

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER FOIP2025-29

October 2, 2025

EDMONTON POLICE SERVICE

Case File Number 026188

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) to the Edmonton Police Service (the Public Body) for records relating to a specified file, including records of all the steps taken by a named Detective in the investigation.

The Public Body provided responsive records, with information withheld under section 17(1) (disclosure harmful to personal privacy). The Applicant requested a review of the Public Body's response, including its search for responsive records. During that review, the Public Body conducted another search for records and located an additional six pages of records, which were provided to the Applicant with information withheld under sections 17(1), and 27(1)(a), (b) and (c). The review did not settle the matter, and the Applicant subsequently requested an inquiry.

The Adjudicator found that the Public Body conducted an adequate search for responsive records.

The Adjudicator found that the Public Body was not authorized to withhold business contact information of individuals acting in a professional capacity. The Adjudicator confirmed that the Public Body was required to withhold the names of third parties appearing in the records.

Lastly, the Adjudicator upheld the Public Body's application of 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, 72.

Authorities Cited: AB: Orders 96-022, 97-006, 2001-013, 2001-016, F2003-002, F2007-014, F2007-029, F2008-028, F2010-002, F2010-007, F2010-036, F2012-08, F2017-28, F2017-58, F2019-07

Cases Cited: *Alberta (Municipal Affairs) v Alberta (Information and Privacy Commissioner)*, 2019 ABQB 274, *Solosky v. The Queen*, 1979 CanLII 9 [1980] 1 S.C.R. 821, *Canadian Natural Resources Limited v. ShawCor Ltd.*, 2014 ABCA 289 (CanLII), *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10

I. BACKGROUND

[para 1] The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) to the Edmonton Police Service (the Public Body) for records relating to a specified case file, including records of all the steps taken by a named Detective "from the time he became investigating Detective until his written conclusion. All the supporting evidence he acquired including the emails between him and Canada post. The [detective's] communications with the legal department that he spoke of with the name(s) of persons that gave him the advice."

[para 2] The Public Body located 34 pages of responsive records; records were provided to the Applicant, with information withheld under section 17(1) (disclosure harmful to personal privacy). The Applicant requested a review of the Public Body's response, including its search for responsive records. During that review, the Public Body conducted an additional search for records and located an additional six pages of records, which were provided to the Applicant with information withheld under sections 17(1), and 27(1)(a), (b) and (c). The review did not settle the matter, and the Applicant subsequently requested an inquiry.

II. RECORDS AT ISSUE

[para 3] The records at issue consist of police investigation records with information withheld under sections 17(1) and 27(1).

III. ISSUES

[para 4] The issues as set out in the Notice of Inquiry dated April 11, 2024, are as follows:

1. Did the Public Body conduct a reasonable search for responsive records as required by section 10(1) of the FOIP Act?
2. Did the Public Body properly apply section 17(1) to the responsive records (disclosure an unreasonable invasion of personal privacy)?
3. Did the Public Body properly apply section 27(1) of the Act (privileged information) to the information/record(s)?

IV. DISCUSSION OF ISSUES

1. Did the Public Body conduct a reasonable search for responsive records as required by section 10(1) of the FOIP Act?

[para 5] A public body's obligation to respond to an applicant's access request is set out in section 10, which states in part:

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 6] 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 (Order 96-022 at para. 14; Order 2001-016 at para. 13; Order F2007-029 at para. 50).

[para 7] The Notice of Inquiry specifies that this issue relates to whether the Public Body conducted an adequate search for responsive records. The Notice requests information from both the Applicant and the Public Body on this issue, as follows:

The Applicant's submission should set out their reasons for believing more records exist than were located and provided to them and/or should describe as precisely as possible records/kinds or records they believe should have been located and provided.

