ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER FOIP2026-05

January 22, 2026

ALBERTA ENERGY REGULATOR

Case File Number 019772

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for copies of the agenda, minutes and attachments of the AER Board's meetings that took place between May 15, 2020, and October 9, 2020.

The Public Body provided responsive records with information withheld under sections 16(1), 17(1), 24(1), 24(2.1) and 27(1) of the FOIP Act.

The Applicant requested an inquiry into the Public Body's decision to withhold information in the records.

The Adjudicator found that section 16(1) did not apply to the records and section 17(1) was not applied correctly to some of the records. The Public Body was ordered to disclose the records to the Applicant to which section 16(1) and 17(1) did not apply. The Adjudicator ordered the Public Body to re-exercise its discretion with respect to some of the records to which section 24(1) was applied; section 24(2.1) was incorrectly applied.

The Adjudicator found that the Public Body properly withheld information pursuant to 27(1)(a).

The Adjudicator found that there was insufficient evidence to support the application of section 27(1)(a) or 27(1)(b) to the information in the records. The Public Body was given the option to either release the records to the Applicant or provide the Adjudicator with sufficient evidence to show how section 27(1)(a) and/or section 27(1)(b) apply to the records.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 16, 17, 24, 27 and 72

Authorities Cited: AB: Orders 1996-012, 2000-003, 2000-05, F2004-13, F2004-024, F2006-10, F2007-026, F2010-030, F2012-06, F2013-13, F2013-16, F2015-12, F2015-15, F2015-22, F2017-013, F2018-32, F2021-39, F2022-22, F2022-28, F2023-13, F2023-16, F2023-25, F2023-39, F2023-40, F2024-29, and F2023-44

Cases Cited: *Merck Frosst Canada Ltd.* v. *Canada (Health)*, [2012] S.C.R. 23, *Blank v. Canada (Minister of Justice)*, 2006 SCC 39, *Solosky v. The Queen*, [1980] 1 SCR 821, *Pritchard v. Ontario (Human Rights Commission)*, [2004] 1 S.C.R. 809, *Beverage Industry Association of Newfoundland and Labrador v. Newfoundland and Labrador (Minister of Finance)*, 2019 NLSC 222 (CanLII), *Imperial Oil Limited v Alberta (Information and Privacy Commissioner)*, 2014 ABCA 231, *Edmonton Police Service* v *Alberta (Information and Privacy Commissioner), 2020* ABQB 10 (CanLII)

Other Documents Cited: *AER Manual 004*: *Alternative Dispute Resolution Program and Guidelines for Energy Industry Disputes*

I. BACKGROUND

[para 1] The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) to the Alberta Energy Regulator (the Public Body) for the following:

> Copies of any Agendas, including attachments, and Minutes of any meetings of the AER Board that took place between May 15, 2020 and October 9, 2020.

[para 2] The Public Body located 755 pages of responsive records. Initially, the Public Body withheld the entirety of the records relying on section 24(1)(f) of the FOIP Act. Upon reconsideration of its position, the Public Body subsequently released 279 pages in their entirety, withheld 375 pages in their entirety in reliance on sections 24 and 27 and provided 101 pages with redactions made in reliance on sections 16, 17, 24 and 27.

[para 3] On June 17, 2024, I requested that the Public Body provide me with a more detailed description of the records withheld under section 27(1). An index of records was sent to this Office with the requested information on July 5, 2024.

[para 4] Upon reviewing the records to prepare the requested index, the Public Body changed its decision on 11 pages of the records. Of the 11 pages, nine pages were released in their entirety and two pages continued to be withheld relying on section 24(1)(a) instead of section 27(1).

[para 5] The Applicant was not satisfied with the decision to withhold information within the records and requested an Inquiry.

[para 6] The Commissioner agreed to conduct an inquiry and delegated her authority to conduct the inquiry to me.

II. RECORDS AT ISSUE

[para 7] The records at issue consist of 467 pages of AER records with information withheld relying on sections 16(1), 17(1), 24(1)(a)(b)(e)(f)(g), 24(2.1)(b), and 27(1)(a)(b).

III. ISSUES

[para 8] The Notice of Inquiry, dated September 21, 2023, states the issues for this Inquiry as follows:

1. Does section 16 of the Act (disclosure harmful to business interests of a third party) apply to the information/record(s)?

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

3. Did the Public Body properly apply section 24(1) of the Act (record relating to an audit of the Chief Internal Auditor of Alberta) to the information/record(s)?

4. Did the Public Body properly apply section 24(2.1)(b) (advice from official) to the information/record(s)?

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

IV. DISCUSSION OF ISSUES

1. Does section 16 of the Act (disclosure harmful to business interests of a third party) apply to the information/record(s)?

[para 9] Section 16(1) is a mandatory exception to disclosure, it reads:

> *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

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

[para 10] The Public Body partially redacted information on 10 pages of the records (pages 602-603, 605-606, 607, 608, 609, 610, 613, 617) relying on section 16.

[para 11] The redacted portions of the Hearing Commissioner's report that are redacted by reference to section 16(1), contain information pertaining to the Public Body's Alternate Dispute Resolution (ADR) process. Upon examination of the records, information contained under the heading of "Alternate Dispute Resolution" pertains to the level of participation of the parties in ADR and status of the ADR process.

