

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER FOIP2025-41

December 9, 2025

ALBERTA ENERGY REGULATOR

Case File Number 026340

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request to the Alberta Energy Regulator (AER or the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) for records relating to a particular AER investigation file. Some of the responsive records contain information about Snubco Pressure Control Ltd. (the Third Party).

The Public Body invited the Third Party to provide input regarding disclosure of the records relating to the Third Party. The Third Party objected the disclosure of specific information in the records. The Public Body informed the Third Party of its decisions regarding access, and the Third Party requested a review by this office of the Public Body's decision to disclose some information.

The Adjudicator found that section 16(1) does not apply to the information at issue and ordered the Public Body to disclose it to the Applicant.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 16, 71, 72, 74

Orders Cited: AB: Orders 99-018, 2000-017, F2004-013, F2010-036 **Ont** Order M-169

Case Cited: AB: *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 (CanLII)

I. BACKGROUND

[para 1] An Applicant made an access request to the Alberta Energy Regulator (AER or the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) for records relating to a particular AER investigation file. Some of the responsive records contain information about Snubco Pressure Control Ltd. (the Third Party).

[para 2] The Public Body responded to the Applicant, providing some records with some information withheld. The Applicant requested a review of that decision by this office. Following that review, the Public Body reconsidered the information it had withheld from the Applicant, and decided to provide the Applicant with additional information, including information about the Third Party. As part of its reconsideration process, the Public Body consulted with the Third Party. The Third Party consented to the disclosure of some information but asked this office to review the Public Body's decision to disclose the information in pages 270 and 272 (duplicated at pages 534 and 535).

[para 3] As a mediation has already been conducted with respect to the access request that led to this matter, the Commissioner decided to conduct an inquiry into the Third Party's request for review.

[para 4] The Applicant that made the access request was invited to participate in the inquiry but did not respond.

[para 5] The Third Party and Public Body were each given an opportunity to make a submission to the inquiry. By email dated November 5, 2025, counsel for the Third Party advised that the Third Party will not be providing a submission to the inquiry. The Third Party had previously provided arguments with its Request for Review form, which were attached to the Notice of Inquiry.

[para 6] The Public Body did not provide arguments for the inquiry. Its submission comprised only a new copy of the records, and copies of letters previously sent to the Third Party regarding its decision to disclose information in the records.

II. RECORDS AT ISSUE

[para 7] The record at issue consists of pages 270, 272, 534 and 535 of the records, in their entirety.

III. ISSUES

[para 8] The Notice of Inquiry, dated September 24, 2025, sets out the following issue:

Does section 16 of the Act (disclosure harmful to business interests of a third party) require the head of the Public Body to refuse access?

IV. DISCUSSION OF ISSUES

[para 9] In *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 (CanLII), 2012 SCC 3 (*Merck Frosst*), the Supreme Court of Canada discussed the balance between a right of access to government information with exceptions that protect a third party's confidential business information. The Court said (at paras. 3-4):

The need for this balance is well illustrated by these appeals. They arise out of requests for information which had been provided to government by a manufacturer as part of the new drug approval process. In order to get approval to market new drugs, innovator pharmaceutical companies, such as the appellant Merck Frosst Canada Ltd. ("Merck"), are required to disclose a great deal of information to the government regulator, the respondent Health Canada, including a lot of material that they, with good reason, do not want to fall into their competitors' hands. But competitors, like everyone else in Canada, are entitled to the disclosure of government information under the *Access to Information Act*, R.S.C. 1985, c. A-1 ("Act" or "ATI").

The Act strikes a careful balance between the sometimes competing objectives of encouraging disclosure and protecting third party interests. While the Act requires government institutions to make broad disclosure of information, it also provides exemptions from disclosure for certain types of third party information, such as trade secrets or information the disclosure of which could cause economic harm to a third party.

[para 10] While the Court was discussing a provision in the federal *Access to Information Act*, this balancing is also applicable to section 16 in Alberta's FOIP Act. The FOIP Act provides a right of access to government information; section 16 ensures that confidential business information of third parties is not disclosed when providing access to government information.

[para 11] Section 16 of the Act reads, in part, as follows:

16(1) The head of a public body must refuse to disclose to an applicant information

- (a) *that would reveal*
 - (i) *trade secrets of a third party, or*
 - (ii) *commercial, financial, labour relations, scientific or technical information of a third party,*
- (b) *that is supplied, explicitly or implicitly, in confidence, and*
- (c) *the disclosure of which could reasonably be expected to*
 - (i) *harm significantly the competitive position or interfere significantly with the negotiating position of the third party,*
 - (ii) *result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,*
 - (iii) *result in undue financial loss or gain to any person or organization, or*
 - ...

[para 12] As this inquiry involves information about a third party, the burden of proof set out in section 71(3) of the Act applies. It reads as follows:

71(3) If the inquiry relates to a decision to give an applicant access to all or part of a record containing information about a third party,

(a) in the case of personal information, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy, and

(b) in any other case, it is up to the third party to prove that the applicant has no right of access to the record or part of the record.

