ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER FOIP2025-32

November 5, 2025

ALBERTA FORESTRY AND PARKS

Case File Number 024814

Office URL: www.oipc.ab.ca

Summary: The Applicant, Ecojustice Canada Society (the Applicant), made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Alberta Forestry and Parks (the Public Body) for:

> All project proposals submitted to Alberta Agriculture and Forestry and all written authorizations issued by Alberta Agriculture and Forestry to Forest Management Agreement holders and Quota holders for the application of glyphosate for forest management purposes in accordance with section 11 of the Environmental Code of Practice for Pesticides.
>
> Time Frame: January 1, 2020 to October 5, 2020.

The Public Body located responsive records but severed information from 19 pages of records under sections 21(1)(a), and 21(1)(b) (disclosure harmful to interjurisdictional relations) and 25(1)(c) (disclosure harmful to the economic and other interests of a public body). The Applicant requested review by the Commissioner.

The Adjudicator found that the Public Body was not authorized to refuse access to the information under section 21 or 25 and order the head of the Public Body to give the applicant access to the records.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 21, 25 and 72

Authorities Cited:

AB: Orders F2001-037; F2006-23; F2022-20

BC: *British Columbia (Energy, Mines & Petroleum Resources) (Re)*, Order F20-20, 2020 BCIPC 23;

Cases Cited: *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner),* 2014 SCC 31; *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2012 ABQB 595

I. BACKGROUND

[para 1] The Applicant submitted an access request to the Public Body on October 5, 2020 for the following:

> "All project proposals submitted to Alberta Agriculture and Forestry and all written authorizations issued by Alberta Agriculture and Forestry to Forest Management Agreement holders and Quota holders for the application of glyphosate for forest management purposes in accordance with section 11 of the Environmental Code of Practice for Pesticides.
>
> Time Frame: January 1, 2020 to October 5, 2020."

[para 2] The Public Body responded in two parts. The first response was in a letter dated April 27, 2021, whereby the Public Body released part of the responsive records but redacted information under section 17(1) of the Act; those records are not in dispute and are not the subject of this Inquiry.

[para 3] The Applicant requested review of the second part, the redactions on 19 pages of the records (pages 208, 271-272, 399, 439, 440-443, 444-446, 614, 1005, 1014, 1016, 1139, 1153 and 1155). The Public Body had refused access to information in these records under sections 21(1)(a), 21(1)(b), and section 25.

[para 4] The Commissioner agreed to conduct an inquiry into the issues raised by the Applicant and delegated the authority to conduct it to me.

II. ISSUES

1. Is the head of the Public Body authorized to refuse access to information in the records under section 21(a) of the Act (disclosure harmful to intergovernmental relations) to the information/record(s)?

2. Is the head of the Public Body authorized to refuse access to information in the records by section 25(1) of the Act (disclosure harmful to economic and other interests of a public body)?

III. DISCUSSION OF ISSUES

Issue 1: Is the head of the Public Body authorized to refuse access to information in the records under section 21(a) of the Act (disclosure harmful to intergovernmental relations) to the information/record(s)?

[para 5] Section 21 of the Act allows a public body to withhold information that could reasonably be expected to harm intergovernmental relations if disclosed. This provision states, in part:

> *21(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to*
>
> *(a) harm relations between the Government of Alberta or its agencies and any of the following or their agencies:*
>
> *(i) the Government of Canada or a province or territory of Canada,*
>
> *(ii) a local government body,*
>
> *(iii) an aboriginal organization that exercises government functions, including*
>
> *(A) the council of a band as defined in the Indian Act (Canada), and*
>
> *(B) an organization established to negotiate or implement, on behalf of aboriginal people, a treaty or land claim agreement with the Government of Canada,*
>
> *(iv) the government of a foreign state, or*
>
> *(v) an international organization of states,*
>
> *or*
>
> *(b) reveal information supplied, explicitly or implicitly, in confidence by a government, local government body or an organization listed in clause (a) or its agencies.*
>
> *[…]*

[para 6] The withheld information is described by the Public Body in its submissions in the following way:

Page Number	Description	Section of the Act
208	Letter from the Public Body to Alberta-Pacific Forest Industries Inc. and Northland Forest Products Ltd. regarding "Indigenous Consultation Adequacy Extension".	21(1)(a); 21(1)(b); 25(1)(c)(iii)
271-272	Letter	21(1)(a); 21(1)(b); 25(1)(c)(iii)
399	Public Consultation Summary for Indigenous communities identified for Canfor Herbicide Program – 2020	21(1)(a); 21(1)(b); 25(1)(c)(iii)
439	Email from Canadian Forest Products Ltd.	21(1)(a); 21(1)(b); 25(1)(c)(iii)
440-443	Letters	21(1)(a); 21(1)(b); 25(1)(c)(iii)
444-446	Email from Canadian Forest Products Ltd.	21(1)(a); 21(1)(b); 25(1)(c)(iii)
614	North Central Woodlands Integrated Vegetation Management Plan 2020	21(1)(a); 21(1)(b); 25(1)(c)(iii)
1005, 1014, 1016	Hinton Wood Products 2020 Herbicide Program Proposal West Fraser Mills Ltd. Edson Forest Products FMA9700032 (29 June 2020)	21(1)(a); 21(1)(b); 25(1)(c)(iii)
1139, 1153, 1155	Hinton Wood Products 2020 Herbicide Program Proposal West Fraser Mills Ltd. Hinton Wood Products FMA8800025 (29 June 2020)	21(1)(a); 21(1)(b); 25(1)(c)(iii)

[para 7] In its request for Inquiry, the Applicant states that the issue for inquiry is "of public importance regarding the Government of Alberta's withholding of information regarding the performance of its constitutional obligations towards First Nations and Indigenous Peoples."

[para 8] The Public Body argues:

> Section 21(1)(a) is a discretionary exception designed to protect information that would harm relations between the province and other levels of government or the intergovernmental supply of information. As such, the Public Body must carefully consider the potential harm of public release of certain types of information under a general FOIP Act request.
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> This exception has two parts: section 21(1)(a) addresses harm to intergovernmental relations, and section 21(1)(b) relates to information given in confidence.
>
> Section 21(1)(a) allows a Public Body to refuse to disclose or withhold information if public disclosure could reasonably be expected to harm relations between the Government of Alberta or its agencies and a government listed in 21(1)(a).
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> Section 21(1)(b) requires a Public Body to refuse to disclose or withhold information if public disclosure could reasonably be expected to reveal information supplied explicitly or implicitly in confidence by a government, local government body or one of the organizations listed in section 21(1)(a) or its agencies, which includes an aboriginal organization that exercises government functions, when consent to release has not been obtained.
>
> The records at issue contain information related to project proponents' general

development plans, vegetation management plans, and consultations with aboriginal communities regarding the application of herbicides on Treaty lands.

Consultation records and logs related to aboriginal organizations contain information that is shared on a confidential basis. This is highly sensitive information, which includes traditional knowledge and placename data. Disclosing any site-specific concerns from aboriginal communities would infringe on their traditional rights.

Section 21(1)(a)(ii) applies to the information as they contain details specific to confidential consultations with Metis Settlements, which are identified as local government bodies. Also, sections 21(1)(a)(iii)(A)(B) apply as the records contain confidential consultation details with the council of a band and aboriginal organizations that are established to negotiate on behalf of aboriginal people. If this confidential information were disclosed, it would harm relations between the Government of Alberta and those organizations exercising government functions and damage the intergovernmental supply of information by negatively impacting future engagement processes.

In addition, section 21(1)(b) applies to the information as the responses, feedback and information collected in the records was supplied in implicit or explicit confidence by an aboriginal organization through the consultation process with the third parties.

The Public Body consulted with the project proponents on the disclosure of all the records at issue. Some of the project proponents indicated that their records contain information shared by aboriginal organizations on a confidential basis. As one third party explained, "…it is clear from the contextual factors that the Records are replete with third party information supplied in confidence …The facts and circumstances of the Records are apparent. [Name] and the private third parties with whom [Name] does business or consults supplied to AF in confidence their closely-held trade secrets, First Nations' cultural and other information as part of the consultation process…"

Another third-party proponent identified that disclosure of site-specific information would harm traditional rights of First Nations, explaining that the disclosure of "…any site specific concerns from First Nations would infringe on their traditional rights…".

Further, another third-party proponent stated how the consultation information was submitted to them with an expectation of confidence:

> "The Public Consultation Information and the Personal Information was supplied to AF on a confidential basis. Such information includes non-publicized reports of private consultations with stakeholders about proposed herbicide activities…. Such information was in each case imparted on [Name] with a reasonable expectation of confidence and [Name] reported on such consultations to AF with the same expectation."

Pursuant to section 21(3), there has been no consent from the government, local government body or organization that supplied the information to disclose this information. The records at issue contain highly sensitive traditional information and knowledge related to aboriginal communities including placename data which was shared with the project proponent on a confidential basis. The disclosure of this information would be certain to harm the relationship between the aboriginal organizations and the Government of Alberta.