The Respondent's submission should be in the form of a sworn document, describing the search it conducted for records responsive to the Applicant's access request. In preparing the sworn document, the Respondent may wish to consider addressing the following:

- The specific steps taken by the Respondent to identify and locate records responsive to the Applicant's access request.
- The scope of the search conducted, such as physical sites, program areas, specific databases, off-site storage areas, etc.
- The steps taken to identify and locate all possible repositories where there may be records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
- Who did the search? (Note: that person or persons is the best person to provide the direct evidence).
- Why the Respondent believes no more responsive records exist other than what has been found or produced. (In answering this question the Respondent should have regard to the reasons the Applicant gave for believing more records exist than were located/provided to them, and/or the Applicant's description of the records/kinds or records they believes should have been located and provided.)
- Any other relevant information.

[para 8] The Public Body provided a detailed accounting of the search conducted, including an affidavit sworn by the FOIPP Coordinator who was responsible for ensuring the Applicant's request was properly processed. In the affidavit, the Coordinator states that as the request related to a case file, a search was conducted of the Edmonton Police Reporting and Occurrence System (EPROS), which is the Public Body's case management system for official police case files and is used for recording investigative steps and outcomes.

[para 9] This search resulted in 34 pages of responsive records. The Coordinator states that at the time of the Applicant's request, the relevant case file had recently concluded; as such, not all documents related to the case file were available on EPROS. Specifically, the Detective's narrative reports and emails were not yet available. The Coordinator decided to provide the 34 pages from EPROS to the Applicant, after information had been severed under section 17(1). The Applicant was informed on January 31, 2022 that these records were available; the records were provided to the Applicant electronically on February 3, 2022.

[para 10] On February 4, 2022, the Applicant wrote to the Public Body expressing dissatisfaction with the Public Body's response, and made another access request with a similar scope to the request at issue here. In its submissions, the Public Body refers to the access request at issue in this inquiry as "1312" and the later access request as "0306". In responding to that later request, the Coordinator states that

23. That same date, after sending out the First 0306 Package, I considered that for the sake of due diligence, I should make search efforts going beyond the EPROS database. While the EPROS database is intended to be a comprehensive source of information on case files and can generally be relied upon as such, occasionally there are delays or problems uploading investigative information such as emails. It thus occurred to me that I should reach out directly to [Detective S] for any of the various types of email sought by the Applicant on Requests 1312 or Request 0306. I began to make those inquiries of [Detective S] at that time.

[para 11] The Coordinator states that two 3-page email chains were obtained in response to the enquiries made to Detective S; one of those emails chains was provided to the Applicant on April 11, 2022, with information withheld under section 17(1), and the other email chain was withheld in its entirety under section 27(1). In both cases, these records were provided in response to the later request, 0306.

[para 12] The Coordinator states that during the initial review of this file, the Public Body provided 6 additional pages of records to the Applicant. These consisted of the 6 pages located for 0306 (with one 3-page email chain being reformatted into 2 pages) and one additional page of emails.

[para 13] The Coordinator states that between the 34 pages of records previously provided to the Applicant, and the 6 pages provided during the review, all responsive records have been located and provided to the Applicant. The Coordinator states that a new search was undertaken with updated software, and no new records were located.

[para 14] The Coordinator provides the following conclusion:

35. I acknowledge the confusion on this matter due to the cross-over between the two requests made. Upon reflection, I consider that the better way to have approached this matter would have been to have advised the Applicant that the requested case file was not yet closed upon the date of the request, such that more time was likely necessary to retrieve the full case file. If I had the opportunity to re-do this response, I would then have awaited the closure of the file to ensure that the records of [Detective S] were on file. I would also have reached out to [Detective S] upon realizing that his emails were not on the file. However, despite these observations, I am fully confident that the end result for the Applicant, as delivered via the four packages of documents circulated to him, was full and complete. In fact, I believe that all appropriately responsive material was provided to the Applicant as of April 2022 and that the December 2022 disclosure was redundant. As a result of the EPS FOIPP Unit's decision to treat Request 1312 and Request 0306 as "personal" rather than "general", no fees were charged to the Applicant on these matters (in fact, a cheque delivered by the Applicant on Request 1312 was returned to him by EPS). Nevertheless, I regret any inconvenience caused to the Applicant through this process.

