any findings on whether the Public Body had properly applied the FOIP Act to withhold the information that the Court did not order the Public Body to disclose to the Applicant for the purpose of the judicial review proceeding, Accordingly, the Commissioner determined that she still had jurisdiction to decide whether the Public Body had properly withheld the information in the first instance under the FOIP Act, that the Court did not order it to disclose to the Applicant for the purpose of the judicial review proceeding.

[para 143] The Court's decision not to order the Public Body to disclose the information on pages 71-73 to the Applicant in the judicial review proceeding, however, arguably means that it considered and accepted the Public Body's assertion of privilege over that information.

[para 144] As I will explain below, if the Court decided that litigation privilege and/or solicitor-client privilege applied to this information, its decision affects whether this Office has any jurisdiction to address whether the Public Body properly claimed privilege to withhold the information under section 27(1)(a) of the FOIP Act.

[para 145] It is possible that the Court decided that the information on pages 71-73 was subject to litigation privilege, and therefore the Public Body did not have to disclose it to the Applicant in the judicial review proceeding. If that was the case, it would not have been necessary for the Court to decide whether solicitor-client privilege also applied to the information, and it accordingly, may not have turned its mind to this question.

[4] Tab 1 of the Public Body's rebuttal submission: Order of Justice Gill pronounced September 6, 2017 (the Court Order).

[para 146] It is also possible that the Court decided that solicitor-client privilege applied to the information, and for this reason the Public Body did not have to disclose it to the Applicant in the judicial review proceeding. If that was the case, it would not have been necessary for the Court to decide whether litigation privilege also applied to the information, and it accordingly, may not have turned its mind to this question.

[para 147] It is also possible that the Court decided that both litigation privilege and solicitor-client privilege applied to the information, and for these reasons the Public Body did not have to disclose it to the Applicant in the judicial review proceeding.

[para 148] I do not know which of the above possible conclusions underpinned the Court's decision to permit the Public Body to continue to withhold the information over which it had asserted litigation and solicitor-client privilege.

Solicitor-client privilege

[para 149] As solicitor-client privilege is not limited in its duration, if the Court determined that solicitor-client privilege applied to the information on pages 71-73, the information would continue to be protected by that privilege. If this was the conclusion reached by the Court, absent any allegation that the Public Body had subsequently waived solicitor-client privilege over the information, I would have no jurisdiction to review this conclusion or make a different finding.

[para 150] The Applicant did make an argument that because the Public Body disclosed information in *another* incident report in the responsive records, it could not assert solicitor-client privilege over the information in *this* incident report. It appears the Applicant may be arguing that because the Public Body disclosed information to him in *another* incident report, it has waived solicitor-client privilege over the information in *this* incident report.

[para 151] Assuming solicitor-client privilege applies to the information withheld on pages 71-73, the Public Body's decision to disclose information in *another* incident report does not operate to prevent it from asserting solicitor-client privilege over information in *this* incident report. Nor does the Public Body's decision to disclose information in *another* incident report amount to a waiver of solicitor-client privilege over the information in *this* incident report.

[para 152] There is nothing before me which would lead me to conclude that the Public Body waived solicitor-client privilege over the information on pages 71-73.

Litigation privilege

[para 153] As noted by the Supreme Court in *Blank v. Canada (Minister of Justice)*, 2006 SCC 39, unlike solicitor-client privilege, litigation privilege ends when the litigation, and any closely related proceedings:[5]

[5] Summary in *Blank v. Canada (Minister of Justice)*, 2006 SCC 39.

