ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER ATIA2026-07

February 5, 2026

COMMUNICATIONS AND PUBLIC ENGAGEMENT

Case File Number 040644

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request to Communications and Public Engagement (the Public Body) under the *Access to Information Act* (ATIA) for the following:

> […] copies of responses from the public (or summary data thereof) in response to questions 6 and 7 to the Alberta Next panel survey on an Alberta pension plan. Only include responses to questions where option 'E' reading 'Other/none of the above' was available for selection. Q6 = What potential benefit do you like most about Alberta opting to leave the CPP and create its own pension plan? Q7=Which risk of opting out of CPP to start an Alberta Pension Plan are you most concerned about?

The Public Body located responsive records but refused access to the records in their entirety under section 29(1)(g) of ATIA (advice from officials).

The Adjudicator found that none of the information to which the Public Body had applied section 29(1)(g) of ATIA met the terms of this provision. She ordered the Public Body to give the Applicant access to the information it had severed under section 29(1)(g) of ATIA.

Statutes Cited: AB: *Access to Information Act*, S.A. 2024, c. A-1.4, ss. 29, 64; *Freedom of Information and Protection of Privacy Act,* R.S.A. 2000, c. F-25, s. 24

Authorities Cited: AB: Order F2005-004, F2008-008

Cases Cited: *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII)

I. BACKGROUND

[para 1] The Applicant made an access request to Communications and Public Engagement (the Public Body) under the *Access to Information Act* (ATIA) for the following:

> […] copies of responses from the public (or summary data thereof) in response to questions 6 and 7 to the Alberta Next panel survey on an Alberta pension plan. Only include responses to questions where option 'E' reading 'Other/none of the above' was available for selection. Q6 = What potential benefit do you like most about Alberta opting to leave the CPP and create its own pension plan? Q7=Which risk of opting out of CPP to start an Alberta Pension Plan are you most concerned about?

[para 2] The Public Body located responsive records but refused access to the records in their entirety under section 29(1)(g) of ATIA (advice from officials). The Public Body stated:

> Communications and Public Engagement has decided to refuse access to all the records you requested. The records contain some information that was withheld from disclosure in accordance with sections 20(1) [Disclosure harmful to personal privacy] and Section 29 (Advice from Officials) of the ATI Act, specifically, Section 29(1)(g)– "Information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision".

[para 3] The Applicant requested review of the Public Body's decision to refuse access to the records under section 29(1)(g). The Commissioner agreed to conduct an inquiry and delegated the authority to conduct it to me.

II. RECORDS AT ISSUE

[para 4] Responses from the public to questions 6 and 7 to the Alberta Next panel survey on an Alberta Pension Plan are at issue.

III. ISSUE

Is the head of the Public Body authorized to refuse access to information under section 29(1)(g)?

[para 5] Section 29(1)(g) of the ATIA authorizes the head of a public body to refuse access to information that could reasonably be expected to reveal information that could result in disclosure of a pending policy or budgetary decision:

> *29(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal*

> *(g) information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision […]*

If information would serve to disclose a pending policy or budgetary decision if it is disclosed, then a public body may refuse access to the information under section 29(1)(g) of ATIA. It is not enough that a record contain information; section 29(1)(g) requires that disclosing the information could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

[para 6] In *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII), the Supreme Court of Canada confirmed that when access and privacy statutes refer to reasonable expectations of harm, a party seeking to rely on the exception must demonstrate that disclosure will result in a risk of harm that is beyond the merely possible or speculative. The Court stated:

> It is important to bear in mind that these phrases are simply attempts to explain or elaborate on identical statutory language. The provincial appellate courts that have not adopted the "reasonable expectation of probable harm" formulation were concerned that it suggested that the harm needed to be probable: see, e.g., Worker Advisor, at paras. 24-25; Chesal v. Nova Scotia (Attorney General), 2003 NSCA 124 (CanLII), 219 N.S.R. (2d) 139, at para. 37. As this Court affirmed in Merck Frosst, the word "probable" in this formulation must be understood in the context of the rest of the phrase: there need be only a "reasonable expectation" of probable harm. The "reasonable expectation of probable harm" formulation simply "captures the need to demonstrate that disclosure will result in a risk of harm that is well beyond the merely possible or speculative, but also that it need not be proved on the balance of probabilities that disclosure will in fact result in such harm": para. 206.
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> Understood in this way, there is no practical difference in the standard described by the two reformulations of or elaborations on the statutory test. 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:
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> 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 in original.]
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> 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 (CanLII), [2008] 3 S.C.R. 41, at para. 40.

