ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2024-42

December 5, 2024

BRAZEAU COUNTY

Case File Number 028951

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act), the Applicant made an access to information request to Brazeau County (the Public Body). The Applicant sought the names of those who received rebates through the Public Body's Herbicide Rebate Program (the Program). The Public Body withheld the names on the basis that disclosing them would be an unreasonable invasion of third party personal privacy pursuant to section 17(1) of the FOIP Act.

The Adjudicator found that the names were details of a discretionary benefit of a financial nature granted by the Public Body under section 17(2)(h) of the FOIP Act. Since section 17(2)(h) deems disclosure of such details to not be an unreasonable invasion of third party personal privacy, the Adjudicator ordered the Public Body to disclose the names to the Applicant.

Statutes Cited: AB: *Agricultural Service Board Act*, RSA 2000, c A-10; *Alberta Health Care Insurance Act,* R.S.A. 2000, c. A-20; *Assured Income for the Severely Handicapped Act*, S.A. 2006, c. A-45.1; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 ss. 16, 17(1), 17(2)(a), 17(2)(g), 17(2)(g)(i), 17(2)(g)(ii), 17(2)(h), 17(4)(g), 17(5), 30(1), 33(c), 34(2), 40(1)(a), 72; *Out-of-Country Health Services Regulation*, AR 78/2006; *Weed Control Act*, R.S.A. 2000, c. W-5; *Weed Control Regulation* AR 19/2010; *Workers' Compensation Act,* R.S.A. 2000, c. W-15

Authorities Cited: AB: Orders 98-014, 2001-020, 2002-011, F2003-002, F2007-025, F2009-041, F2009-046, F2014-31, F2015-40.

I. BACKGROUND

[para 1] On November 19, 2021, the Applicant made an access to information request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the FOIP Act) to Brazeau County (the Public Body). The Applicant sought the following information:

> Rebate Application names and amount paid out for ASB 2021

[para 2] The Public Body received the access request on November 19, 2021. It clarified with the Applicant that he was seeking records related to the 2021 Herbicide Rebate Program (the Program). The Program provides rebates for a portion of the costs of herbicide purchased in order to control weeds as required under the *Weed Control Act*, R.S.A. 2000, c. W-5 (the *Weed Control Act*), and its regulations. I note that since the time of the access request, an updated version of the *Weed Control Act* has been declared in force; the updated version does not affect the analysis in this case.

[para 3] The Applicant filed a request for review of the Public Body's response to the access request with this Office (the Office of the Information and Privacy Commissioner or OIPC). After review by the OIPC, the Public Body reprocessed its response. On November 3, 2022, the Public Body provided its reprocessed response to the Applicant; it provided responsive records, while withholding some information under sections 16 and 17(1) of the FOIP Act.

[para 4] On November 22, 2022, the Applicant filed a request for review of the Public Body's reprocessed response to the November 19, 2021 access request. The OIPC again reviewed the matter. Investigation and mediation were authorized to attempt to resolve the issues between the parties, but did not do so, and the matter proceeded to inquiry.

[para 5] The Applicant's request for inquiry challenges the Public Body's decision to withhold names under section 17(1) of the FOIP Act. Those redactions are the subject of this inquiry. Amounts paid as rebates under the Program have been disclosed to the Applicant in the copy of the records already provided to him.

II. RECORDS AT ISSUE

[para 6] In all, the Public Body identified 328 pages of responsive records. It withheld names (including corporate names) under section 17(1) from each of the following pages:

> **Pages:** 1, 5 - 10, 13 - 27, 29 - 38, 40 - 42, 44 - 54, 56, 57, 59 - 63, 65 - 77, 79, 81 - 108, 111 - 115, 122 - 126, 133 - 135, 138 - 143, 150 - 156, 159 - 161, 163, 165 - 173, 175 - 191, 193 - 202, 204 - 214, 218 - 221, 223 - 230, 232 - 238, 242 - 253, 255, 258, 260, 262, 264 - 266, 268 - 270, 272 - 275, 277 - 289, 291, 292, 294, 295, 297, 299 - 301, 303, 305 - 311, 313 - 315, 317, 318, 320, 321, 323, 324, 326, and 327.

[para 7] The records on which the names appear are of several types.

1. Purchase Orders: These records document the payments (including amounts) made to those who received rebates under the Program. They appear to be paper copies of electronic records.