The Delegated Decision Maker (DDM) exercised their discretion properly when they

> reviewed all the information above as they considered their decision to withhold. The DDM agreed with the entities that were consulted that 21(1)(a) was appropriately applied. The DDM decided that releasing information would harm relations between the Government of Alberta and all the aboriginal communities that took part in these consultations. The DDM additionally approved the severing of information that was provided in confidence under section 21(1)(b).

[para 9] The Public Body takes the position that some of the information it severed from the records would harm governmental relations between itself and two band councils should it be disclosed. Further, it argues that section 21(1)(b) applies to information supplied by a third-party organization to the Public Body where it relates to the views of a band council.

[para 10] The Applicant argues:

> The Public Body withheld almost all information pertaining to First Nations and Indigenous communities from the release, claiming exceptions under sections 21(1) (disclosure harmful to intergovernmental relations) and 25(1) (disclosure harmful to economic and other interests of a public body).
>
> The Public Body improperly applied section 21(1) (disclosure harmful to intergovernmental relations). The release of the withheld information does not give rise to a reasonable expectation of harm to intergovernmental relations. In fact, it is the Public Body's failure to be transparent about how it is consulting and accommodating First Nations' concerns about herbicides – which pose serious threats to members' health and ability to exercise their constitutional rights to hunt, trap, fish and gather in a healthy environment – that poses a significant risk of harm to Crown-Indigenous relations. There is no indication that the Public Body consulted Indigenous bodies about whether the information should be released and whether it contained confidential information, as it was required to.

[para 11] In its reply submissions, the Public Body states:

> As noted in the Public Body's initial submissions, the Public Body consulted with project proponents. This included consultation with two First Nations about the potential disclosure of their information. A First Nation was consulted on the disclosure of their records/information on pages 442-446. They objected to the disclosure of the letter and requested that it be withheld in its entirety.
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> Another First Nation was consulted on the disclosure of their records/information on pages 271-272 and 439-441. The First Nation did not object to the release of the information. However, the Public Body maintains that section 21(1)(a) still applies as the Public Body is concerned for its relationship to these First Nations and local government bodies as a whole and must consider how the sharing of information with the public body could be negatively affected by the release of portions of this information. The relationship and trust built between the Public Body and the First Nations or local government bodies must be preserved, and the head of the Public Body chose to weigh in favour of preserving that relationship.

[para 12] In *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner),* 2014 SCC 31 the Supreme Court of Canada interpreted the phrase "could reasonably be expected to", which is used in section 21(1)(a). In that case, the Court said:

> [53] …Given that the statutory tests are expressed in identical language in provincial and federal access to information statutes, it is preferable to have only one further elaboration of that language; *Merck Frosst*, at para. 195:
>
> > I am not persuaded that we should change the way this test has been expressed by the Federal Courts for such an extended period of time. Such a change would also affect other provisions because similar language to that in s. 20(1)(*c*) is employed in several other exemptions under the Act, including those relating to federal-provincial affairs (s. 14), international affairs and defence (s. 15), law enforcement and investigations (s. 16), safety of individuals (s. 17), and economic interests of Canada (s. 18). In addition, as the respondent points out, the "reasonable expectation of probable harm" test has been followed with respect to a number of similarly worded provincial access to information statutes. Accordingly, the legislative interpretation of this expression is of importance both to the application of many exemptions in the federal Act and to similarly worded provisions in various provincial statutes. [Emphasis added.]
>
> [54] This Court in *Merck Frosst* adopted the "reasonable expectation of probable harm" formulation and it should be used wherever the "could reasonably be expected to" language is used in access to information statutes. As the Court in *Merck Frosst* emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach that middle ground: paras. 197 and 199. This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and "inherent probabilities or improbabilities or the seriousness of the allegations or consequences": *Merck Frosst*, at para. 94, citing *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41, at para. 40.

[para 13] From the foregoing, I understand that a public body must establish it has a reasonable expectation of probable harm arising from disclosure of information. With regard to section 21(1)(a), the Public Body must establish a reasonable likelihood of probable harm to governmental relations with the band councils referenced in the records at issue if the information it has withheld is disclosed.

[para 14] In Order F2022-20, the Adjudicator said:

> [para 35] …it is not enough for the Public Body to raise the possibility that harm would result to intergovernmental relations; rather, the Public Body must explain why there is a reasonable likelihood that its intergovernmental relations [with other government bodies will be harmed by the disclosure of information.] It need not prove that harm will result; only [that] there is a reasonable likelihood of probable harm.

I agree with the foregoing analysis.