Applicant's Submissions

[para 12] The Applicant submits that the public's right to information relating to public finances, public health and safety and the environment outweighs any harm to a third party's interests. He says there should be a requirement to disclose potential threats and risks to the public and how those are being managed by public officials.

[para 13] The Applicant submits that the Public Body has not demonstrated how the disclosure could be harmful to the business interests of the third party, and it is the Public Body's responsibility to explain why an exception should be applied to the information.

Public Body's Submissions

[para 14] The Public Body submits that section 16 uses mandatory language and therefore it "has no discretion to release this information to the Applicant."

[para 15] The Public Body submits that disclosure of the redacted information that relates to its ADR process "would reveal commercial information of a third party that is supplied, explicitly or implicitly, in confidence"[1] which in turn could lead to a consequence listed in section 16(1)(c). It says a company's competitive and negotiating position could be put at risk.

Analysis

[para 16] In order to determine if section 16 has been met, the three-part test laid out in Order F2004-13 has been used in previous Orders of this Office. All three parts must be met:

> Part 1: 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?

[1] Ibid, para 37

Part 2: Was the information supplied, explicitly or implicitly, in confidence?

Part 3: Could disclosure of the information reasonably be expected to bring about one of the outcomes set out in section 16(1)(c)?

Part 1: 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?

[para 17] I begin by considering whether the withheld portions could reveal a "trade secret" or "commercial, financial, labour relations, scientific or technical information" of the third parties.

[para 18] "Trade secret" is a defined term in the FOIP Act:

> *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 19] The withheld information is not a trade secret; it is not a formula, pattern, compilation, program, device, product, method, technique or process.

[para 20] In Order F2018-32 the Adjudicator, reviewed "commercial" and "financial information" and stated at paragraph 11:

> …Previous orders have said that "commercial information" is information belonging to a third party, at the time the information is supplied, about its buying, selling or exchange of merchandise or services and "financial information" is information belonging to a third party about its monetary resources and use and distribution of its monetary resources.

[para 21] I do not find it possible to categorize information relating to the participation by third parties in the ADR process and the status of that process as commercial or financial information.

[para 22] "Labour relations" was considered in Order 2000-003, in that order the Adjudicator wrote:

> [para 97] The term "labour relations" has been defined by a number of other sources:
>
> - Sack and Poskanzer, Labour Law Terms, A Dictionary of Canadian Labour Law, defines labour relations as "employer-employee relations including especially matters connected with collective bargaining and associated activities".
> - Webster's Third New International Dictionary defines labour relations as "relations between management and labour, especially as involved in collective bargaining and maintenance of contract".
> - Arthur Mash, Concise Encyclopedia of Industrial Relations, defines labour relations within the context of industrial relations, as follows: "…relationships within and between workers, working groups and their organizations and managers, employers and their organization…'Labour relations' are sometimes abstracted from 'industrial relations' as describing organized or institutionalized relationships within the whole, though sometimes the two terms are used as if they were interchangeable..."
>
> [para 98] Given these definitions, I agree that "labour relations" would include "collective relations", such as collective bargaining and related activities.
>
> [para 99] However, I do not think that "labour relations" should be limited to "collective relations", as that would unduly limit the scope of labour relations. For the purposes of section 15(1), I favour a more comprehensive definition, such as that set out in the Concise Encyclopedia of Industrial Relations.

[para 23] There is nothing in the withheld information that could be categorized as "labour relations" as defined by previous orders of this office. The ADR-related information has nothing to do with the third party's employees or labour practices nor does it discuss management of employees.

[para 24] In Order F2012-06, the Adjudicator reviewed the terms "scientific" and "technical information":

> [para 56] In Order 2000-017, the former Commissioner defined "scientific information" as "information exhibiting the principles or methods of science". Scientific information for the purposes of section 16(1)(a), then, is information belonging to a third party that exhibits the principles or methods of science.
>
> [para 57] 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. Reconciling these two orders, technical information, is information belonging to a third party regarding the applied sciences, proprietary designs, methods, and technology.

[para 25] From the foregoing I conclude that there is nothing technical or scientific about the withheld information.

[para 26] I note as well that a number of orders (see F2015-12,F2015-22) have held that for information to fall within the terms of section 16(1)(a), it must "belong to" a third party in the

sense that that the party has a proprietary interest arising from having expended money, skill or effort to develop it. There is no evidence before me that the information related to the ADR process that was withheld under section 16 was the product of the expenditure of money, skill or effort by a third party in the sense discussed in these cases.

[para 27] I find that the ADR-related information does not fall within any of the categories of information in section 16(1)(a).

[para 28] The information severed by the Public Body does not meet the first part of a three-part test. As stated, all three parts must be met to satisfy that section 16 applies to the withheld information.

[para 29] Accordingly, there is no need to proceed with the analysis of the other parts of the test.

Conclusion Re Issue 1

[para 30] All steps of the 3-step test must be met in order to withhold information under section 16 of the FOIP Act. The information being withheld under section 16(1) of the FOIP Act does not reflect the third party's "commercially valuable information"; there are no "trade secrets" being divulged. As the redacted information failed the first part of the test, I do not find it necessary to proceed with the rest of the test.

[para 31] Accordingly, I find that section 16(1) does not apply to pages 602, 603, 605, 606, 607, 608, 609, 610, 613, and 617.