2. Rebate Administrative Forms: These are hand-written records which also document amounts paid as rebates. They include a checklist indicating whether the required documentation was provided with an application for a rebate.

3. Rebate Application Forms: These are the application forms completed by those who sought rebates under the Program.

4. Receipts: These are receipts from the businesses from where those applying for rebates obtained the herbicides used to destroy weeds on their properties. Such receipts were required documents under the Program. The Rebate Application Form specifies that the names on the receipts must match the name of the person applying for the rebate.

5. Weed Reports: These are reports prepared by Brazeau County Agricultural Department. They contain details of land inspected by the Agricultural Department, the type and location of prohibited weeds found on the land, and a letter to the land owner/leaseholder informing of the results of the inspection and the obligation to control the weeds under the *Weed Control Act*. These documents appear to have been generated pursuant to the Public Body's policy which enables the Program, the Herbicide Rebate Policy 2021 or "Policy AG-3", either as a result of weed identification services provided to land owners, or field inspections which take place after herbicide application to verify that weed control has been achieved. Both activities are specified in Policy AG-3.

6. Applicants' Property Maps/Descriptions: These are documents included with applications for the rebate, depicting areas where herbicide was applied. The Rebate Application Form states that a map of the area where application occurred must be attached to it. Only some of the maps contain names of applicants.

7. File Notes: These are sticky notes containing hand-written information about some of the applications. Only one of them contains the name of someone who applied for a rebate.

III. ISSUES

[para 8] The issues set out in the Notice of Inquiry were as follows:

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

B. Does section 17(2)(g) of the Act apply to the information or records (licence, permit or other similar discretionary benefit)?

[para 9] In the course of the Inquiry, the following issue was added:

C. Does section 17(2)(h) of the Act apply to the information or records (discretionary benefit of a financial nature)?

IV. DISCUSSION OF ISSUES

Preliminary Matter – Corporate Names withheld under section 17(1)

[para 10] On some of the records at issue, the Public Body withheld the names of corporate organizations and other business entities under section 17(1). I need not consider those names in this inquiry for substantially the same reasons given in Order 2002-011 at paras. 34 to 36:

> Section 17(2) [previously section 16(2)] refers to "personal information". That term is defined in section 1(n) [previously section 1(1)(n)] to mean recorded information about an identifiable "individual".
>
> The Commissioner previously held that "individual" encompasses only a single human being, and does not include a corporation or any entity other than a single human being: see Order 96-019. Therefore, the reference to the name of a third party in section 17(2)(g) [previously section 16(2)(g)] can mean only the name of an individual. A name that is not the name of an individual does not fall within section 17(2)(g) [previously section 16(2)(g)] and indeed not within section 17 [previously section 16] either.
>
> Some of the names in the records are individuals' names contained in a business name that is not a corporate name. In any other case, I would have to decide whether those business names are "personal information". In this case, I do not have to decide because section 17(2)(g) [previously section 16(2)(g)] provides that the disclosure of the name in any event is not an unreasonable invasion of a third party's personal privacy.

[para 11] The only difference in this case from Order 2002-011 is that in this case, I find that section 17(2)(h) provides that disclosure is not an unreasonable invasion of third party personal privacy, rather than section 17(2)(g). My reasons for that conclusion are below.

[para 12] I have considered Issues B and C first, since if the sections referred to in either of them applies to the names sought by the Applicant, there is no need to consider Issue A.

B. Does section 17(2)(g) of the Act apply to the information or records (licence, permit or other similar discretionary benefit)?

[para 13] Section 17(2)(g) states,

> *(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if*
>
> *...*
>
> *(g) the information is about a licence, permit or other similar discretionary benefit relating to*
>
> *(i) a commercial or professional activity, that has been granted to the third party by a public body, or*
>
> *(ii) real property, including a development permit or building permit, that has been granted to the third party by a public body,*
>
> *and the disclosure is limited to the name of the third party and the nature of the licence, permit or other similar discretionary benefit,*

[para 14] The first question I consider in determining whether section 17(2)(g) applies, is whether the information sought by the Applicant is "about a licence, permit or other similar discretionary benefit" as stipulated in that section.

[para 15] The present case does not concern a licence or permit; the question is whether the names relate to a discretionary benefit similar to a licence or permit.