> The litigation privilege and the solicitor-client privilege are driven by different policy considerations and generate different legal consequences. Litigation privilege is not directed at, still less, restricted to, communications between solicitor and client. It contemplates, as well, communications between a solicitor and third parties or, in the case of an unrepresented litigant, between the litigant and third parties. The purpose of the litigation privilege is to create a zone of privacy in relation to pending or apprehended litigation. The common law litigation privilege comes to an end, absent closely related proceedings, upon the termination of the litigation that gave rise to the privilege. Unlike solicitor-client privilege, it is neither absolute in scope nor permanent in duration. The privilege may retain its purpose and effect where the litigation that gave rise to the privilege has ended, but related litigation remains pending or may reasonably be apprehended. This enlarged definition of litigation includes separate proceedings that involve the same or related parties and arise from the same or a related cause of action or juridical source. Proceedings that raise issues in common to the initial action and share its essential purpose would qualify as well. [27] [33 – 39].

[para 154] As a result, if the Court did not turn its mind to the application of solicitor-client privilege, and decided that litigation privilege applied and permitted the Public Body to withhold the information on pages 71-73, and the litigation and any closely related proceedings between the Applicant and the Public Body have now come to an end, then litigation privilege would no longer apply to the information withheld on this basis.

[para 155] Based on the following comments of the Alberta Court of Appeal at paragraph 7 in *[Applicant] v. Edmonton (City) Police Service*, 2019 ABCA 272,[6] the issues between the parties, and the litigation as it relates to the Public Body's ban of the Applicant, has come to an end (my emphasis):[7]

> [7] An appeal is moot where the decision of the court will have no practical effect on the rights of the parties: *Borowski v Canada (Attorney General)*, 2989 CanLII 123 (SCC), [1989] 1 SCR 342. This appeal as it relates to the ban is moot: the "police ban", if it ever existed, expired May 1, 2016, three months before the appellant filed his application for judicial review; and the City's first ban, which was the subject matter of the judicial review, was vacated. The appellant never sought judicial review of the ban imposed on February 28, 2018, which expired over one year ago. <u>There is no longer a concrete dispute or live controversy between the City and the appellant as it relates to the appellant's use of the City's facilities.</u>

[para 156] As a result, the Applicant could make a new access request under the FOIP Act for the information on pages 71-73 and the Public Body could not rely on *litigation privilege* to withhold it. The Public Body could, however, continue to rely on solicitor-client privilege, or potentially another form of privilege, to withhold the information under section 27 of the FOIP Act.

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[6] Following the practice of the Director of Adjudication in Order F2020-13, and former Commissioner Clayton in Alberta Health Services (Re), 2020 CanLII 97990 (AB OIPC), I have redacted the Applicant's name where it appears in the citation of this publically reported case.

[7] Neither party informed me of this decision; however, in my role as an adjudicator I am not limited to only considering the Orders of this Office and the cases cited by the parties, and may do my own research and rely on any case law and Orders that I find to be applicable (see *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10 at paragraphs 172 – 174).

[para 157] Since it is possible that the Court only determined that litigation privilege applied to enable the Public Body to withhold the information in the judicial review proceeding, and did not turn its mind to whether solicitor-client privilege applied, and since the litigation between the parties has now ended, I will address whether, in my opinion, the Public Body has established that solicitor-client privilege applies and permits it to continue to withhold the information under section 27(1)(a).

Analysis Regarding Solicitor-Client Privilege

[para 158] The test for determining whether solicitor-client privilege applies to information was set out by the Supreme Court of Canada at page 837 in *Canada v. Solosky*, [1980] 1 S.C.R. 821:

> . . . privilege can only be claimed document by document, with each document being required to meet the criteria for the privilege - - (i) a communication between solicitor and client; (ii) which entails the seeking or giving of legal advice; and (iii) which is intended to be confidential by the parties.