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

[para 32] Section 17 of the Act states:

> *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*
>
> *[…]*
>
> *(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 33] Section 17(5) sets out factors to be considered when determining whether the presumption set out in section 17(4) is rebutted. Among these reasons, subsections (a) and (b) that are potentially relatable to the Applicant's arguments. These are as follows:

> *17(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether*
>
> *(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,*
>
> *(b) the disclosure is likely to promote public health and safety or the protection of the environment,*
>
> *[…]*

[para 34] Personal information is defined under section 1(n) of 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,*
>
> *[…]*

[para 35] The Public Body withheld information on six pages (pages 607, 608, 609, 610, 612 and 613) in reliance on section 17.

Applicant's Submissions

[para 36] The Applicant submits section 17 should not be used to protect the identity of anyone who was interacting with government officials regarding policy or regulatory matters that could have an impact on members of the public. He did add that he was not looking for personal phone numbers or mailing addresses of these individuals, just their names.

Public Body's Submissions

[para 37] The Public Body submits that the responsive records do not show attendance at its meetings by anyone external to the Public Body.

[para 38] The Public Body submits that as section 17 is a mandatory section, there is no discretion to disclose information that is protected by this section of the FOIP Act.

Analysis

[para 39] I accept that section 17(1) is a mandatory exception in the FOIP Act, which means if the information within the requested records falls within the scope of this exception, the Public Body must withhold it. Section 17 also sets out the circumstances in which it would be an unreasonable invasion of personal privacy to disclose personal information.

[para 40] If third party personal information is contained in the requested records, then according to section 71(2) it is the Applicant's responsibility "to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy."

[para 41] In Order F2023-25, at paragraph 22, the Adjudicator wrote:

> When the specific types of personal information set out in section 17(4) are involved, disclosure is subject to a rebuttable presumption that it would be an unreasonable invasion of a third party's personal privacy to disclose the information. 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 application, applies), and balance these against any presumptions arising under section 17(4). Section 17(5) is not an exhaustive list and any other relevant circumstances must be considered. If, on the balance, it would not be an unreasonable invasion of personal privacy to disclose an individual's personal information, a public body may give an individual's personal information to a requestor. If there are no factors weighing in favor of disclosure, the presumption created by section 17(4) is not rebutted and the information cannot be disclosed.

[para 42] In Order F2021-39 at paragraph 16, the Adjudicator stated:

> The Complainant's first and last name, home address, and home telephone number are personal information under section 1(n)(i) of the Act; …"

[para 43] In Order F2007-026, the Adjudicator wrote:

> [para 12] Section 1(n)(i) clearly states that the definition of personal information includes an individual's name. Although the record at issue only contains the Complainant's surname, I find that this information nevertheless falls within the definition of personal information.

[para 44] Section 17(4)(g)(i) contains a presumption against disclosure. The names of the third party individuals have been withheld along with other information about them, giving rise to this presumption. The names and information associated with the names are of people acting in their own capacities and not in representative capacities.

[para 45] The Applicant has not produced evidence that would counter the application of section 17 to the names and associated information of persons concerned with protecting their own properties and interests. While he makes arguments that certain kinds of information about individuals should be made public, he provides no evidence that there is any association between these arguments and the individuals whose names appear in the records. Even if there were, I am not persuaded without more that the assertions he offers as reasons for requiring

disclosure of the information he describes should override the privacy interests in the withheld information.

[para 46] Information has been withheld in reliance on section 17 under the Alternative Dispute Resolution heading. This information does not identify any individuals or their property and I find that section 17 has been incorrectly applied to these sections of the records.

[para 47] I find that the Public Body has correctly applied section 17(1) to the portions of the record that contain names, addresses and information about a third party's concerns about the effects to their property that cannot be separated from personal identifiers.

[para 48] The Public Body also applied section 17 to information in the ADR section of the records on pages 607, 608, 609, 610, and 613. The withheld information is a status update and does not refer to an identifiable individual nor can the identity of an individual be discerned from the entries in these records.

[para 49] I find that the Public Body applied the section 17 exemption to some parts of the records correctly; however, there are portions on five pages with regard to which redacting the information cannot be justified under section 17.

Conclusion Re Issue 2

[para 50] I find that the Public Body applied the section 17 exemption to parts of the records correctly; however, there are portions on five pages (ADR section) for which the redacted information cannot be justified under section 17.

3. Did the Public Body properly apply section 24(1) of the Act (advice from officials) to the information/record(s)?

[para 51] Section 24(1) of the FOIP Act reads:

> *24(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal*
>
> *(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council,*
>
> *(b) consultations or deliberations involving*
>
> *(i) officers or employees of a public body,*
>
> *(ii) a member of the Executive Council, or*
>
> *(iii) the staff of a member of the Executive Council,*
>
> *[…]*

(f) the contents of agendas or minutes of meetings

(i) of the governing body of an agency, board, commission, corporation, office or other body that is designated as a public body in the regulations, or

(ii) of a committee of a governing body referred to in subclause (i),

[…]

[para 52] The Public Body applied section 24(1)(a) to 235 pages of the records (13-14, 25, 26-28, 31-37, 153-165, 1714-174, 177-178, 238-239, 242-244, 245, 246, 249-259, 271-272, 322, 324, 325-326, 338, 339-344, 346, 347-349, 351, 352-354, 356, 357-359, 372, 373-390, 418, 419-421, 423-439, 445, 446-448, 451, 452-455, 464-465, 485, 486-487, 503, 504, 530-534, 536-545, 549-552, 559-582, 583, 597-599, 635, 653-665, 667, 668-669, 671-675, 677-683, 729, 730-755).