[para 16] In my view, what sorts of benefits will be similar to licences or permits are those that grant permission for a person to take some sort of action. While the terms "licence" and "permit" are not defined in the FOIP Act, both connote the notion of being granted permission. Further, sections 17(2)(g)(i) and (ii) both mention discretionary benefits being "granted" to a third party in relation to commercial or professional activities, or development and building permits in respect of real property, which again suggests permission of a sort to do something. This aspect of the word "grant" was previously discussed in Order F2007-025 at paras. 24 – 25,

> The term "grant" has a range of meanings. The *Canadian Oxford Dictionary* provides the following: "consent to fulfill (a request, wish, etc.,) allow, give (rights, property etc.)" *Black's Law Dictionary* 8th Edition offers the following definition of "grant":
>
> > 1.To give or confer (something), with or without compensation ... 2. To formerly transfer (real property) by deed or other writing ... 3. To permit or agree to ... 4. To approve, warrant or order (a request, motion, etc.)
>
> These definitions suggest that the grantor has some power to decide whether it will grant something or not. In the context of subsection 17(2)(h), it appears that "grant" means to "give" or "confer" discretionary benefits of a financial nature, in situations where the

grantor is not required to give or confer these benefits, or to consent or agree to provide them, but has discretion to do so.

[para 17] It seems to me that by referencing licences, permits, and other similar discretionary benefits granted to a third party, the Legislature intended that there should be greater access to personal information indicating whom the government allows to act by its discretion, than to personal information in general. That is to say that the Legislature recognizes that the citizen applicant has an interest in knowing to whom the government provides particular permission to act, where such actions may otherwise be curtailed.

[para 18] In view of the above, I find that there is no discretionary benefit, similar to a licence or permit in this case.

[para 19] The Program does not grant permission to any third party to do anything; it merely provides rebates to owners or operators of land for a portion of costs related to weed control. Its stated purpose is to incentivize the control of noxious weeds listed in the *Weed Control Regulation* AR 19/2010 (the *Weed Control Regulations*), rather than to grant permission to anyone to do anything. I find that section 17(2)(g) does not apply to the names in the records at issue in this case.

C. Does section 17(2)(h) of the Act apply to the information or records (discretionary benefit of a financial nature)?

[para 20] Section 17(2)(h) states,

> *(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if*
>
> ...
>
> *(h) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body,*

[para 21] The Program provides a benefit of a financial nature in the form of a cash rebate for the costs of conducting weed control. The remaining question is whether or not it is a discretionary benefit.

[para 22] In its submissions regarding section 17(2)(g) the Public Body argued that the Program, and the benefit provided under it, is not discretionary. Though it made those arguments in respect of section 17(2)(g), they are equally applicable to section 17(2)(h) since the type of discretion contemplated in each section is the same. It raised a further point in respect of section 17(2)(h) specifically, stating that the Program is a "basic reimbursement for land owners with no other discretionary criteria."

[para 23] The Public Body argues that the Program is not discretionary since it is open to all landowners to apply for it, and there are set criteria for eligibility that apply the same to all of them. The details of the program are set out in Policy AG-3.

[para 24] As stated by the Public Body, the Program is open to all landowners, and the rules apply the same to all who apply. Applications must be received by September 30. Provided applicants meet the deadline and supply the required documentation, the rebate will be granted, subject only to the maximum reimbursement amount set for the program. Policy AG-3 set the total maximum reimbursement amount at $5000.00, "in accordance with the current rebate rate set by Council annually." For 2021, the maximum initial amount was $1600.00, with the possibility of further distribution to those who reached the maximum initial amount as of September 30, 2021, in the event that the Public Body has remaining funds set aside for that purpose. Further distribution amounts are determined by the Public Body's Agricultural Services Board, which is constituted under the *Agricultural Service Board Act*, RSA 2000, c A-10 (the *Agricultural Service Board Act*).

[para 25] While the rules of the Program apply uniformly among those who apply for it, I find that the Program provides a discretionary benefit nonetheless.

[para 26] Numerous orders of this Office have considered whether a benefit or other action is discretionary. The common thread running through those decisions is that a decision or action is discretionary where a public body *may decide* whether to take action, without *a requirement* to take action. A benefit may be discretionary even if it is open to many on uniform terms.