[para 15] Section 21(1)(b) applies to information supplied in confidence. As stated in Order 2001-037, and later upheld by the Court of Queen's Bench in *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2012 ABQB 595, there are four criteria used to determine whether section 21(1)(b) has been applied correctly:

a) the information must be supplied by a government, local government body or an organization listed in clause (a) or its agencies;

b) the information must be supplied explicitly or implicitly in confidence;

c) the disclosure of the information must reasonably be expected to reveal the information; and

d) the information must have been in existence in a record for less than 15 years.

[para 16] I will now undertake a page-by-page review of the records from which the Public Body severed information under section 21(1)(a) and (b) to determine whether it has established that it is authorized to refuse access under these provisions.

Page 208

[para 17] Page 208 is a letter written by the Public Body to two third-party organizations. It contains a table of numbers to which the Public Body applied both section 21(1)(a) and (b). The Public Body refers to the numbers it severed as "planning units".

[para 18] As it was unclear from its submissions what "planning units" are or how disclosure of these numbers could have any effect on governmental relations, on May 6, 2025, I asked the Public Body to explain the significance of the planning units contained in the table on page 208. The Public Body replied as follows:

> Planning units are areas defined by companies that have specific objectives tied to them. Planning units can be defined at a coarse Forest Management Plan level and go by multiple names including compartments or working circles; or they can be defined at a more refined level such as a General Development Plan or Annual Operating Plan to highlight specific areas having specific forest activities.
>
> For example, a planning unit may be linked to the Sub-Regional Plans and identify caribou areas that have activity timing or harvesting restrictions, or it may be linked to watersheds with activities planned to preserve or protect watersheds. At an Annual Operating Plan level, a planning unit may differentiate different types of harvesting activities that require special attention. For example, a company may be planning a conventional harvest activity in one area and an experimental harvesting activity in another area, or there may be fish and wildlife restrictions that limit access or have timing constraints that impact how harvesting must happen in specific areas.
>
> In this particular case, the numbers in the record reference planning units (and a corresponding Planning Unit Map) based on a location identifier of Township, Range, Meridian (Alberta Land Survey/Township System). Each of the planning units in this record is identified as a planning unit for Indigenous Consultation. The planning unit numbers in this record could be cross-referenced with Planning Unit Maps which are produced by the company, potentially allowing someone to locate and exploit a culturally significant site.

[para 19] From the foregoing, I understand that a "planning unit" is an area defined by a company over which members of industry have specific goals and plans. I am unable to say from my review of the record, with the additional explanation provided by the Public Body, that disclosure of the planning unit numbers would have any effect on governmental relations involving the Public Body. If there is a harm to governmental relations that could arise from the numbers that appear in the record, which the Public Body indicates are defined by companies, the Public Body has not stated it for the inquiry and I am unable to draw an inference as to what it might be.

[para 20] As noted above, the Public Body also applied section 21(1)(b) to the information in the record 208. The record was created by the Public Body and sent to two lumber companies. The numbers severed from the record are reportedly defined by the industry, and were not supplied by an entity listed in clause (a) of section 21, such as a band council.

[para 21] For the reasons above, I find that section 21 does not apply to the information severed from record 208.

Pages 271-272

[para 22] Records 271-272 contain a letter from a band council to a third-party organization or "project proponent". The Public Body refused access to the entire letter. The Public Body severed the information under both section 21(1)(a) and 21(1)(b).

[para 23] This letter contains the band council's position regarding the third-party organization's proposal. It appears that the third-party organization then shared this information with the Public Body as evidence of its consultation with the band council. The Public Body severed the reference to the band council's position from the records as it is the Public Body's understanding that the band supplied the information in confidence.

[para 24] In arriving at its conclusion that the letter from the band council was confidential, the Public Body spoke with "project proponents", which I understand to be the third-party organizations whose project involves applying herbicide but also to include two bands whose views regarding the project are contained in the records. While the term "proponent" typically refers to a party advocating in favor of a project, I will accept the Public Body's explanation that it uses this term to include parties that are not in favor of a project.

[para 25] The Public Body provided no direct evidence regarding the position of the band's as to whether the information in the records was supplied in confidence. It does not provide the names of the bands with whom it consulted. It appears to have based its decision on the basis that it asked the position of two bands on disclosure. One authorized disclosure and the other did not.

[para 26] While section 21(3) authorizes disclosure subject to section 21(1)(b) with the consent of the entity in question, it does not follow that the terms of section 21(1)(b) are met if an entity set out in clause 21(1)(a) does not consent. As noted above, section 21(1)(b) applies

only to information supplied in confidence. If information was not supplied to a public body in confidence by an entity listed in section 21(1)(a), then section 21(1)(b) cannot apply.