[para 53] The Public Body applied section 24(1)(b) concurrently with section 24(1)(a) by the Public Body to 117 pages of the records (13-14, 177-178, 238-239, 242-244, 271-272, 338, 339-344, 346, 347-349, 351, 352-354, 356, 357-359, 372, 373-390, 536-545, 549-552, 597-599, 653-665, 671-675, 677-683, 730-755)

[para 54] The Public Body applied section 24(1)(e) concurrently with section 24(1)(a) by the Public Body to pages 423-439 and 464-465.

[para 55] The Public Body applied section 24(1)(f) to 113 pages (1-2, 4-11, 15, 16, 23, 25, 29, 30, 38, 112, 151-152, 168, 170, 176, 179, 180, 183, 191, 196, 205, 214, 223, 227, 229-236, 240-241, 245, 247, 248, 262, 263, 265-269, 318, 324, 327, 337, 345, 350, 355, 371, 391-392, 415-417, 418, 422, 440, 444, 445, 449, 450, 451, 463, 466, 483-484, 485, 488, 495, 497, 499, 501-502, 503, 514, 517, 525, 527, 529, 535, 548, 558, 585-593, 595, 631, 636, 642, 651, 652, 666, 667, 670, 676, 684)

[para 56] The Public Body applied section 24(1)(g) to two pages of the records (225-226).

Applicant's Submissions

[para 57] The Applicant submits that the Public Body operates in a quasi-judicial manner and has a duty to conduct its business in an open and transparent way, "respecting principles of an open court"[2]

[para 58] The Applicant further submits that meeting agendas should not be redacted as the discussion of these matters would be revealed through public announcements or media reports.

[para 59] It is submitted by the Applicant that it is unclear how much discretion has been exercised by the Public Body and that it "should provide more explanations about how information, particularly if it consists of factual information and observations, can fall under the

[2] Ibid., para 15

category of privileged information, or whether it is using this label to massively censor information that members of the public are entitled to see, simply to avoid embarrassment."[3] The Applicant is questioning why the topic of a briefing note would be withheld under section 24(1), when the body of the note is withheld under section 27.

[para 60] The Applicant submits that he doubts that records are confidential or privileged when they are marked as "for discussion purposes only" or as "information". He also submits that there is not evidence that the Public Body exercised its discretion.

Public Body's Submissions

[para 61] The Public Body submits that discretion was properly exercised when it refused to disclose information in the records. It says the discretion is section 24(1) was exercised with the objective of "protecting the decision-making process" as stated in Order 1996-12 at paras 59-60.

[para 62] The Public Body submits that there are no mandatory factors or objectives that must be considered when exercising discretion under this section. Furthermore, the Public Body submits that it did not fetter its discretion. It submits that as stated by the Alberta Court of Queen's Bench, in *Costco Wholesale Canada Ltd v City of Medicine Hat*, 2022 ABQB 129 at para 70, "Fettering of discretion occurs when "a statutory body treats non-legislative guidelines or policies as binding to the exclusion of other valid or relevant reasons for the exercise of discretion"…".

[para 63] The Public Body submits that it has adhered to the legislation and has relied on the relevant interpretation of FOIP in exercising its discretion as the decision maker. It further submits that it demonstrated that it was exercising its discretion when it reviewed its initial response to the Applicant and then decided to provide records, in a new response, to the Applicant on August 30, 2022.

[para 64] The Public Body submits that it withheld a Briefing Note found on page 102 under two different sections. It says the record was withheld under section 24(1)(f) to protect the decision making process and under section 27(1) because it was prepared by legal counsel in the course of providing legal services.

[para 65] The Public Body submits that marking records "for discussion purposes only" or as "information" does not constitute a waiver of privilege or confidentiality.

Analysis

Section 24(1)(a)

[para 66] As stated in past orders of this office, including F2023-39, the test for section 24(1)(a) is that advice, proposals, recommendations, analysis or policy options should:

1. be sought or expected, or be part of the responsibility of a person by virtue of that person's position,

[3] Ibid., para 19

2. be directed toward taking an action,
3. be made to someone who can take or implement the action.

[para 67] In F2013-13, the adjudicator, restated the third arm of the test at paragraph 123:

> The intent of section 24(1)(a) is to ensure that internal advice and like information may be developed for the use of a decision maker without interference. This purpose would not be achieved if information otherwise falling under section 24(1)(a) were automatically producible prior to the decision maker actually receiving it, or in cases where a public body elected to follow another course and the advice did not ultimately reach the decision maker. So long as the information described in section 24(1)(a) is developed by a public body or for the benefit or use of a public body or a member of the Executive Counsel, by someone whose responsibility it is to do so, then the information falls under section 24(1)(a) regardless of whether the individual or individuals ultimately responsible for making a decision receives it. The third arm of the test should therefore be restated as "created for the benefit of someone who can take or implement the action" to better accord with the language and purpose of section 24(1)(a), and I will review the information to which the Public Body has applied section 24(1)(a) with that in mind.

[para 68] Past orders (F2017-013, F2022-22) of this office have stated that a bare recitation of facts or summaries of information cannot be withheld, unless they are interwoven with the advice, proposals and recommendations and cannot be separated out.