[para 15] The Applicant chose to rely on the arguments previously provided in their request for review and request for inquiry, rather than providing a submission to the inquiry.

[para 16] Although the Applicant indicated in their request for review form that the Public Body did not conduct an adequate search for responsive records, they did not specify in that request for review what other records they expected to receive in response to the access request. It is also not clear from the Applicant's request for inquiry what other records the Applicant expected to receive.

[para 17] The Notice of Inquiry instructed the Applicant to set out in their submission the reasons for believing more records exist than were located and/or describe as precisely as possible the records (or kinds or records) they believe should have been located. Applicant did not provide any additional information in a submission.

[para 18] In their request for review, the Applicant indicates that the head of the Public Body is required to sign a letter requesting that the Public Body FOIP unit deny the Applicant access to the requested records, with reasons. The Applicant appears to argue that unless the head of the Public Body does this, the Public Body cannot withhold records from the Applicant.

[para 19] In their request for inquiry, the Applicant argued that the Senior Information and Privacy Manager who conducted the review by this office "has not proven that the head of the public body (The Edmonton Chief of Police) actually denied to release these documents for any reason... [EPS FOIP] and or OIPC has not providing that to me at any time. Even though the "burden of proof" is on them... And if these documents are not found then all reasons to deny me access to these documents are void and null. They must be ordered to send me unredacted documents as I requested."

Analysis

[para 20] I will first address the Applicant's argument that the head of the Public Body is obligated to provide a signed letter confirming application of the relevant exceptions to access.

[para 21] The Applicant has indicated that the Manager who conducted the initial review by this office has a burden of proof. This is not the case; this office conducts independent reviews of decisions made by the head of a public body or their delegate. Neither the Manager who conducted the initial review, nor I as the Commissioner's delegate in conducting this inquiry, have a burden of proving that the Public Body has met its duties under the Act. The Public Body has the burden of showing that it met its duties under the Act.

[para 22] The Applicant has correctly pointed out that it is the head of a public body that is authorized or required to withhold information under the exceptions set out in sections 16-29 of the Act. It is also the head of the public body that has a duty to assist the applicant, under section 10 of the Act.

[para 23] However, section 85 of the Act permits the head of a public body to delegate any power, duty, or function of the head under the Act. Therefore, it is not necessarily the case that the decision to apply an exception to access must be made by the head of the Public Body. Further, section 12 of the Act sets out what an applicant must be told by a public body in response to an access request. It states:

12(1) In a response under section 11, the applicant must be told

- (a) whether access to the record or part of it is granted or refused,*
- (b) if access to the record or part of it is granted, where, when and how access will be given, and*
- (c) if access to the record or to part of it is refused,*
 - (i) the reasons for the refusal and the provision of this Act on which the refusal is based,*
 - (ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and*
 - (iii) that the applicant may ask for a review of that decision by the Commissioner or an adjudicator, as the case may be.*

[para 24] Nothing in section 12 (or section 10) indicates that an applicant must be provided with a signed letter from the head of the public body setting out the exceptions being applied. While the decision to apply an exception to access must be made by the head of a public body or a person appropriately delegated by the head, section 12(1) does not specify that the head or the delegated decision-maker must inform an applicant about the decision. Section 12(1) is crafted in a passive voice, stating only what information an applicant must be given; it does not specify who must provide it.

[para 25] For these reasons, I disagree with the Applicant's arguments that the Public Body (or the head of the Public Body) failed in its duties to properly inform the Applicant of the decisions to withhold information.

[para 26] Regarding the Public Body's search for records, I don't know what additional records the Applicant believes ought to have been located

[para 27] I agree with the Coordinator's conclusion above, that the first search conducted for the access request at issue here was not adequate. The Coordinator acknowledged that the Detective should have been contacted for further records, once it was known that the EPROS file was not complete. By not doing this at the outset, the Public Body's initial search for record was not sufficient to meet the duty to assist under section 10. However, I accept that the various searches conducted by the Public Body following that initial search and response located all responsive records. In other words, the Public Body rectified the initial inadequate search, such that there is no need to order it to conduct a new search.