[para 27] According to the Public Body's submissions, the band council that sent record 272 to a third-party organization consented to its disclosure when asked by the Public Body. Despite this, the Public Body argues that section 21 requires it to withhold this record:

> Another First Nation was consulted on the disclosure of their records/information on pages 271-272 and 439-441. The First Nation did not object to the release of the information. However, the Public Body maintains that section 21(1)(a) still applies as the Public Body is concerned for its relationship to these First Nations and local government bodies as a whole and must consider how the sharing of information with the public body could be negatively affected by the release of portions of this information. The relationship and trust built between the Public Body and the First Nations or local government bodies must be preserved, and the head of the Public Body chose to weigh in favour of preserving that relationship.

[para 28] I am unable to say from my review of the severed information in this record that disclosure of the information severed from the record could reasonably be anticipated to result in probable harm to relations between the Public Body and the band council.

[para 29] The Public Body's submissions appear to anticipate that harm to governmental relations will result from disclosure because it has not received consent from a band council to disclose the information. It also puts forward the position that information regarding the band council's views regarding the application of herbicide are confidential. As the Public Body's own evidence suggests, the band council is aware of the contents of the letter, as the letter was written on its behalf. Moreover, it has no objection to disclosure of the letter. It is unclear how disclosure of the letter to the Applicant could be reasonably expected to harm the relations of the Public Body with the band council that wrote the letter.

[para 30] The Public Body's views as to confidentiality do not appear to take into account the fact that the third-party organization that received the letter from the band council then provided it to the Public Body. If the information was understood to be confidential – that is, between the band council and the third-party organization, disclosing the letter to the Public Body requires an explanation that does not appear in the records or the Public Body's submissions. Moreover, the letter itself contains no indication that it was not to be shared or was intended to be confidential.

[para 31] I find that the Public Body has not established that either section 21(1)(a) or (b) applies to the information severed from records 271 – 272.

Record 399

[para 32] Record 399 documents the extent to which a third-party organization consulted with band councils regarding its intended application of herbicides. The Public Body applied sections 21(1)(a) and (b) to the names of the bands with whom the third-party organization consulted.

[para 33] The Applicant argues in relation to this record:

> Further, in at least one case, the Vegetation Management Plan from which the Public Body redacted information had been previously distributed to other parties, presumably in unredacted form. The Canfor 2015-2020 Vegetation Management Plan, from which the Public Body redacted all reference to First Nations, had been previously distributed to three other forestry companies with no indication that the contents were intended to be confidential.

[para 34] I am unable to draw an inference that there is any likelihood that governmental relations between the Public Body and a band council could be harmed by disclosure of the names of the bands with whom the third-party organization consulted. Moreover, there is no satisfactory evidence before me to support finding that the names of the bands involved in the consultation were intended to be held in confidence.

[para 35] In *British Columbia (Energy, Mines & Petroleum Resources) (Re)*, Order F20-20, 2020 BCIPC 23 at para 110 the adjudicator states:

> [110] Finally, I am not satisfied that s. 16(1)(a)(iii) applies to information identifying First Nations who have been consulted. It is not clear to me how any of the Ministry's arguments, set out in paragraphs 104 and 105 above, apply to this information. In particular, I do not see how this information, if disclosed, could cause strife between aboriginal governments. On the whole, I am not satisfied that this information, if disclosed, could reasonably be expected to harm the conduct of the Ministry's relations with an aboriginal government.

[para 36] I agree with the BCIPC adjudicator and her determination that section 16 of their statute, which is similarly worded as section 21(1) of the Alberta statute, does not necessarily apply just because it relates to First Nations who are being consulted. The Public Body must explain the harm that may be probable and the discord it may sow in intergovernmental relations.

[para 37] I find that neither section 21(1)(a) nor (b) authorizes withholding information from record 399.

Record 439

[para 38] Record 439 contains an email from one third-party organization to a representative of band council regarding the consultations to be undertaken and the position of the band regarding the application of herbicide. The Public Body severed this information under both section 21(1)(a) and (b). The band council is the same band council that wrote the letter that is contained on record 272-272 and agreed that its views could be disclosed.

[para 39] I am unable to infer that there would be a reasonable likelihood of probable harm to the relations between the Public Body and a band council should the information in the email be disclosed. As a result, I cannot find that section 21(1)(a) applies.

[para 40] There are no indications that the email was intended to be confidential. Moreover, as the Public Body has the email in its custody or control, it appears that the email was to be distributed to some extent. Finally, the band in question has apparently expressed that it has no objection to disclosure of the information. I am unable to find that the email contains information supplied by an entity listed in clause to the Public Body in confidence.