[para 69] Upon examination of the records, I have ascertained that the information withheld is comprised of advice, analyses, recommendations, and development of policy options by various employees for the Public Body.

[para 70] I find that the information severed under section 24(1)(a) is advice developed on behalf of the Public Body by employees and meets the requirements of that section.

Section 24(1)(b)

[para 71] Section 24(1)(b) was applied to 117 pages of the records; I note that there is an overlap in the application of section 24(1)(b) and section 24(1)(a). As I have determined that the information was properly withheld under section 24(1)(a), it is not necessary for me to consider whether section 24(1)(b) also applies to the information.

Section 24(1)(e)

[para 72] The Public Body has applied section 24(1)(e) to two charts (pages 423-439 and 464-465). I note that section 24(1)(a) has also been applied to these pages and I have upheld the application of section 24(1)(a) to the records including these pages. As I have determined that the information was properly withheld under section 24(1)(a), it is not necessary for me to consider whether section 24(1)(e) also applies to the information.

Section 24(1)(f)

[para 73] The application of section 24(1)(f) was discussed in Order 1996-012 at paragraph 59 and 60:

> [59.] Section 23(1)(f) is unique to Alberta. On the surface, section 23(1)(f) appears to protect two categories of documents, namely, contents of agendas and minutes of meetings of certain public bodies. However, when I look at all the other parts of section 23(1), the intent is clearly to protect the decision-making process, and those other parts of the section merely mention the kinds of documents that will likely be a record of the decision-making process, or the situations in which the decision-making process is likely to occur. Do I interpret section 23(1)(f) to be consistent with these other parts of section 23(1), that is, to protect only the decision-making process; alternatively, do I give the words in section 23(1)(f) their ordinary meaning, that is, to protect the contents of agendas or minutes of meetings?
>
> [60.] While I would very much like to narrow the application of section 23(1)(f) to make it consistent with the intent of section 23, I believe that I must give the words in section 23(1)(f) their ordinary meaning since those words don't bear any other interpretation. The wording of section 23(1)(f), including the introductory part of section 23(1), clearly states that the public body may refuse to disclose information that could reasonably be expected to reveal the contents of agendas or minutes of meetings, which I take to mean both information revealing those contents, as well as the contents themselves. As the record is indisputably minutes of meetings, I believe that the only issue remaining to be considered under section 23(1)(f) is whether the public body properly exercised its discretion in applying the section. Section 23(1)(f) is a discretionary ("may") exception.

[para 74] Having examined the records, I find that the information to which this section was applied meets the criteria set out in section 24(1)(f), that is they are either agenda for meetings or meeting minutes; withholding the information protects the Public Body's decision making process.

Section 24(1)(g)

[para 75] Section 24(1)(g) was applied to 2 pages of the records, the rationale provided by the Public Body in its index of records states: "Draft AER Board Goals 2020-2021 – June 13, 2020".

[para 76] Upon examining these pages, I find that the information does fall into the category of proposed plans, projects etc. There are proposed plans to increase accountability of the various committees and manage safety and risk.

[para 77] Next, I will examine whether discretion was properly exercised when applying section 24.

Exercise of Discretion

[para 78] *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10, had the following to say with respect to the exercise of discretion to withhold information by a Public Body under the FOIP Act:

> [416] What ***Ontario Public Safety and Security*** requires is the weighing of considerations "for and against disclosure, including the public interest in disclosure:" at para 46. The relevant interests supported by non-disclosure and disclosure must be identified, and the effects of the particular proposed disclosure must be assessed. Disclosure or non-disclosure may support, enhance, or promote some interests but not support, enhance, or promote other interests. Not only the "quantitative" effects of disclosure or non-disclosure need be assessed (how much good or ill would be caused) but the relative importance of interests should be assessed (significant promotion of a lesser interest may be outweighed by moderate promotion of a more important interest). There may be no issue of "harm" in the sense of damage caused by disclosure or non-disclosure, although disclosure or non-disclosure may have greater or lesser benefits. A reason for not disclosing, for example, would be that the benefit for an important interest would exceed any benefit for other interests. That is, discretion may turn on a balancing of benefits, as opposed to a harm assessment.
>
> …
>
> [419] However, the Adjudicator's "harm" language may be only a way of describing the effect of disclosure on the public body's interests, including public interests. If disclosure would enhance or improve the public body's interests, there would be no reason not to disclose. If non-disclosure would benefit the public body's interests beyond any benefits of disclosure, the public body should not disclose. If disclosure would neither enhance nor degrade the public body's interests, given the "encouragement" of disclosure, disclosure should occur. Information should not be disclosed only if it would run counter to, or degrade, or impair, that is, if it would "harm" identified interests of the public body.
>
> [420] I also accept that insofar as the Adjudicator restricted the impact of harm to "a legal matter," that restriction is not warranted. That is not the only type of harm that may be encompassed in the consideration of the whether or not to disclose. In my view, that is the implication of the ***Ontario Public Safety and Security*** passages quoted above. A public body is entitled to show that disclosure could have other adverse effects (whatever those might be) – but the public body must indicate what those adverse effects are and that the negative consequences of disclosure outweigh the interests in the disclosure, the "interest in open government."
>
> [421] I accept that a public body is "in the best position" to identify its interests at stake, and to identify how disclosure would "potentially affect the operations of the public body" or third parties that work with the public body: EPS Brief at para 199. But that does not mean that its decision is necessarily reasonable, only that it has access to the best evidence (there's a difference between having all the evidence and making an appropriate decision on the evidence). The Adjudicator was right that the burden of showing the appropriate exercise of discretion lies on the public body. It is obligated to show that it has properly refrained from disclosure. Its reasons are subject to review by the IPC. The public body's exercise of discretion must be established; the exercise of discretion is not presumptively valid. The public body must establish proper non-disclosure. The IPC does not have the burden of showing improper non-disclosure.