[para 27] In Order 98-014, former Commissioner Clark, stated at paras. 15 to 18,

> This inquiry concerns a grazing lease, which is not a "licence" or "permit". Therefore, I must determine whether a grazing lease is a "discretionary benefit".
>
> The word "discretionary" refers to a choice given to a decision-maker as to whether, or how, to exercise a power. A discretionary power is different from a duty, which requires a decision-maker to act whenever the duty arises. As provided by section 16(4)(g), the discretion is exercised in granting the "benefit". In other words, the decision-maker must have the choice as to whether, or how, to grant the "benefit". There must not be a duty to grant the "benefit".
>
> Section 106(1) of the *Public Lands Act* reads:
>
> > 106(1) The Minister *may* [my emphasis] in accordance with this Part lease public land for a term not exceeding 20 years for the purpose of grazing livestock when, in the Minister's opinion, [my emphasis] the best use that may be made of the land is the grazing of livestock.
>
> The underlined words in section 106(1) of the *Public Lands Act* are words commonly used to indicate discretion: see James L.H. Sprague, "*In My Opinion": Discretion in a Nutshell* (July 1997) Vol. 3, No. 2 Administrative Agency Practice 43. The import of the underlined

words is that the Minister has a choice as to whether or not to grant a grazing lease. Therefore, a grazing lease under section 106(1) of the *Public Lands Act* is "discretionary".

[para 28] In Order 2001-020, former Commissioner Clark stated at para. 22,

> A severance package is also a "discretionary" benefit because the City exercised its discretion to negotiate mutually acceptable compensation with each third party. This creates the necessary element of a degree of discretion. Therefore, I am satisfied that the severance package of each of the third parties, formalized in the records, is a discretionary benefit for the purposes of section 16(2)(e).

[para 29] In Order F2003-002, the Adjudicator stated at para 23,

> In Orders 98-014 and 98-018, the Commissioner defined the word "discretionary" to mean a choice given to a decision-maker as to whether, or how, to exercise a power. The Commissioner said that in order for a benefit to be "discretionary" the decision-maker must have a choice as to whether, or how, to grant the benefit.

[para 30] In Order F2009-046, the Adjudicator considered retirement allowances for which all employees were eligible. The Adjudicator stated at paras. 47 - 48,

> As for the retirement allowances given to the Commissioners, the Public Body submits that these do not constitute a discretionary benefit, as they are an entitlement that all eligible employees of the Public Body receive. It cites Order F2003-002 where it was stated that "discretionary" means that there is a choice given to a decision-maker as to whether or how to exercise a power (at para. 23). The Public Body says that it did not exercise a choice as to whether or not to give the retirement allowance. For the purposes of section 17(2)(e) of the Act, I also note that Order F2003-002 stated that "benefit" means, among other things, a favourable or helpful factor or circumstance, or an advantage (also at para. 23).
>
> First, the retirement allowance paid to the Commissioners was a helpful factor or circumstance, or an advantage, and therefore constitutes a benefit. Second, despite the submissions of both the Applicant and the Public Body, I find that City Council chose to give the retirement allowance to the Commissioners of its own accord, and did not have to do so. The retirement allowance was therefore discretionary. The minutes of March 22, 1999 indicate that the retirement allowance was recommended by the Committee of the Whole, rather than based on some sort of mandatory requirement or a pre-existing scheme. The Public Body suggests that a benefit is not discretionary if given to all who are eligible for it, but the fact that four Commissioners -- rather than three, or two, or one -- were made eligible for the retirement allowance does not make it any less discretionary, in my view. The key is whether or not the benefit was granted on the basis of a choice exercised by the decision-maker. For clarity, I point out that City Council, and not just employees of the Public Body's administration, make decisions on behalf of the Public Body, being the City of Calgary.
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> [underlining added]

[para 31] It is clear that the Public Body was not required to implement the Program.

[para 32] While the Public Body's Agricultural Service Board operates pursuant to the *Agricultural Service Board Act*, which vests it in certain duties and powers related to weed control, and is involved in the process of delivering rebates under the Program, it is not required by legislation to implement the Program, or provide any sort of financial benefit related to weed control.

[para 33] The Program exists and operates as a matter of a policy decision made by the Public Body, following debate on the matter by the Public Body's County Council. Minutes from a March 2, 2021 Council Meeting record several arguments about the appropriateness of a herbicide rebate policy, including arguments that paying out money under such a policy "is ridiculous" and "has to quit." Council also debated whether or not to introduce a cap on the amount of money paid to those who apply for a rebate.