2. Did the Public Body properly apply section 17 to the responsive records (disclosure an unreasonable invasion of personal privacy)?

[para 28] The Public Body applied section 17(1) to withhold the names of third party individuals that appear in relation to the investigation of a complaint made by the Applicant to the Public Body. The Public Body also applied this provision to withhold the phone number extensions and cell phone numbers of employees of the Public Body and other organizations.

[para 29] Under section 17, if a record contains personal information of a third party, section 71(2) states that it is then up to the applicant to prove that the disclosure would not be an unreasonable invasion of a third party's personal privacy.

[para 30] 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 31] Past Orders of this Office state that the disclosure of the names, contact information and other information about individuals, that relates only to the individuals acting in their professional capacities, is not an unreasonable invasion of personal privacy under section 17(1) unless that information has a personal dimension in the circumstances (see Orders 2001-013 at

paras. 89-90, F2003-002 at para. 62, F2008-028 at para. 53). In other words, in the absence of a personal dimension, such information cannot be withheld under section 17(1).

[para 32] While the Applicant has the burden of proving that it would not be an unreasonable invasion of privacy to disclose personal information to which section 17(1) applies, the Public Body has the burden of establishing that the information withheld under section 17(1) is personal information to which that provision can apply (Order F2010-002, at para. 9).

[para 33] The Public Body's submission states that section 17(1) was applied to "names of various individuals alleged to be involved in the subject matter of the Applicant's complaint" on pages 5 and 31 of the first package of records.

[para 34] It further states that section 17(1) was applied to "non-public cell phone information" of Canada Post employees and the Public Body Detective appearing in pages 1-2 of the second package of records. It states that "it was determined that basic, publicly available information about Canada Post employees could be released."

[para 35] With respect to the names of the individuals involved in the subject-matter of the Applicant's complaint, I agree that this is personal information to which section 17(1) can apply.

[para 36] The phone numbers withheld on pages 1-2 of the second package of records appear in the signature line of emails sent by the relevant individuals, in the context of the performance of their work duties. Two are cell phone numbers and one appears to be the extension number for a landline. From the context of the records, I conclude that the numbers are work-assigned phone numbers.

[para 37] Past Orders address the application of section 17(1) to business contact information of public body employees, including cell phone numbers assigned to an employee for work purposes (see Orders 2001-013 at para. 89, F2003-002 at para. 62, F2008-028 at paras. 53-54, F2017-28 at para. 27). As stated above, unless there is a personal dimension to the information, section 17(1) does not apply to business contact information, including cell phone numbers. The Public Body did not address any of those Orders. The Public Body has said only that these numbers are not publicly available. The fact that a cell phone number is not published does not give the number a personal dimension such that section 17(1) can apply.

[para 38] No reason has been presented to persuade me not to apply the analysis from numerous past precedents finding that work-assigned phone numbers cannot be withheld under section 17(1) absent some personal dimension. Further, no argument has been provided showing how these numbers have a personal dimension. As such, I find that section 17(1) cannot apply to the information withheld under that provision in pages 1-2 of the second package of records. As no other exception has been applied to this information, I will order the Public Body to disclose it to the Applicant.

[para 39] The remainder of the discussion regarding section 17(1) applies only to the personal information (names) on pages 5 and 31 of the first package of records, to which I have found section 17(1) can apply.

[para 40] The next step with respect to the application of section 17(1) to that information, is to determine whether disclosing this personal information would be an unreasonable invasion of the third parties' privacy. Section 17 is a mandatory exception: if the information falls within the scope of the exception, it must be withheld. In Order F2019-07 the adjudicator described how section 17(1) operates as follows (at paras. 22-23):

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 (such as the Applicant in this case) 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.

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 41] Sections 17(2) and (3) do not apply in this case and so I will not discuss them.

[para 42] The Public Body argues that sections 17(4)(b) and (g) apply to this information, as well as sections 17(5)(e) and (h).