[para 41] For the foregoing reasons, I find the head is not authorized or required to withhold information from this record under section 21 of the FOIP Act.

Records 440 – 441

[para 42] Records 440 – 441 contain a letter written by the same band council on whose behalf records 271 – 272 were written. This letter is written to a third-party organization. The Public Body has severed the entire record on the basis of section 21(1)(a) and (b).

[para 43] As with records 271 – 272, I am unable to find that there would be any harm to the relations of the Public Body and the band council as a result of the disclosure of the information in the record. The band council is aware of the letter it wrote and has no objection to the Public Body disclosing it to the Applicant. Moreover, there are no indications that the band council provided the letter to the Public Body in confidence as section 21(1)(b) requires. Rather, the band council sent the letter to a third-party organization, which is not an entity listed in clause (a). As the letter subsequently came into the custody of the Public Body, it is unclear that the letter was not intended to be distributed beyond the third-party organization.

[para 44] For the foregoing reasons, I find that the head of the Public Body is not authorized to refuse access to records 440 – 441 under section 21 of the FOIP Act.

Records 442 - 443

[para 45] Records 442 – 443 contain a letter sent by a representative of a band council to a third-party organization regarding the band council's position on herbicides. The Public Body applied section 21(a) and (b) to the entirety of the letter. In its reply submissions, the Public Body indicated that this band council did not consent to disclosure of the letter. The Public Body did not provide a copy of its correspondence with the band council or the band council's response. If it spoke with the band council, it did not say what was asked or what was answered.

[para 46] Assuming that the band council does object to the Applicant being given access to the letter, the objection alone does not ground the application of section 21(1)(a) or (b).

[para 47] From my review of the letter written by the band council to the third-party organization, I am unable to infer that disclosure of the information in this record would, in any way, harm the relations of the Public Body and the band council. Both the Public Body and the band council are aware of the contents of the letter and it is unclear how disclosure of the information in the letter could conceivably harm the Public Body's relations with the band council. As the band council did not consent to the Public Body disclosing the information, it may be that the Public Body takes the position that harm to its relations would result from the

disclosure over the objection of the band council. Section 21(1)(a) applies in the situation where disclosure of information could reasonably be expected to result in the harms it contemplates, not disclosure on its own without regard to the information. As a result, the fact that a band council has objected to disclosure does not bring information within the terms of section 21(1)(a).

[para 48] If the information that is to be disclosed cannot reasonably be expected to harm the relations of the Public Body with an entity listed in section 21(1)(a), then the information cannot be withheld under section 21(1)(a), even though the entity listed in section 21(1)(a) has objected to disclosure.

[para 49] I also find that section 21(1)(b) does not apply in this case. The letter at issue was written by band council to a third-party organization, not the Public Body. As a result, the contents of the letter were not supplied in confidence to the Public Body as section 21(1)(b) contemplates. Section 21(1)(b) applies to information supplied to the Government of Alberta or a public body, not to a third-party organization.

[para 50] Finally, from my review of the letter, there is no indication that the author intended the recipient to keep its contents in confidence. As the letter is now in the custody of the Public Body, it appears that further dissemination or disclosure was contemplated.

[para 51] For all these reasons, I find that section 21 does not authorize the head of the Public Body to refuse access to records 442 – 443.

Records 444 – 446

[para 52] Records 444 – 446 contain the response to the letter on records 442 – 443 from the third-party organization. The letter contains references to the letter. It is not an intergovernmental communication and there are no indicia of confidentiality and no evidence has been provided to support the confidential nature of the communication.

[para 53] For the reasons for which I rejected the Public Body's application of section 21 of the FOIP Act to records 442 – 443, I find that section 21 does not apply to records 444 – 446. While I found that section 21(1)(b) does not apply to information supplied by a band council to a third-party organization, I find the same holds true for information supplied by a third-party organization to an entity listed in section 21(1)(a).

[para 54] I find that the head of the Public Body is not authorized to refuse access to information on records 444 – 446 under section 21 of the FOIP Act.

Record 614

[para 55] The Public Body severed the names of First Nations who were to be informed of decisions regarding the application of herbicide in various areas. It is unclear from the Public Body's submissions why it believes the disclosure of the names of the bands in question would harm its relations with First Nations or how such information could possibly be supplied in

confidence. Moreover, there is no clear evidence that an entity listed in clause 21(1)(a) supplied the names to the Public Body, or that this was done in confidence.

[para 56] I find that section 21 does not authorize the head of the Public Body to refuse access to the information on record 614.