[para 79] With respect to section 24(1)(a), I find that the Public Body exercised its discretion appropriately. The Public Body withheld information in order to protect the decision-making process. The withheld information was comprised of advice, recommendations and analysis that would help the Public Body to make decisions.

[para 80] I find that the Public Body did properly exercise discretion in its decision to withhold information relying on section 24(1)(f) (see Order 1996-12, paragraph 61). This information was reasonably withheld, as it would disclose the decision-making process.

[para 81] Other than referring to section 24(1)(g) in the index, the Public Body has not explained its reasons for refusing access to this information. Moreover, its reasons for refusing access are not evident from the records.

Conclusion Re Issue 3

[para 82] I find that the Public Body applied section 24(1)(a) appropriately to the records.

[para 83] I find that the Public Body applied section 24(1)(f) appropriately to the records.

[para 84] I find that the Public Body did not apply section 24(1)(g) appropriately to the records.

4. Did the Public Body properly apply section 24(2.1)(b) of the Act (advice from officials) to the information/record(s)?

[para 85] Section 24(2.1) of the FOIP Act reads:

> *(2.1) The head of a public body must refuse to disclose to an applicant*
>
> > *(a) a record relating to an audit by the Chief Internal Auditor of Alberta that is created by or for the Chief Internal Auditor of Alberta, or*
> >
> > *(b) information that would reveal information about an audit by the Chief Internal Auditor of Alberta.*

Applicant's Submissions

[para 86] Many of the Applicant's submissions are the same as stated in his submissions on section 24(1). The submission consists of the Applicant questioning how the Public Body exercised discretion and asserting that the Public Body needs to provide more explanation as to why the information is withheld.

Public Body's Submissions

[para 87] The Public Body submits that section 24(2.1)(b) is applied to the records to protect the Public Body's decision-making process.

Analysis

[para 88] Pages 113-150 is a report prepared by the Auditor General of Alberta. There is a label on the first page titled "Confidential", which reads:

[para 89] The Office of the Auditor General of Alberta is a Legislative Office in the province, governed by the *Auditor General Act*, RSA 2000, Chapter A-46.

[para 90] The Auditor General and the Chief Internal Auditor are two different positions. Section 24(2.1)(b) would apply to any audits conducted by the Chief Internal Auditor, not by the Auditor General, who is an officer of the Legislature.

[para 91] The Chief Internal Auditor works for Corporate Internal Audit Services, the mandate for which is set out in the Corporate Internal Audit Services Charter. The Chief Internal Auditor functionally reports to the Internal Audit Committee and administratively to the Deputy Minister of the Treasury Board and Finance.

[para 92] Section 4 of the FOIP Act outlines the records to which the Act does and does not apply:

> *4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*
>
> > *(d) a record that is created by or for or is in the custody or under the control of an officer of the Legislature and relates to the exercise of that officer's functions under an Act of Alberta;*

[para 93] The Auditor General is included in the definition of officer of the Legislature in section 1(m) of the Act:

> *1 In this Act,*
>
> > *(m) "officer of the Legislature" means the **Auditor General**, the Ombudsman, the Chief Electoral Officer, the Ethics Commissioner, the Information and Privacy Commissioner, the Child and Youth Advocate or the Public Interest Commissioner;*

[para 94] As stated in section 4(1)(d) of the FOIP Act, I do not have jurisdiction over these records.

Conclusion Re Issue 4

[para 95] I find that the Public Body's application of section 24(2.1) to the records is incorrect. These records fall under Section 4(1)(d) of the Act and therefore, I do not have jurisdiction over the records.

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

[para 96] Section 27(1) of the FOP Act reads:

> *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,*
> *(ii) an agent or lawyer of the Minister of Justice, or*
> *(iii) an agent or lawyer of a public body, in relation to a matter involving the provision of legal services, or*
>
> *[…]*

[para 97] Section 27(1)(a) was applied to 29 pages of records (pages 181-182, 184-186, 187-190, 192-195, 197-204, and 206-213)

[para 98] Section 27(1) (a) and (b) were applied concurrently to pages 16-22, 39-45, 489-494, 515-516, 518-524, 637-641, and 643-650)

Applicant's Submissions

[para 99] Many of the Applicant's submissions are the same as stated in his submissions on section 24(1). The submission consists of the Applicant questioning how the Public Body exercised discretion and asserting that the Public Body needs to provide more explanation as to how the information is privileged.

Public Body's Submissions

[para 100] The Public Body submits that the responsive records to which section 27(1) applies are part of the legal advice that was provided to the Public Body.