[para 43] The Applicant has not provided arguments on the Public Body's application of section 17(1), other than to say in the request for inquiry, that "names may be redacted if they prove that this falls under a section of the Act and how it applies to this situation (Burden of proof 71(1)) but not the whole document." As stated above, the Public Body applied section 17(1) only to the names of individuals on pages 5 and 31, not to entire documents.

[para 44] Sections 17(4)(b) and (g) state:

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.

...

(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,

...

(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 45] Section 17(4)(b) applies to personal information that 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 continue an investigation.

[para 46] Law enforcement is defined in section 1(h) of the Act, to include:

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 proceeding are referred;

[para 47] As the records consist of police records, I find that section 17(4)(b) applies to the names withheld on pages 5 and 31 under section 17(1).

[para 48] Section 17(4)(g) creates a presumption against disclosure of information consisting of a third party's name when it appears with other personal information about that third party, or where the name alone would reveal personal information about the third party. This provision applies to the names withheld on pages 5 and 31 under section 17(1).

[para 49] As stated above, section 17(5) is a non-exhaustive list of factors to consider when determining whether disclosing personal information would be an unreasonable invasion of privacy. The Applicant has not indicated that any factors weigh in favour of disclosure, and none appear to apply.

[para 50] At least two presumptions against disclosure apply to the personal information, and no factors weighing in favour of disclosure have been demonstrated to apply. Given this, I do not need to consider whether additional factors weigh in favour of withholding the information, such as sections 17(5)(e) and (h), as raised by the Public Body. I find that the names withheld on pages 5 and 31 of the first package of records were properly withheld under section 17(1).

3. Did the Public Body properly apply section 27(1) of the Act (privileged information) to the information/record(s)?

[para 51] The Public Body applied sections 27(1)(a), (b) and (c) to pages 4-6 of the second package of records, in their entirety.

[para 52] Section 27(1) 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,

(b) information prepared by or for

(i) the Minister of Justice and Solicitor General,

(ii) an agent or lawyer of the Minister of Justice and Solicitor General, or

(iii) an agent or lawyer of a public body,

in relation to a matter involving the provision of legal services,

(c) information in correspondence between

(i) the Minister of Justice and Solicitor General,

(ii) an agent or lawyer of the Minister of Justice and Solicitor General, or

(iii) an agent or lawyer of a public body,

and any other person in relation to a matter involving the provision of advice or other services by the Minister of Justice and Solicitor General or by the agent or lawyer.

[para 53] 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 54] Regarding its application of section 27(1)(a), the Public Body claims solicitor-client privilege applies to the withheld information.

[para 55] The test to establish whether communications are subject to solicitor-client privilege is set out by the Supreme Court of Canada in *Solosky v. The Queen*, 1979 CanLII 9 [1980] 1 S.C.R. 821. The Court said:

... 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 56] The requirements of this privilege are met if information is a communication between a solicitor and a client, which was made for the purpose of seeking or giving of legal advice and intended to be kept confidential by the parties.

[para 57] The Court in *Alberta (Municipal Affairs) v Alberta (Information and Privacy Commissioner)*, 2019 ABQB 274 found (at paras. 17-18):

There are emails in “chains” that are not directly between lawyer and client, or lawyer and lawyer, but have been sent by and received from members of the client group or department. Communications in this category request and give information, make inquiries, answer questions and otherwise relate topically to those in which legal counsel are directly involved. Those emails form part of a discrete body of communications that includes clearly privileged material. I must take a holistic approach to this question. In these instances, they are “part of a continuum in which legal advice is given”: *Calgary (Police Service)* at para 6. What all of them have in common is that they essentially “transmit or comment” on the work products that, I find, are privileged: *Bank of Montreal v Tortora*, 2010 BCSC 1430 at paras 11-12, 14 BCLR (5th) 386.

[para 58] Where a public body elects not to provide a copy of the records over which solicitor-client or litigation privilege is claimed, the public body must provide sufficient information about the records, in compliance with the civil standards set out in the *Rules of Court* (Alta Reg 124/2010, ss. 5.6-5.8). These standards were clarified in *Canadian Natural Resources Limited v ShawCor Ltd.*, 2014 ABCA 289 (CanLII) (*ShawCor*). *ShawCor* states that a party claiming privilege must, for each record, state the particular privilege claimed and provide a brief description that indicates how the record fits within that privilege (at para. 36 of *ShawCor*).