[para 159] The importance of solicitor-client privilege was discussed by the Court in *Alberta Health Services v. Farkas*, 2020 ABQB 281 (*Farkas*). In *Farkas*, Justice deWit stated:

> [20] The Supreme Court stated in *Alberta (Information and Privacy Commissioner) v University of Calgary*, 2016 SCC 53 at paragraph 34, that solicitor-client privilege "is fundamental to the proper functioning of our legal system and the cornerstone of access to justice." Solicitor-client privilege must be "jealously guarded and should only be set aside in the most unusual circumstances" because "without the assurance of confidentiality, people cannot be expected to speak honestly and candidly with their lawyers, which compromises the quality of the legal advice they receive." The court also stated at paragraph 43 that "as a substantive rule, solicitor-client privilege must remain as close to absolute as possible and should not be interfered with unless absolutely necessary."

[para 160] The Public Body did not provide the redacted information on pages 71-73 to me for review in this inquiry on the basis that litigation privilege and solicitor-client privilege applied to the information.

[para 161] As explained by the adjudicator at paragraphs 81 - 85 in Order F2024-09, the FOIP Act does not permit the Commissioner to require a public body to produce information over which it has asserted solicitor-client privilege and/or litigation privilege, to the Commissioner for review in an inquiry:

> [para 81] In *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 (CanLII), [2016] 2 SCR 555 the Supreme Court of Canada quashed a notice to produce issued by this office for records to which the University of Calgary had applied section 27(1)(a), as it determined that the Commissioner lacks the power to review records in the custody or control of a public body when the public body claims solicitor-client privilege over them. The Court held that the Commissioner has the power under section 56 to demand records subject to privileges of the law of evidence, but not records over which a public body claims solicitor-client privilege. The Court reasoned that the phrase "privilege of the law of

evidence" was not sufficiently clear to enable the Court to interpret the phrase as encompassing solicitor-client privilege, given the "importance" the Court assigned this privilege:

> Solicitor-client privilege is clearly a "legal privilege" under s. 27(1), but not clearly a "privilege of the law of evidence" under s. 56(3). As discussed, the expression "privilege of the law of evidence" is not sufficiently precise to capture the broader substantive importance of solicitor-client privilege. Therefore, the head of a public body may refuse to disclose such information pursuant to s. 27(1), and the Commissioner cannot compel its disclosure for review under s. 56(3). This simply means that the Commissioner will not be able to review documents over which solicitor-client privilege is claimed. This result is consistent with the nature of solicitor-client privilege as a highly protected privilege.

[para 82] As a consequence of the Supreme Court of Canada's decision, the Commissioner must issue orders in relation to the application of solicitor-client privilege to government records without the evidence the records would otherwise provide.

[para 83] Historically, "litigation privilege" was considered to be included in the term "solicitor-client privilege". For this reason, the Commissioner does not review records over which litigation privilege is claimed.

[para 162] In other words, a public body can, but it does not have to provide this Office with a copy of a record over which it has claimed solicitor-client or litigation privilege, and this Office cannot compel a public body to provide it with a record over which the public body has claimed solicitor-client privilege or litigation privilege.

[para 163] However, while a public body does not have to produce the record over which it has asserted solicitor-client or litigation privilege to the Commissioner for review in an inquiry, pursuant to section 71(1), the burden of proof is on the public body to prove that an applicant has no right of access to the record or part of the record. Section 71(1) of the Act states:

> *71(1) If the inquiry relates to a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part of the record.*

[para 164] This was confirmed by the Court in *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10 (*EPS*). At paragraph 79, Justice Renke stated:[8]

> [79] Under s. 71(1), a public body must "prove" that an applicant has no right of access to a record or part of a record. The public body bears the burden of proof.

[para 165] At paragraph 80, the Court set out the standard of proof that a public body must meet:

[8] Justice Renke's decision in *EPS* has been followed in a number of Orders of this Office. See for example, Order F2021-20 at paragraphs 77 – 81.

> [80] The standard of proof the public body must meet is the balance of probabilities: 2019 *CPS (QB)* at para. 5; *Alberta Municipal Affairs* at para 11; F2017-58 at paras 124-125; F2013-13 at para 189.