Records 1005 and 1014

[para 57] As with record 614, the Public Body withheld the names of First Nations who were to be consulted regarding the application of herbicide in various areas. It also withheld a number from the subject line on record 1014, which is a letter prepared by a third-party organization. I am unable to find that there is any possibility that harm would result to governmental relations should their names be disclosed the Applicant. Further, there is no satisfactory evidence before me that the names of the First Nations were supplied to the Public Body by the First Nations on conditions of confidentiality.

[para 58] I find that the head of the Public Body is not authorized to refuse access to information in records 1005 and 1014 on the basis of confidentiality.

Record 1016

[para 59] Record 1016 contains a chart containing the names of First Nations and their views regarding the proposed use of herbicides. It is unclear from the record who prepared it.

[para 60] I am unable to say on the evidence before me that disclosure of the information severed from the record could harm the relations of the Public Body with any of the First Nations in the record. There is no evidence before me as to the creation of the record or why the Public Body considers the names of First Nations and their views regarding the proposed application of herbicides would be supplied in confidence.

[para 61] For the foregoing reasons, I find that the head of the Public Body is not authorized to refuse access to information in this record under section 21 of the FOIP Act.

Record 1139

[para 62] Like record 1016, record 1139 contains a chart containing the names of First Nations and their views regarding the proposed use of herbicides.

[para 63] For the same reasons that I rejected the head of the Public Body's application of section 21 to record 1016, I reject the application of section 21 to record 1139.

Record 1153

[para 64] Record 1153 appears to be a duplicate of record 1014. For the same reasons that I rejected the head of the Public Body's application of section 21 to record 1014, I reject its application to section 1153.

Record 1155

[para 65] Like records 1016 and 1139, record 1155 contains a chart containing the names of First Nations and their views regarding the proposed use of herbicides.

[para 66] For the same reasons that I rejected the head of the Public Body's application of section 21 to records 1016 and 1139, I reject the application of section 21 to record 1139.

Conclusion

[para 67] To conclude, I find that the head of the Public Body is not authorized under section 21(1)(a) or (b) to refuse access to information in the records.

Issue 2: Is the head of the Public Body authorized to refuse access to information in the records by section 25?

[para 68] Section 25 states in part:

> *25(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the economic interest of a public body or the Government of Alberta or the ability of the Government to manage the economy, including the following information:*
> *[…]*
>
> *(c) information the disclosure of which could reasonably be expected to*
> *[…]*
>
> *(ii) prejudice the competitive position of, or*
>
> *(iii) interfere with contractual or other negotiations of,*
>
> *the Government of Alberta or a public body […]*
>
> *[…]*

[para 69] Section 25(1) recognizes that there is a public interest in withholding information that could reasonably be expected to harm the economic interests of the Government of Alberta or a public body, or the Government of Alberta's ability to manage the economy, if disclosed.

[para 70] In Order 96-016, former Commissioner Clark considered section 25(1)(c), (then section 24(1)(c)). He said:

> The public body claims that section [25(1)] should be interpreted so that the harm to a public body does not have to result directly from disclosing the specific information, but can be "harm at large" or "indirect harm" (my interpretation of the public body's claim). The essence of the public body's argument is this: The information in the record was produced under a contract

> between a division of a public body and an organization independent of government. There was a confidentiality clause in that contract, which restricts publication of the information. Releasing this information under the Act, contrary to the confidentiality clause, will affect AEC's and, consequently, ARC's contracts with this and other organizations, thereby causing harm to both AEC and ARC. Harm will result from cancelled contracts, and from other organizations bypassing AEC and ARC, knowing they are subject to the Act. That harm is quantifiable.
>
> However reasonable the public body's argument sounds, I do not think that section [25(1)] can or should be interpreted as the public body claims. Section [25(1)] focuses on the harm resulting from the disclosure of that specific information. The wording of section [25(1)] implies that it is the specific information itself that must be capable of causing the harm, if that information is disclosed. When I look at the kinds of information listed in section [25(1)(a)-(d)], two things are clear to me: (i) the legislature had very specific kinds of information in mind when it was contemplating what information had the potential to cause harm if disclosed; and (ii) there must be a direct link between disclosure of that specific information and the harm resulting from disclosure; in other words, there must be something in the information itself capable of causing the harm.

[para 71] A public body seeking to withhold information under section 25 must establish a direct link between the disclosure of the specific information it seeks to withhold and a reasonable expectation of harm to the Government of Alberta's or its own economic interests.

[para 72] The head of the Public Body applied section 25(1)(c) to refuse access to the same information to which it applied section 21(1)(a) and (b). I turn now to the question of whether the head is authorized to do so.