[para 34] The Public Body's deliberations appear to have led to creation of the aforementioned Policy AG-3. Policy AG-3 states that the Public Body implemented the Program in order to incentivize destruction of noxious weeds listed in the *Weed Control Regulations*. Policy AG-3 was approved by the Public Body's council on April 6, 2021, and is reassessed annually as part of final budget deliberations.

[para 35] In view of the above, it seems to me that the circumstances here are similar to those in Order 2009-046. There is a benefit equally applicable to many; the key question being whether the benefit was granted on the basis of a choice exercised by the decision maker. Since the Program was something that the Public Body chose to do as a matter of its decision to incentivize weed destruction, the Program is discretionary, and provides a discretionary benefit, accordingly.

[para 36] I note that other cases have found that a benefit was not discretionary where receiving a benefit was determined by the application of uniform eligibility criteria set by legislation, even where a deliberative process was involved in providing a benefit.

[para 37] In Order F2015-40, the Adjudicator found that benefits provided under the *Out-of-Country Health Services Regulation*, AR 78/2006 under the *Alberta Health Care Insurance Act,* R.S.A. 2000, c. A-20 was not discretionary, despite a deliberative application process. The Adjudicator described components of the legislated scheme under the regulations at paras. 14 and 15:

> The legislation which primarily sets the Public Body's mandate is the *Out-Of-Country Health Services Regulation* ("OOCHS regulation") which is a regulation established under the *Alberta Health Care Insurance Act*. The OOCHS regulation states that an individual may apply to the Public Body for reimbursement of medical expenses incurred outside of Canada (OOCHS regulation, s. 2). On receiving a completed application, the Public Body must make a decision to either accept or reject the application (OOHSC regulation, ss. 7 and 8). In deciding whether to accept or reject the application, the Public Body must make decisions on each of the following individual factors set out in section 8 of the OOCHS regulation:
>
> 1. Are the services referred to in the application insured services or insured hospital services?

2. Are the insured services or insured hospital services applied for available in Canada?

3. Are the services applied for experimental or applied research?

In addition to the factors outlined in section 8 of the OOCHS regulation, there are different timing requirements for applications for elective and emergency services. Specifically, funding for an elective service must be made prior to the service being performed. If a service is found to be an emergency service, an individual can apply before the service is performed or within 365 days of it having been performed.

[para 38] The Adjudicator in Order F2015-40 then concluded at para. 18,

> Whether a service is insured, available in Canada, experimental, elective or emergency can raise very complex factual questions requiring evidence from multiple sources. I also note that the Public Body's decision-making panels are mainly comprised of people in the health care field who would bring their own expertise to any decision. Given the possible complexity, this could lead to the Public Body granting funding for one individual and not for another even though their cases look identical on the surface. However, in each case the Public Body is simply fitting findings of fact with legislatively established factors. A difference in a finding of fact does not involve an exercise of discretion as that term is used in section 17(2)(h) of the Act. If the factors are met, the Public Body must approve the application. If they are not, the application must be denied.
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> [underlining added]

[para 39] Similarly, in Order F2014-31, the Adjudicator consider benefits provided under the *Assured Income for the Severely Handicapped Act*, S.A. 2006, c. A-45.1. She stated at paras. 17 - 19,

> The AISH benefit is a benefit provided by the Government of Alberta, in accordance with the *Assured Income for the Severely Handicapped Act* (AISH Act). The benefit might be said to be discretionary insofar as, by its terms, the director "may" provide a benefit to an individual in accordance with the Act and regulation (section 3(1) of the AISH Act). For section 17(2)(h) to apply, a benefit must not only be discretionary, but must also be granted by a public body. In Order F2007-025, the adjudicator noted that "grant" has a range of meanings; she concluded that in the context of section 17(2)(h),
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> > … it appears that "grant" means to "give" or "confer" discretionary benefits of a financial nature, in situations where the grantor is not required to give or confer these benefits, or to consent or agree to provide them, but has discretion to do so. (at para. 25)
>
> In my view, this provision does not apply to benefits such as those provided under the AISH program. While the benefit might be described as discretionary because the provision uses the term "may", and is determined on a case-by-case basis, the eligibility criteria for the benefits, as well as what benefits may be provided, are set out in the AISH Act and regulation. In other words, although AISH benefits *may* be provided under the AISH Act, the assessment of whether a particular individual is entitled to the benefit, and