[para 7] Section 29(1)(g) employs the phrase "could reasonably be expected to". Accordingly, the onus is on the Public Body in this inquiry to establish that its expectation that disclosure of the information in the records could result in disclosure of a pending policy or budgetary decision reflects a probability and is more than mere speculation.

[para 8] The Public Body states:

> Section 29(1)(g) of the Access to Information Act provides that the head of a public body may refuse to disclose information if disclosure could reasonably be expected to reveal information, including proposed plans, policies, or projects of a public body, where disclosure could reasonably be expected to result in the disclosure of a pending policy or budgetary decision.
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> Section 29(1)(g) creates a discretionary exception intended to protect a public body's ongoing decision-making process. Its purpose is to prevent premature disclosure of information that could reveal the substance or direction of a policy or budgetary decision that has not yet been made. This protection allows public bodies to consider options, gather input, and deliberate without external pressure, confusion, or interference before a decision is finalized.
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> The Commissioner has previously upheld the application of this provision where disclosure would reveal a pending decision. In Order F2005-004, the Commissioner confirmed that section [section 24(1)(g) of the FOIP Act] may be relied upon to withhold information connected to an unresolved policy decision, where disclosure would expose the direction or substance of that decision.
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> By contrast, in Order F2008-008, the Adjudicator found that survey results collected by a public body did not, on their face, reveal a pending policy or budgetary decision. Although the survey results could be used to inform future decisions, the Adjudicator concluded that the information did not disclose any actual decision that had been made or was pending. The Adjudicator emphasized that the purpose of the provision is to protect a specific decision under consideration, rather than any number of possible decisions that might eventually arise from background information.
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> In the present matter, the Public Body applied section 29(1)(g) to withhold survey responses submitted by members of the public in connection with the Alberta Next Panel Survey. The Alberta Next Panel was established to engage Albertans and experts and to make recommendations to the Government of Alberta regarding potential actions to enhance Alberta's sovereignty within a united Canada. As part of this mandate, the Panel launched surveys on six topic areas and created a public submission portal to gather feedback for consideration.
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> The survey responses were intended to inform initial policy ideas, support internal deliberations, and assist in developing recommendations to government. The information collected was also intended to inform questions that may form part of a proposed provincial referendum in 2026.
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> At the time the Applicant submitted their access request, the public submission portal remained open and responses had been collected for only one day. The Public Body determined

> that disclosure of incomplete survey responses at that stage could reasonably be expected to cause confusion and influence or prejudice further public submissions. There was a reasonable concern that early disclosure could distort the integrity of the consultation process, undermine the accuracy of the feedback received, and affect the recommendations and decisions ultimately made by government. In these circumstances, the Public Body relied on section 29(1)(g) to protect the integrity of the ongoing policy development process.
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> Since that time, the Alberta Next Panel surveys closed on October 31, 2025. The Panel has now completed its review of the submissions and has provided a summary report containing its recommendations regarding proposed plans or projects for 2026. As a result, the circumstances that supported the original application of section 29(1)(g) may have changed. In light of these developments, the Public Body proposes to reprocess the Applicant's access request in order to reconsider the continued application of section 29(1)(g) to the records.

[para 9] The Applicant has not yet made submissions for the inquiry: however, after reviewing the Public Body's submissions, I have decided that I do not need to hear from the Applicant. Moreover, I have the benefit of the Applicant's submissions in relation to related inquiry case files 040192, 040193, 040194, and 040377, which also address the Public Body's application of section 29(1)(g) to public responses.

[para 10] As noted in the background above, the requested information consists of public responses to questions regarding a proposed Alberta pension plan.

[para 11] At the time of the consultation, members of the public did not know what the Public Body was going to decide. As a result, disclosing the views of members of the public cannot reasonably be expected to disclose a pending policy decision. Moreover, the opinions in the records differ on many key points so it is not possible to point to an opinion and argue that it discloses a pending policy decision. Finally, it is the role of Government to make policy and budgetary decisions, not members of the public.

[para 12] There is absolutely no information before me as to how the individual views of members of the public who completed the survey contributed to any pending policy or budgetary decisions, or what such decisions were. I am unable to find that the information severed by the Public Body would reveal a pending policy or budget decision if disclosed.