[para 166] The Court further identified what a public body is required to do in order to establish its claim of solicitor-client privilege before this Office (emphasis in original):

> [74] In my opinion, a public body like EPS is required to establish its claim to solicitor-client privilege, but only to the extent required by the Court of Appeal in *Canadian Natural Resources Ltd. v ShawCor Ltd.*, 2014 ABCA 289 – and no farther. Satisfaction of the *CNRL v ShawCor* standard suffices for civil litigation and no higher standard should be imposed in the FOIPPA context. Further, even if s. 27(2) does not apply and a solicitor-client privilege claim remains discretionary, to establish the privilege is to establish the grounds for relying on the privilege. The existence of the privilege is the warrant for reliance on the privilege. No additional IPC scrutiny of discretion concerning solicitor-client privilege claims is warranted.
>
> . . .
>
> [94] All three decisions in *University of Calgary*, then, supported the view that sufficient justification for the claim of solicitor-client privilege was provided by compliance with civil litigation rules.

[para 167] In its initial submission, provided by the Public Body's in-house legal counsel, the Public Body stated:

> 40. Section 27(1)(a) provides that a public body may refuse to disclose information that is subject to any type of legal privilege, including solicitor-client privilege.
>
> Act, s[.] 27(1)(a)
>
> 41. Section 27(1)(b)(iii) provides that information can be withheld if it was prepared for the lawyer of the Public Body in relation to a matter involving the provision of legal services.
>
> Act, s. 27(1)(b)(iii)
>
> 42. The redacted record at issue under Section 27 is an incident report prepared by an employee of the Public Body for the Public Body's City Solicitor (solicitor-client privilege) and which contains information that was collected for the dominant purpose of litigation (litigation privilege).
>
> 43. On the face of the redacted record can be seen the title "Incident Report" and the disclaimer in the footer "this report is made exclusively for the use of the City Solicitor for his/her information and advice thereon in the event action is brought."
>
> 44. The law in Alberta has long been established that incident reports prepared for the dominant purpose of litigation are exempted from disclosure pursuant to litigation privilege. The courts have upheld the principle that policies surrounding the investigation of serious incidents and the real risk of litigation necessitate

investigation and the resultant incident reports produced are privileged. Further, while there may be multiple uses of a record, the dominant purpose of the record must be examined to determine if it was made in contemplation of litigation.

Turgeon v. Edmonton (City), 1986 CanLii 1920 (ABKB)
Waissmann v. Calgary (City), 2018 ABQB 131 at para 42

45. The Public Body provides affidavit evidence in the attached Schedule "C" outlining the facts giving rise to the claim of legal privilege over the records in issue.

[para 168] The Public Body provided an affidavit (the Affidavit) sworn by the Branch Manager of the Community Recreation and Culture Branch for the Public Body (the Branch Manager), to me and to the Applicant.[9]

[para 169] In the Affidavit, the Branch Manager attested to the following, in part:

3. I am informed that the records at issue are subject to solicitor-client privilege as the content of the records contain information between employees of the Public Body and the City Solicitor concerning a matter over which legal advice was sought and received. Specifically, the records contain incident report forms prepared by a City employee for the City Solicitor (the "Records").

4. I am informed and do verily believe that in the Spring of 2016, an investigation was conducted by the City of Edmonton Risk Management Section, Corporate Services Department in response to complaints made against the Applicant regarding one or more serious incidents at Hardisty Leisure Centre and related events thereto (the "Incident").

5. An incident report is the product of a policy entitled "City of Edmonton Policy Regarding Incident Reports" which was adopted by the City Council of the City of Edmonton in 1984 to confirm incident reports are created for the dominant purpose of litigation, and are intended to be confidential. Attached hereto and marked as Exhibit "A" to this my Affidavit is a true copy of the aforementioned policy and City Council meeting minutes approving the said policy.

6. The Records specifically state "this report is made exclusively for the use of the City Solicitor for his/her information and advice thereon in the event action is brought."