[para 101] The Public Body quotes from the *Alberta (Information and Privacy Commissioner)* v. *University of Calgary*, 2016 SCC 53 case, "This Court has repeatedly affirmed that, as a substantive rule, solicitor-client privilege must remain as close to absolute as possible and should not be interfered with unless absolutely necessary." (para 43)

Analysis

[para 102] Paragraph 26 of *Blank v. Canada (Minister of Justice)*, 2006 SCC 39 summarizes the role of solicitor-client privilege:

> Much has been said in these cases, and others, regarding the origin and rationale of the solicitor-client privilege. The solicitor-client privilege has been firmly entrenched for centuries. It recognizes that the justice system depends

> for its vitality on full, free and frank communication between those who need legal advice and those who are best able to provide it. Society has entrusted to lawyers the task of advancing their clients' cases with the skill and expertise available only to those who are trained in the law. They alone can discharge these duties effectively, but only if those who depend on them for counsel may consult with them in confidence. The resulting confidential relationship between solicitor and client is a necessary and essential condition of the effective administration of justice.

[para 103] The test for solicitor-client privilege as set out in *Solosky v. The Queen*, [1980] 1 SCR 821 at p. 837 and later affirmed in *Pritchard v. Ontario (Human Rights Commission)*, [2004] 1 S.C.R. 809 at paras. 15-21:

i. Communication must be between solicitor and client;
ii. The communication entails the seeking or giving of legal advice; and
iii. The communication is intended to be confidential by the parties.

[para 104] Section 71(1) of the Act places the burden of proof on the Public Body:

> *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 105] In *Edmonton Police Service* v *Alberta (Information and Privacy Commissioner), 2020* ABQB 10 (CanLII), Justice Renke stated:

> [97] At para 36 of ***CNRL v ShawCor***, the Court of Appeal wrote that rules 5.6, 5.7, and 5.8
>
> > [36] …. [impose] on a party the obligation to number and briefly describe each record that is relevant and material, including those it claims are privileged. In accordance with Schedule 2 of Form 26, those latter records should be set out in separate categories as contemplated therein. A party is entitled to bundle privileged records providing that the bundled record otherwise meets the requirements of Rule 5.7. <u>For records that a party claims are privileged, the party must, in accordance with Rule 5.8, identify the particular grounds of the objection to production for each record in order to assist other parties in assessing the validity of the claimed privilege. That means the party must state the actual privilege being relied upon with respect to that record and describe the record in a way that, without revealing information that is privileged, indicates how the record fits within the claimed privilege.</u> These requirements apply equally to a bundled record over which a party claims privilege …. [emphasis added]

[para 106] In Order F2023-16, at para 57, the Adjudicator states:

> 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 107] On July 5, 2024, the Public Body responded to my request to provide me with an index of the records subject to solicitor-client privilege.

[para 108] The Public Body withheld 71 pages of the record claiming exceptions under section 27. Section 27(1)(a) was applied to 29 pages and sections 27(1)(a) and (b) were both applied to 42 pages.

[para 109] The 29 pages to which only section 27(1)(a) was applied were documents prepared by the external legal counsel for AER counsel with respect to litigation files. I find that these (29 pages) withheld records meet the *Solosky* test and the information was intended to be kept confidential between the lawyer and client (Public Body) and contained legal advice.

Concurrent application of Section 27(1)(a)(b)

[para 110] The Public Body applied both sections 27(1)(a) and (b) to:

a. briefing notes prepared by AER counsel, providing legal analysis and advice; and
b. confidential charts prepared by AER lawyers providing legal analysis on the impact of proposed legislation and litigation strategy and advice.

[para 111] The Public Body has not indicated which information is subject to solicitor-client privilege; instead, solicitor-client privilege is claimed concurrently with information that pertains to matters that may deal with only the provision of legal services.

[para 112] In Order F2015-22, the Adjudicator stated:

> [para 74] The Court in Solosky is clear that not every communication between a solicitor and another party is legal advice or subject to solicitor-client privilege. Rather, solicitor-client privilege will attach to confidential communications between a legal advisor, acting in that capacity, and a client, where the communication is made for the purpose of giving or seeking legal advice. It will only be communications that meet all three requirements of this test that are subject to solicitor-client privilege.
>
> [para 75] The foregoing test is not a narrow one. In Blood Tribe v. Canada (Attorney General), 2010 ABCA 112, the Alberta Court of Appeal determined that records need not contain legal advice to meet the Solosky test. If the information has been communicated so that legal advice could be obtained or given, even though the information is not in itself legal advice, the information meets the requirements of "a communication made for the purpose of giving or seeking legal advice". The Court said:
>
> > The appellant also argues that even if some of the documents contain legal advice and so are privileged, there is no evidence that all of the documents do so. For example, the appellant argues that minutes of meetings, emails and miscellaneous correspondence between Justice Canada lawyers and the Department of Indian and Northern Affairs may not contain any actual advice, or requests for advice, at all. The solicitor-client privilege is not, however, that

> narrow. As the court stated in *Balabel v. Air India*, [1988] Ch 317, [1988] 2 All E.R. 246 at p. 254 (C.A.):
>
> > Privilege obviously attaches to a document conveying legal advice from solicitor to client and to a specific request from the client for such advice. But it does not follow that all other communications between them lack privilege. In most solicitor and client relationships, especially where a transaction involves protracted dealings, advice may be required or appropriate on matters great or small at various stages. There will be a continuum of communication and meetings between the solicitor and client. The negotiations for a lease such as occurred in the present case are only one example. Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach. A letter from the client containing information may end with such words as "please advise me what I should do." But, even if it does not, there will usually be implied in the relationship an overall expectation that the solicitor will at each stage, whether asked specifically or not, tender appropriate advice. Moreover, legal advice is not confined to telling the client the law; it must include advice as to what should prudently and sensibly be done in the relevant legal context.