[para 59] In *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 1 (*EPS*), the Court found that the adjudicator in Order F2017-58 correctly identified the standard as follows: evidence supporting a claim of privilege must be sufficiently clear and convincing so as to satisfy the burden of proof on a balance of probabilities (at para. 82 of *EPS*).

[para 60] In that decision, the Court further states that the role of this Office in inquiries involving claims of privilege under section 27(1)(a) of the Act is to review claims and assertions of privilege. The Court commented on the limitations of this review, given that the Office does not have authority to compel production of information over which solicitor-client privilege is claimed. It states that "... the IPC cannot "properly determine" whether solicitor-client privilege exists: *2018 CPS (CA)* at para 3. The scope of the IPC's review of claims of solicitor-client privilege is inherently limited. The IPC is not entitled to review the relevant records themselves" (at para. 85).

[para 61] It describes the role of this Office in reviewing a claim of privilege as follows (at paras. 103-105):

The clear direction from the Supreme Court is that compliance with provincial civil litigation standards for solicitor-client privilege claims suffices to support the exception from disclosure under *FOIPPA*. The IPC's statutory mandate must be interpreted in light of the Supreme Court's directions. The IPC has an obligation to review and a public body has an obligation to prove the exception on the balance of probabilities. But if the public body claims solicitor-client privilege in accordance with provincial civil litigation standards, the exception is thereby established on the balance of probabilities. It is likely that the privilege is made out, in the absence of evidence to the contrary...

Does this approach mean that the IPC must simply accept a public body's claims of privilege? Is the IPC left with just "trust me" or with "taking the word" of public bodies? Does this approach involve a sort of improper delegation of the IPC's authority to public bodies or their counsel?

In part, the response is that the IPC is not left with just "trust me." The IPC has the detail respecting a privilege claim that would suffice for a court. If the *CNRL v ShawCor* standards are not followed, the IPC (like a court) would be justified in demanding more information. And again, if there is evidence that the privilege claim is not founded, the IPC could require further information.

[para 62] I understand the Court to mean that my role in reviewing the Public Body's claim of privilege is to ensure that the Public Body's assertion of privilege meets the requirements set out in *ShawCor*, and that the information provided in support of that assertion is consistent with the relevant tests for the cited privilege.

[para 63] The Public Body states that these pages consist of email communications between "EPS members and EPS in-house counsel". The affidavit of the FOIP Coordinator states:

34. I further believe that all redactions applied under subsection 27(1) regarding solicitor-client privilege were appropriately made. The Applicant expressly sought information pertaining to discussions between [Detective S] and his in-house legal counsel at EPS. The discussion between EPS members and EPS in-house counsel are contained within the withheld email chain of three pages. They are further reiterated in [Detective S]'s investigative reports, from which they have been redacted. EPS in-house counsel provide legal advice to EPS members acting in the course of their duties, including with respect to investigative work. Because I am not a lawyer, for greater clarity, I have been in touch with the EPS inhouse counsel involved in the withheld or redacted communications, and through those communications I have confirmation that section 27(1), and specifically solicitor-client privilege, has properly been applied. I also have confirmation that the member(s) who sought legal advice have invoked solicitor-client privilege. This is the information withheld under subsection 27(1) in this case.

[para 64] By letter dated September 15, 2025, I informed the Public Body that its affidavit was not sufficient, and asked the Public Body to provide a new affidavit. I said:

I understand from the affidavit of the FOIP Coordinator, provided at Tab A of the Public Body's submission, that the three pages of records contain email communications between the Detective and counsel. I understand that the Public Body's in-house counsel provides advice to members as part of their job duties, generally. The Coordinator's affidavit refers to the content of the emails as "discussions", but does not expressly state whether advice was sought or provided in the emails at issue.