7. The City refuses to produce the Records as they were made or created for the dominant purpose of litigation, existing or anticipated.

8 Due to the nature of its business, the City faces numerous legal claims every year. As a result, the City has come to expect legal action in any case where a serious incident or injury is alleged. The Records are a necessary and integral part of the process to allow the City to gather the facts and information to properly defend legal actions.

9. I am informed that the Records were intended to be confidential.

[9] Affidavit of the Branch Manager of the Community Recreation and Culture Branch, sworn (or affirmed) April 26, 2024.

10. The City does not waive its privilege over the Records at issue.

[para 170] In my view, neither the Public Body's Policy Regarding Incident Reports, nor the language included by the Public Body in the footer of each page of the incident report is determinative of whether the information in the report is actually subject to solicitor-client privilege. In my view, each claim of solicitor-client privilege (or litigation privilege) over information in an incident report, must be determined on a case by case basis.

[para 171] The Court's approach in *Waissmann v. Calgary (City)*, 2018 ABQB 131, cited by the Public Body, supports my view (see paragraphs 16, 17, 31 - 33, and 40 - 44). The comments of the Alberta Court of Appeal in *Alberta v. Suncor Energy Inc.*, 2017 ABCA 221 at paragraph 34 also support my view:

> [34] Suncor cannot, merely by having legal counsel declare that an investigation has commenced, throw a blanket over all materials "created and/or collected during the internal investigation" or "derived from" the internal investigation, and thereby extend solicitor-client privilege over them. This Court stated in *ShawCor*, at para 84 that "[b]ecause the question is the purpose for which the record was originally brought into existence, the mere fact that a lawyer became involved is not automatically controlling." And further, at para 87, the Court stated that "the purpose behind the creation of a record does not change simply because the record is forwarded to, or through, in-house counsel or because in-house counsel directs that all further investigation reports should come to him or her."

[para 172] It is also the view taken by the Office of the Privacy Commissioner of Canada in PIPEDA Report of Findings No. 2017-008 (the PIPEDA Report), where it stated at paragraph 53:

> 53. In our view, a blanket policy applicable to all documents generated from onboard incidents would not meet the tests for solicitor-client privilege and litigation privilege. Not every document that is prepared in response to an onboard incident will be for the dominant purpose of litigation or involve a solicitor-client communication. Such a policy would, in all likelihood, lead to privilege claims that are overbroad, and therefore in contravention of the respondent's obligation to provide access to personal information under the Act.

[para 173] Although the PIPEDA Report was decided under the federal *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, in my view the comments are equally applicable to assertions of solicitor-client privilege and litigation privilege under the FOIP Act.

[para 174] In this case, the Public Body has provided information about the circumstances that gave rise to the creation of the incident report. It has advised that the incident report contains information between employees of the Public Body and the City Solicitor concerning a matter over which legal advice was sought and received, and that this information was intended to be confidential.

[para 175] Assuming the Court has not already determined that solicitor-client privilege applies to the information on pages 71-73, and it is still therefore within the jurisdiction of this Office to decide, then based on my review of the Public Body's submissions and Affidavit, I find that in this case the Public Body has established on a balance of probabilities that the information withheld in the incident report meets the test set out in *Solosky* for solicitor-client privilege to apply, and the Public Body has properly asserted solicitor-client privilege under section 27(1)(a) of the FOIP Act.

Exercise of Discretion

[para 176] Section 27(1)(a) is a discretionary section, meaning that a public body can exercise its discretion in deciding whether to release a record over which it has claimed privilege.