> the benefits to which an individual is entitled under the AISH Act, is determined by the legislation; the director under the AISH Act cannot decide, outside of this statutory scheme, that a benefit will not be provided, or provide benefits in excess of those set out in the statutory scheme. This finding is consistent with Order 98-004 (at paras. 207-210), and BC Order 01-40 (at para. 36). Therefore, I find that section 17(2)(h) is not applicable in this case.
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> [underlining added]

[para 40] A similar conclusion to those in Orders F2014-31 and F2015-40 appears in Order F2009-041 at para. 58 with regard to disability payments made pursuant to the *Workers' Compensation Act,* R.S.A. 2000, c. W-15.

[para 41] In my view, the distinguishing factor between Orders F2014-31, F2015-40, and F2009-041, and this case is the presence of legislation that requires that a benefit be provided according to its terms. Orders F2009-041, F2014-31, and F2015-40 concern legislation by which public bodies must abide, as a matter of legislated duties. Policy AG-3 is different from such legislation in that the Public Body can choose to do away with it, or amend its terms, as it sees fit and is not bound by the strictures of legislation to have such a policy. The Public Body has all of the discretion it needs to decide to adopt Policy AG-3, or not.

[para 42] The Public Body makes several other arguments that the names sought by the Applicant should not be disclosed as permitted by section 17(2)(h). The first such argument is that it is not clear that names are "details" of a discretionary benefit as the term used in section 17(2)(h). The Public Body observes that between the redacted records provided to the Applicant and information in Policy AG-3, a report about Policy AG-3, and minutes of meetings concerning the Program, significant details have already been provided.

[para 43] Whether or not names constitute details under section 17(2)(h) was considered in Order F2007-025 at paras. 28 - 29,

> The purpose of subsection 17(2)(h) is to ensure that the presence of personal information in a record does not prevent a public body from being accountable for the discretionary payments it makes to third parties. Interpreting this provision as encompassing settlements aligns with this objective and ensures that an area in which public bodies have discretion to expend public funds is subject to public scrutiny.
>
> If disclosure "reveals details of a discretionary benefit of a financial nature granted to the third party by a public body" then disclosure of personal information is not an unreasonable invasion of the third party's personal privacy. The next question to address is what constitutes "details" for the purposes of the provision. Given that the discretionary benefit must be of a financial nature, be granted to a third party and be granted by a public body for the provision to apply to the information, and given that the purpose of this provision is to ensure that discretionary grants of financial benefits are subject to public scrutiny, I find that "details" in this provision would necessarily include: the name of the recipient of the benefit, the reason for providing the benefit to the recipient, any consideration received by

> the recipient in exchange for granting the benefit, and personal information relating to the public body's act of granting the benefit. This interpretation is in keeping with the purpose of the provision, which is to ensure the accountability of public bodies in relation to the public funds they expend. Section 17(2)(h) recognizes that accountability would not be achieved by merely disclosing that a public body paid a certain amount to a third party. Rather, details of the benefit, such as the reasons for it and whether it was duly given, must necessarily also be included to ensure transparency and accountability.

[para 44] I agree with the Adjudicator in Order F2007-025. The names of those who received rebates are details necessarily included in section 17(2)(h).

[para 45] In light of the above conclusion, I will order the Public Body to disclose the names sought by the Applicant on all documents on which they appear. This is so since the use of the names, and disclosure of them in each instance, will reveal the details of the discretionary benefit provided under the program as deemed not be to an unreasonable invasion of the third party personal privacy under section 17(2)(h).

[para 46] The names as they appear on the Purchase Orders, Rebate Administrative Forms, Rebate Application Forms, File Notes, and Applicants' Property Maps/Descriptions, all reveal who sought and received rebates. Such information is necessarily included under section 17(2)(h) as discussed above.