[para 13] Section 16(1) does not apply to personal information, so the Third Party has the burden, under section 71(3)(b), of establishing that the Applicant has no right of access to the records by virtue of section 16(1).

[para 14] Per Order F2004-013, at paragraph 10, for section 16(1) to apply to information, the requirements set out in all three paragraphs of that section must be met:

- Would disclosure of the information reveal trade secrets of a third party or commercial, financial, labour relations, scientific or technical information of a third party under section 16(1)(a)?

- Was the information supplied, explicitly or implicitly, in confidence under section 16(1)(b)?
- Could disclosure of the information reasonably be expected to bring about one of the outcomes set out in section 16(1)(c)?

[para 15] Pages 270 and 272 are each comprised of a compliance certificate relating to a specified piece of equipment. Page 534 consists of a photograph of a paper copy of the certificate appearing on page 270; page 535 is a photograph of a paper copy of the certificate appearing on page 272.

Section 16(1)(a)

[para 16] Section 16(1)(a) sets out the types of information to which this provision can apply.

[para 17] In a letter dated February 17, 2021, from the Third Party to the Public Body explaining the Third Party's objection to the disclosure of certain information, the Third Party said:

Each of these Certificates of Compliance contain an engineering data point relating to our proprietary equipment. They are each like a puzzle piece, and the public disclosure of these pieces would allow a third party competitor to put together a full or fairly complete puzzle without compensation to Snubco for its design work or risk capital. Snubco has no issue with the release of this information to an equipment purchaser for value, but the disclosure of information to parties that have not provided value to Snubco would certainly be a direct loss to Snubco.

[para 18] In a November 19, 2019 letter from the Third Party to the Public Body, the Third Party said:

These pages are "Certificate of Compliance" issued by Snubco Manufacturing on the design of the Snubco Tension Snubbing Slip Bowl. This is compiled from years of practice, meetings, design, drafting knowledge, engineering, countless man-hours of in-house welding and testing. Snubco's confidential property. These information pages are proprietary, deemed a trade secret, and have technical information that is not for public knowledge.

[para 19] In a June 22, 2022 email from counsel for the Third Party to the Public Body, counsel specified that the Third Party is primarily concerned about a specific number in the certificates that indicate a weight capacity for the equipment, stating "that is the kind of information that Snubco usually sells to customers (because you can reverse engineer things from those numbers)."

[para 20] Counsel further stated:

I have no idea if this is possible even, but we were able to blot out that number and [a Third Party employee's] name, then I suspect the release of those documents would be no big deal for Snubco.

[para 21] All of the above correspondence was provided by the Third Party to this office in support of its request for review.

[para 22] The Third Party's arguments indicate that it considers the information at issue to be trade secrets, or technical information.

[para 23] With respect to whether the information is properly characterized as a trade secret, section 1(s) defines "trade secret" for the purposes of the FOIP Act. This provision states:

1 In this Act,

...

(s) "trade secret" means information, including a formula, pattern, compilation, program, device, product, method, technique or process

(i) that is used, or may be used, in business or for any commercial purpose,

(ii) that derives independent economic value, actual or potential, from not being generally known to anyone who can obtain economic value from its disclosure or use,

(iii) that is the subject of reasonable efforts to prevent it from becoming generally known, and

(iv) the disclosure of which would result in significant harm or undue financial loss or gain.

[para 24] The Third Party has not referred to the definition for 'trade secret' in section 1 of the FOIP Act, and has not explained how it is met in this case. The Third Party's arguments to the Public Body state that the compliance certificates "contain an engineering data point relating to our proprietary equipment"; presumably the information referred to here is information in the certificates that indicates the capacity (or capacity limit) of the equipment. It is not clear how such information could meet the definition for "trade secret". I find it does not.

[para 25] The Third Party also characterized the information as technical information. "Scientific" and "technical" information have been defined in Order 2000-017, as follows:

"Scientific information" is information exhibiting the principles or methods of science, and "technical information" is information relating to a particular subject, craft or technique.

[para 26] In Order F2010-036 the Adjudicator said the following regarding the meaning of “technical information” (at paras. 13-18):

In Order F2008-018, I considered the meaning of "technical information" for the purposes of section 16(1)(a). I said:

In my view, technical information includes information falling under the category of applied sciences or mechanical arts, and includes such topics as construction, operation or maintenance of a structure, process, equipment or thing. I find that Records 1 - 9, 25 - 27, 36 - 41, 45 - 76, 95, and 121 - 122 do not contain technical information. Consequently, these records cannot be withheld on the basis that they contain technical information under section 16. However, I find that the remaining records contain technical information as it falls under the category of mechanical arts and addresses the operation and maintenance of equipment.

In Order F2002-002, as the Public Body notes, the Adjudicator considered information to be technical if it relates to particular subjects, crafts or professions that are based on a specific technique or approach.

In Order P-454, the Assistant Commissioner of the Office of the Information and Privacy Commissioner of Ontario considered the meaning of "technical information" within the context of Ontario's equivalent of section 16. He said:

In my view, technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. While, admittedly, it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information which also appears in section 17(1)(a) of the Act.