I understand that the FOIP Coordinator communicated with the lawyer involved in the emails at issue, and "confirmed" through those communications that the emails are protected by privilege. The Coordinator did not provide any facts about the emails, or other information that led to this conclusion. I also understand that the Detective believes the communications are privileged, but again, this seems to be a second-hand opinion without sworn facts to support it.

The Public Body's submission and affidavit are not sufficient to show how the withheld communications meet the test set out in *Solosky*. I have only general statements about the scope of the counsel's job duties, but no actual statement that the communications at issue entailed the seeking or giving of legal advice. As stated in *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31, cited in the Public Body's submission, not all communications or advice from in-house counsel is privileged (see para. 19).

In order to satisfy the test set out in *Solosky*, it is not sufficient to merely state that in-house counsel was involved in the discussions contained in the emails. Nor is it sufficient to merely state that the role of the Public Body's in-house counsel includes providing advice to members. I also note that the Public Body has not provided any evidence or information addressing the third part of the *Solosky* test, namely that the communications were intended to be confidential.

[para 65] The Public Body provided a new affidavit as requested. In this new affidavit, the FOIP Coordinator states that the email chain involves the request for, and giving of, advice on a particular policing matter; specifically:

The contents involve a true legal opinion and advice based on a lawyer's review of selected information.

[para 66] The Coordinator states that there are eight messages back and forth between the Detective and counsel, over a span of about six weeks. In a ninth email, the Detective forwards the chain to another Public Body member who is assigned to assist with the matter. In the affidavit, the Coordinator states that the emails were intended to remain confidential, and that sharing the advice with another member assigned to the matter did not alter that confidentiality.

[para 67] The Coordinator again provided information about the general scope of legal advice provided to Public Body members during an investigation:

7. In-house counsel at EPS are required, among other things, to evaluate the legality of investigative steps, the availability of criminal sanctions, and risks of disciplinary, civil, or other legal consequences associated with the use of investigative tools or strategies. That advice is essential in order for the EPS to remain compliant with the *Police Act* and its regulations, and to take appropriate steps under the *Criminal Code of Canada* and the *Charter of Rights and Freedoms*. Often those questions involve evaluations of evidentiary sufficiency, which draw upon in-house counsel's knowledge of the Canadian criminal justice system and its jurisprudence.

[para 68] I accept that the evidence provided in this supplemental affidavit meets the requirements set out in *ShawCor* and is consistent with the test for finding solicitor-client privilege applies. From the records it is clear that the Detective was conducting an investigation. I understand that Public Body members sometimes seek advice from in-house counsel when conducting investigations and the Detective sought such assistance in this case. Nothing in the records or submissions indicates that the content of the emails is other than that which the Coordinator has sworn to.

[para 69] I find that the Public Body has established its claim of privilege over these records. I do not need to also consider whether sections 27(1)(b) or (c) also apply.

[para 70] Section 27(1)(a) is a discretionary exception. Past Orders of this Office have found that once solicitor-client privilege has been established, withholding the information is usually justified for that reason alone (see Orders F2007-014, F2010-007, F2010-036, and F2012-08 citing *Ontario (Public Safety and Security) v Criminal Lawyers' Association*, 2010 SCC 23).

[para 71] This approach was discussed with approval in *EPS*, cited above.

[para 72] As I have found that the Public Body properly claimed solicitor-client privilege, its exercise of discretion to withhold that information can be presumed to be appropriate.

V. ORDER

[para 73] I make this Order under section 72 of the Act.

[para 74] I find that the Public Body ultimately fulfilled its duty under section 10 by conducting an adequate search for records.

[para 75] I find that the Public Body is not authorized to withhold the contact information withheld under section 17(1) on pages 1-2 of the second package of records. I order the Public Body to disclose this information to the Applicant.

[para 76] I confirm that the Public Body is required to withhold the information withheld under section 17(1) in the first package of records.

[para 77] I uphold the Public Body's application of section 27(1)(a).

[para 78] I further order the Public Body to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Amanda Swanek
Adjudicator