Section 25(1)(c)(ii)

[para 73] Section 25(1)(c)(ii) was applied to pages 442-446. As stated in Order F2006-023:

> [para 20] The phrase "prejudice the competitive position" found in section 25(1)(c)(ii) of the Act means that a public body must have a reasonable expectation that disclosure of the information is capable of being used by an existing or potential competitor to reduce the public body's share of the market (Order F2005-009 at para. 56).

[para 74] As already stated these communications do not involve the Public Body and the Public Body has not provided any evidence as to how its competitive advantage would be harmed by the disclosure of these records.

Section 25(1)(c)(iii)

[para 75] The Public Body argues:

> Section 25 is a discretionary exception which may be applied to protect the economic or other interests of a public body and/or the Government of Alberta. Section 25(1)(c)(iii) may apply if disclosure of the records could reasonably be expected to interfere with contractual or other negotiations of the Government of Alberta or a public body. The information that may be withheld under this exception includes information, the disclosure of which could be expected to interfere and negatively impact negotiations between the government and stakeholders.

> As mentioned above, the Public Body consulted with Indigenous Relations on the potential disclosure of the records at issue. Subject matter experts in that Public Body's Aboriginal Consultation Office explained that the consultation process is understood by each community to be confidential; the aboriginal communities only provided their information under explicit confidentiality agreements. Section 25(1)(c)(iii) applies to the information as the disclosure of consultation details could potentially provide unfair advantage to one party over another (i.e., between communities, or between project proponents and communities) and would undermine the Government's position as a neutral party to the consultation process. Withholding this information under 25(1)(c)(iii) protects the economic and other interests of the Government of Alberta's stakeholder relations.
>
> The Delegated Decision Maker (DDM) exercised their discretion properly when they reviewed the information above as they considered their decision to withhold. The DDM agreed with the entities that were consulted that 25(1)(c)(iii) was appropriately applied.
>
> The DDM decided that releasing information would harm the contractual negotiations of all parties by allowing for advantage to one of the parties involved. They also decided that the Government of Alberta needs to maintain [its] neutrality in this process to allow it to properly manage the economy and to limit the risk to the Government of Alberta.

[para 76] I am unable to accept the Public Body's arguments that disclosure of the information it severed from the records would harm its negotiations or give weight to its evidence regarding subject matter experts.

[para 77] It is unclear how the information the Public Body severed under sections 21 and 25 could harm the negotiations of the Public Body as it argues. The information severed in some cases are simply names and numbers. In other cases it is the position of band council regarding the proposed use of herbicide. It is unknown from the Public Body's submissions how disclosing such information could undermine its position in negotiations.

[para 78] Further, it is unclear from its arguments in what negotiations the Public Body is involved. The information it severed from the records are generally communications between third-party organizations and band council as part of a consultation process. The Public Body has not explained its role in this process or explained why its ability to fulfill its role would be affected by the disclosure of the information it severed from the records.

[para 79] The Public Body refers to "subject matter experts" as explaining "that the consultation process is understood by each community to be confidential; the aboriginal communities only provided their information under explicit confidentiality agreements". I do not know from the Public Body's argument who the "subject matter experts are", the source of their expertise, or whether the Public Body showed them the information it intended to sever under section 25. Moreover, I note that I have not been provided evidence, such as procedures or policies, regarding the Public Body's procedures when it conducts consultations. It is unclear from the Public Body's submissions what kinds of information the "subject matter experts" consider to be confidential and whether their opinions apply to correspondence between band councils and third-party organizations before the consultations take place. As one of the bands

whose information appears in the records did not object to disclosure, it is unclear that the bands rely on confidentiality to the extent the Public Body claims.

[para 80] Finally, assuming that consultations with First Nations are confidential, it remains unclear how the Public Body's ability to consult or negotiate would be harmed. As set out in order 96-016, it is the information that is disclosed that must give rise to the harm envisioned, not the fact of disclosure itself. Section 25 contemplates the harm that could result from disclosure of specific types of *information*. It does not apply to information that could not, on its own, result in harm to negotiations.

[para 81] For these reasons, I find that the head of the Public Body has not established that section 25 authorizes the head to refuse access to the information to which the head applied this provision.

[para 82] I will order the head of the Public Body to grant the Applicant access to the information severed under provisions of sections 21 and 25.

IV. ORDER

[para 83] I make this Order under section 72 of the Act.

[para 84] I order the head of the Public Body to give the Applicant access to all the information it severed from the records under sections 21 and 25 of the FOIP Act to the Applicant.

[para 85] I order the Public Body to inform me within 50 days of receiving this order that it has complied with it.

_____

Pam Gill
Adjudicator
/rm