The *Canadian Oxford Dictionary* offers the following definitions of the word "technical": "1. of or involving the mechanical arts and applied sciences 2. of or relating to a particular subject or craft." Previous decisions of this office differ from one another to a certain extent, given that Order F2008-018 considers technical information to refer to information relating to fields of applied sciences or mechanical arts, while Order F2002-002 holds information to be technical for the purposes of section 16(1)(a) provided it relates to particular subjects or crafts.

As I found in Order F2008-018, "technical information" includes information belonging to a third party that falls under the general category of applied sciences or mechanical arts. "Technical" is paired grammatically with "scientific" in section 16(1)(a), which is consistent with the notion that the two terms are intended to complement one another. "Scientific" information would then to information relating to information belonging to a third party regarding natural or physical sciences, such as proprietary formulas, as an example, while technical information is information belonging to a third party regarding the applied sciences, such as proprietary designs, methods, and technology.

Defining "technical" for the purposes of section 16(1)(a) as referring to information "relating to a particular subject or craft" is consistent with the idea that technical information is information belonging to a third party that has to do with applied sciences and mechanical arts. Technical information, in essence, is information about such things as specialized designs, methods, and technology.

[para 27] The information in the certificates that sets out the capacity or capacity limit of the Third Party's equipment is a technical specification; I accept that this can be characterized as technical information within the terms of section 16(1)(a).

[para 28] However, the remainder of the information in the certificates does not set out any specification, design, methodology, or other information that could be characterized as technical information. While the Third Party's arguments indicate that other technical information can be "reverse engineered" from the capacity/capacity limit data, the Third Party has not said what other technical information could be inferred or how. From my review of the records, I cannot see how other technical information could be inferred from the minimal information in the certificates. Therefore, I find that the remainder of the information in the records is not information falling within the scope of section 16(1)(a) and therefore cannot be withheld.

[para 29] I will consider only whether the information regarding the equipment capacity satisfies the remaining requirements for section 16(1).

Section 16(1)(b)

[para 30] In order for section 16(1)(b) to apply, the information must be supplied by the third party to the public body, explicitly or implicitly in confidence, or reveal information that was supplied in confidence.

[para 31] The factors for determining whether the information was supplied in confidence were set out by former Commissioner Clark at paragraph 37 in Order 99-018, citing Ontario Order M-169, as follows:

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

- (1) Communicated to the institution on the basis that it was confidential and that it was to be kept confidential.
- (2) Treated consistently in a manner that indicates a concern for its protection from disclosure by the Third Party prior to being communicated to the government organization.

(3) Not otherwise disclosed or available from sources to which the public has access.

(4) Prepared for a purpose which would not entail disclosure.

[para 32] As stated by the Public Body in its October 21, 2019 correspondence to the Third Party (provided to this office by the Third Party):

In the absence of explicit statements of confidentiality there should be evidence that the information has been consistently treated in a confidential manner.

[para 33] The Third Party has referred to the information in the certificates as “confidential”, but has not provided any explanation as to how the certificates were provided to the Public Body in confidence, which is the test to for section 16(1)(b) to be met. I do not have information about the context in which these certificates were provided to the Public Body by the Third Party. There is no indication in the records themselves, or any of the other information before me that they were provided to the Public Body in confidence.

[para 34] The Third Party’s arguments provided to the Public Body indicate that the Third Party regularly provides this information to customers who purchase the Third Party’s equipment. This is presumably so that customers will use the equipment safely within its stated capacity.

[para 35] The Third Party did not indicate whether or how it requires its customers to keep this information confidential. For example, the Third Party has not told me whether there are industry practices regarding compliance certificates such that there would be an implicit understanding that this information is provided in confidence. Nor has the Third Party shown any express statement of confidentiality.

[para 36] Without anything to support the claim that this information was provided to the Public Body in confidence, I cannot conclude that it was.

[para 37] I find that the information about equipment capacity appearing in the records does not meet the requirements of section 16(1)(b).

Conclusion regarding section 16(1)

[para 38] As stated above, in order for section 16(1) to require a Public Body to withhold information from an applicant, all three parts of section 16(1) must be met.

[para 39] I have found that most of the information is not the type of information set out in section 16(1)(a); therefore, that information cannot be withheld under section 16(1).

[para 40] With respect to the information I have found is technical information, I have found that it does not meet the requirements set out in section 16(1)(b).

[para 41] Therefore, none of the information in the records at issue is information to which section 16(1) applies. I will order the Public Body to disclose this information to the Applicant.

V. ORDER

[para 42] I make this Order under section 72 of the Act.

[para 43] I find that section 16(1) of the Act does not apply to the information in pages 270, 272, 534, and 535 of the records.

[para 44] I order the Public Body to disclose this information to the Applicant. Sections 74(1), (2), and (3) of the Act set out the timelines for compliance, which is not before the 45-day period to bring a judicial review has passed, and not later than 50 days after receiving a copy of the Order.

[para 45] I further order the Public Body to notify me in writing, not later than 50 days after receiving a copy of this Order, that it has complied with the Order.

Amanda Swanek
Adjudicator