[para 177] However, as noted by the adjudicator in Order F2024-09, when solicitor-client or litigation privilege is established, the review of a public body's discretion by this Office is not warranted. At paragraph 85, the adjudicator stated:

> [para 85] With regard to the Public Body's application of section 27(1)(a), I accept from its description of the records that the records are likely to be privileged. The records indicate that issues had been raised that would give rise to a need to obtain legal advice to create records in contemplation of litigation. I accept that the Public Body sought legal advice. When solicitor-client privilege is claimed, the Supreme Court of Canada has determined that exercise of discretion need not be reviewed because of the strength of the public interest protected by solicitor-client privilege. (See *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (CanLII), [2010] 1 SCR 815 at paragraph 75.)

[para 178] This was also confirmed by the Alberta Court of King's Bench in *EPS* at paragraph 74 where Justice Renke stated that "to establish the privilege is to establish the grounds for relying on the privilege. The existence of the privilege is the warrant for reliance on the privilege. No additional IPC scrutiny of discretion concerning solicitor-client privilege claims is warranted". As a result, a review of the Public Body's discretion concerning its claim of solicitor-client privilege is not warranted.

Section 27(1)(b)(iii)

[para 179] In its response to the Applicant's access request, the Public Body stated that it had withheld information in the responsive records under section "27 (legal privilege)". The Public Body did not identify in its response which subsection of section 27 it was relying on to withhold the information, or, if relying on section 27(1)(a), the type of privilege or privileges that it was asserting applied to the information (for example, solicitor-client privilege, or litigation privilege, or settlement privilege).

[para 180] In its initial submission, the Public Body advised that it had applied section 27(1)(a) to withhold the information on pages 71-73 on the basis that the information was subject to solicitor-client privilege and litigation privilege. It also asserted that section 27(1)(b)(iii) applied to the information it withheld on these pages.

[para 181] Section 27(1)(b) of the FOIP Act states:

> *27(1) The head of a public body may refuse to disclose to an applicant*
>
> . . .
>
> *(b) information prepared by or for*
>
> *(i) the Minister of Justice,*
>
> *(ii) an agent or lawyer of the Minister of Justice, or*
>
> *(iii) an agent or lawyer of a public body,*
>
> *in relation to a matter involving the provision of legal services, or*
>
> . . .

[para 182] The Notice of Inquiry prepared by the former adjudicator only identified section 27(1)(a) as the subsection pursuant to which the Public Body withheld information; however, I am unable to determine what led to the former adjudicator to determine that it was section 27(1)(a) that was the only subsection of section 27 which the Public Body had relied on to withhold information.

[para 183] Nonetheless, given the findings I have reached above, I find it is not necessary for me to add as an issue in this inquiry whether the Public Body properly applied section 27(1)(b)(iii) to withhold the information on pages 71-73.

V. ORDER

[para 184] I make this Order under section 72 of the FOIP Act.

[para 185] I find that the Public Body conducted an adequate search for responsive records and met its duty to assist the Applicant under section 10(1) of the FOIP Act.

[para 186] I find that the Public Body properly identified information at the bottom of page 1 as non-responsive and properly withheld the information as non-responsive.

[para 187] I order the Public Body to review the name of the individual on page 1 of the responsive records and, if it is the name of an employee and not another third party, to disclose it to the Applicant.

[para 188] I order the Public Body to disclose the phone number that appears on pages 23 and 68 of the responsive records to the Applicant.

[para 189] I order the Public Body to disclose the employee's work email address on page 58 of the responsive records to the Applicant.

[para 190] I confirm the Public Body's decision to withhold the balance of the personal information it withheld under section 17(1) of the FOIP Act.

[para 191] If the Court did not already conclude that solicitor-client privilege applied to the information withheld on pages 71-73, and it therefore remained within the jurisdiction of this Office to decide the issue, I find that the Public Body has established its claim of solicitor-client privilege on a balance of probabilities over the information withheld on pages 71-73, and is authorized under section 27(1)(a) to withhold the information.

[para 192] I further order the Public Body to notify me and the Applicant in writing not later than 50 days after being given a copy of this Order, that it has complied with the Order.

_____

Carmen Mann
Adjudicator
/kh