[para 13] I note that that Public Body now takes the position that the records would no longer reveal a pending policy or budgetary decision if disclosed. I believe this is because the decision to which the Public Body refers is no longer pending. Regardless, the information severed by the Public Body is not the kind of information to which section 29(1)(g) can apply. This is so whether a policy or budgetary decision related to an Alberta pension plan is pending or not. As discussed above, section 29(1)(g) applies to information that would serve the purpose of disclosing a pending policy or budgetary decision, not to any information that could possibly have been used to make such a decision.

[para 14] The Public Body misstated the purpose of section 29(1)(g) in its arguments. While the Public Body argues that this provision enables public bodies to consider options, gather input, and deliberate without external pressure, confusion, or interference before a decision is made, that is not what section 29(1)(g) does. Section 29(1)(g) permits a public body to refuse access to information that would reveal a pending policy or budgetary decision, not

information used to make such a decision that would not reveal the pending decision itself. A "pending decision" is one that has been made but not announced or implemented.

[para 15] I note that the Public Body refers to Order F2005-004 as supporting its position. In that case, the Commissioner agreed that information severed by a public body would reveal a pending policy decision. In that case former Commissioner Work did not suggest that information simply used to develop a pending policy could be withheld under section 24(1)(g) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). In Order F2005-004, former Commissioner Work said at paragraph 29:

> The Public Body identified section 24(1)(g) of the Act as applying because these pages address proposed plans. I examined the records. I find that they address a pending policy decision and address establishing the scope of the project and securing resources to facilitate and guide the development of regulations. The records meet the criteria found in section 24(1)(g) of the Act. I further find that the Public Body properly exercised its discretion in withholding pages 000011 and 000013 of the records as the proposed plans factor significantly in the decision-making process. Therefore, I find that the Public Body properly applied section 24(1)(g) of the Act to pages 000011 and 000013 of the records.

[para 16] In the foregoing case, former Commissioner Work found that the records referenced a pending policy decision; as a consequence, disclosing the information in the record would disclose a pending policy decision. In the case before me, the information in the records does not disclose or refer to a pending policy decision.

[para 17] Section 29(1)(g) applies to ensure that information about a pending policy or budgetary decision may be withheld to allow the pending decision to be introduced without interference or reconsidered; it does not apply to any information that may have been used to make the decision but does not reveal the substance of the pending decision.

[para 18] I draw support for this conclusion from Order F2008-008 at paragraph 56, where the Adjudicator said:

> Section 24(1)(g) of the Act gives a public body the discretion to withhold "information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision." Again, the Public Body does not fully explain why this section applies to the information gathered during the telephone surveys. It only refers vaguely to "employment standards programs and services" and "education and enforcement activities", submitting that the survey results would disclose "pending policy decisions".
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> Although the survey results might provide background information for future policy or budgetary decision decisions, I do not find that they reveal any actual decision. In other words, the information gathered during the surveys might be used to support a variety of legislative and policy changes. In referring to a decision that is *pending*, I believe that the intent of section 24(1)(g) of the Act is to protect a decision that has already been made – and not merely any number of possible decisions. In other words, there is no actual decision that is revealed on the face of the survey results. Moreover, as in the context of section 24(1)(d) discussed above, the Public Body has shown me no particular policy or budgetary decision that it is trying to protect from disclosure (again, it could have elaborated *in camera* if necessary).

> I accordingly find that the Public Body has not established that section 24(1)(g) of the Act (a pending policy or budgetary decision) applies to the information at issue. The Public Body has not met its burden, under section 71(1), of proving that the Applicant has no right of access. It therefore had no discretion to withhold the information in reliance on section 24(1)(g).

In the foregoing case, Adjudicator Raaflaub held that section 24(1)(g) of the FOIP Act applies to a decision that is pending, and not any information that may have been used in the course of arriving at a decision. I agree with the reasoning in Order F2008-008.

[para 19] As I find that section 29(1)(g) does not apply to the information in the records, it follows that I find the Public Body is not authorized to refuse access to it. I will therefore order the Public Body to give the Applicant access to the information in the records.

IV. ORDER

[para 20] I make this order under section 64 of ATIA.

[para 21] I order the Public Body to give the Applicant access to the information to which it applied section 29(1)(g) of ATIA.

[para 22] I order the Public Body to notify me in writing, within 50 business days of receiving a copy of this Order, that it has complied with the Order.

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Teresa Cunningham
Adjudicator