[para 47] The names as they appear in Weed Reports document who benefitted from weed identification services and/or in respect of which individuals who received a rebate the Public Body fulfilled its duty to inspect fields after herbicide application, as required by Policy AG-3. In addition, the names on these reports also provide information that indicates why the benefit was granted, which is a detail under section 17(2)(h) as discussed in Order F2007-025, above. Per Policy AG-3, landowners are eligible for a rebate only in respect of prohibited noxious weeds. That is to say that the presence of certain weeds is a perquisite to receiving the rebate. The names in the Weed Reports indicate whether landowners who received the rebate met that prerequisite.

[para 48] The Public Body also argues that it does not have the consent of those whose names appear in the records to disclose their personal information. This point is not germane to the application of section 17(2)(h). Section 17(2)(h) is not dependent upon consent. I observe that section 17(2)(a) states that it is not an unreasonable invasion of a third party's personal privacy to disclose personal information if the third party consents, however, section 17(2)(a) is a separate circumstance prescribing when disclosure is not unreasonable, and not a prerequisite to the application of section 17(2)(h).

[para 49] The Public Body makes a further, general argument that the names should not be disclosed in light of section 33(c) of the FOIP Act, and the Public Body's notification to the participants in the Program concerning that section. Section 33(c) states,

> *33 No personal information may be collected by or for a public body unless*

...

(c) that information relates directly to and is necessary for an operating program or activity of the public body.

[para 50] Notification appears on the Program's Rebate Application Form, it states,

> The personal information provided will be used to process this Agreement with Brazeau County and is collected under the authority of Section 33(c) of the Freedom of Information and Protection of Privacy Act (FOIP) Act. The information collected on this form will only be used for the provision of the program you have applied for. If you have any questions about the collection and use of this information, please contact the Brazeau County FOIP Coordinator at…

[para 51] The Public Body notes that its notification does not inform those applying for the Program that their names may be disclosed. The Public Body argues that, under these circumstances, section 34(2) of the FOIP Act would restrain it from releasing personal information since notice of disclosure was not given. Section 34(2) states,

> *(2) A public body that collects personal information that is required by subsection (1) to be collected directly from the individual the information is about must inform the individual of*
>
> *(a) the purpose for which the information is collected,*
>
> *(b) the specific legal authority for the collection, and*
>
> *(c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.*

[para 52] Section 34(2) does not have the effect that the Public Body argues it does. It is a notice requirement, not a prohibition on disclosure. Further, section 40(1)(a) expressly permits public bodies to disclose personal information in accordance with Part 1 of the FOIP Act. Part 1 of the FOIP Act contains the sections that detail public bodies' duties and responsibilities when responding to access requests, including the reasons why it may or must refuse to disclose personal information, section 17 included. In this case, if the names and amounts sought by the Applicant are captured under section 17(2)(h), and, therefore, disclosing them is not an unreasonable invasion of third party personal privacy under Part 1, the information may be disclosed.

[para 53] Lastly, the Public Body observes that under section 30(1) of the FOIP Act, public bodies are required to give notice to third parties when considering providing access to a record containing information disclosure of which may be an unreasonable invasion of third party personal under section 17. Again, the Public Body argues that since notice was not given to those whose names appear in the records, the names should not be disclosed. I note, however that if the names are caught within the terms of section 17(2)(h), their disclosure is deemed not to be an unreasonable invasion of third party

personal privacy. In view of my decision about section 17(2)(h) the notice provision in section 30(1) does not apply in this case.

[para 54] Given my findings that the Program provides a discretionary benefit of a financial nature, and that names and amounts are details under section 17(2)(h) above, I conclude that disclosing the names and amounts to the Applicant is not an unreasonable invasion of third party personal privacy. The information cannot be withheld under section 17(1).

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

[para 55] In view of my conclusion about section 17(2)(h) above, I do not consider section 17(1). Under section 17(2)(h) disclosing the information sought by the Applicant is deemed to not be an unreasonable invasion of third party personal privacy. For that reason, I do not need to consider the Public Body's numerous arguments about why disclosure would be an unreasonable invasion of a third party's personal privacy. Among them are various factors that would be considered under section 17(5) and the application of the presumption that disclosure of names is unreasonable under section 17(4)(g).

V. ORDER

[para 56] I make this Order under section 72 of the FOIP Act.

[para 57] I order the Public Body to disclose the names sought by the Applicant.

[para 58] I order the Public Body to confirm to me and the Applicant, in writing, that it has complied with this Order within 50 days of receiving a copy of it.

John Gabriele
Adjudicator
/kh