[para 113] In the current case, I have not been provided with the necessary information to establish that the test in *Solosky* has been met. It is difficult to ascertain from the descriptions as set out above how all the information constitutes legal advice and how the Public Body has established that all the information on the 42 pages of records entail seeking or giving legal advice.

[para 114] With respect to the application of section 27(1)(b), in Order F2013-013, at para 110, the Adjudicator said:

> [para 242] In Order F2008-021, I interpreted section 27(1)(b) in the following way: In the context of "information in relation to a matter involving the provision of legal services", I read "matter involving the provision of the legal services" such that the "matter" is constituted by, or consists of, the provision of legal services. The other potential interpretation of this part of the provision – that the phrase is met for any matter to which legal services have been provided at some time – is implausible. It would have the provision take into account a factor (that the matter happens to have involved the provision of legal services) that may be coincidental and have no relevance to the information that is being prepared and which requires the protection of the provision. I interpret the phrase "information prepared in relation to" as referring to information compiled or created for the purpose of providing the services, in contrast to merely touching or commenting upon the provision of the services. The use of the term "prepared" – which the Canadian Oxford Dictionary defines as "to make ready for use" - carries the suggestion that the information is necessary for the outcome that legal services be provided. It follows, then, that the person contemplated by the provision who is preparing the information, is doing so for the purpose of providing legal services, and therefore must be either the person providing the legal service or a person who is preparing the information on behalf of, or, at a minimum, for the use of, the provider of legal services. For section 27(1)(b) to apply to information, the information in question must be prepared by the lawyer or someone acting under the direction of the lawyer for the purpose that a lawyer will use the information in order to provide legal services to a public body.

> [para 243] In Order F2008-028, the Adjudicator held that the term "prepared" in section 27(1)(b) is not intended to refer to information that is not substantive, such as dates, letterhead, and names and business contact information.

[para 115] In *Edmonton Police Service v Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10, Justice Renke commented on the relationship among sections. 27(1)(a)-(c):

> [392] …
>
> The architecture of ss. 27(1)(a) through (c) is one of expanding scope, with para (a) (information subject to privilege) having most limited scope; para (b) expanding protection to information that is "in relation to a matter involving the provision of legal services;" and para (c) expanding protection to information "in correspondence" and "in relation to a matter involving the provision of advice or other services." It follows, as the Adjudicator [in the case before Justice Renke] reasoned, that information protected under para (c) is not necessarily protected under para (b) or para (a), and information protected under para (b) is not necessarily protected under para (a)…

[para 116] Justice Renke also quoted the same Adjudicator in the decision she had rendered in F2013-13, as follows:

> [para 252] Although section 27(1)(b) may apply in some instances to records that are subject to privilege, it does not follow that section 27(1)(b) applies to all records that are subject to solicitor-client privilege or is intended to do so. Determining whether section 27(1)(b) applies does not involve consideration of whether information is subject to privilege, but involves inquiring whether a person listed in subclauses 27(1)(b)(i – iii) prepared the record, and whether the record was prepared for the purpose of providing legal services. Section 27(1)(b) is clearly not intended to protect privileged information, as that is the purpose of section 27(1)(a). Moreover, it does not appear intended to protect information such as advice that is not subject to a privilege, as that is the purpose of section 24. In addition, it appears that section 27(1)(b) is not intended to serve the purpose of protecting information that may be harmful to negotiations, or competition, that is not privileged, as that is the purpose of section 25. Despite the references to the Minister of Justice and Attorney General in these provisions, sections 27(1)(b) and (c) do not appear intended to protect activities uniquely associated with that office, given that these provisions also apply to all public bodies generally.

[para 117] The withheld records contain charts "prepared by lawyers in the AER law branch for the AER Board of Directors regarding the status of AER litigation files, litigation strategy, and advice regarding future steps."

[para 118] Six pages of the withheld records constitute a briefing "prepared by AER general counsel for the AER Board of Directors."

[para 119] The evidence provided by the Public Body is not sufficient for me to make a finding that all 42 pages in their entirety are subject to the section 27(1)(b) exception.

[para 120] Furthermore, sections 27(1)(a) and (b) are applied to page 494. This page was provided to me in its entirety; it is the last page of one of the confidential charts. There is no

information other than general information on the purpose of the legislation chart. Neither section 27(1)(a) or (b) applies to this information.

[para 121] Any records or parts thereof that are not subject to solicitor-client privilege or possibly other categories of privilege such as litigation or settlement privilege, must be provided to me for my review.

Conclusion Re Issue 5

[para 122] I find that the Public Body applied section 27(1)(a) appropriately to 29 pages of the records.

[para 123] I have decided to give the Public Body the same option as was done in Order F2022-28 and subsequently in Order F2024-29. If it chooses not to release the records to the Applicant or seek judicial review, it may provide me with sufficient evidence as to how section 27(1)(a) applies to the 42 pages to which it has applied section 27(1)(a) and (b) concurrently. If upon review the Public Body determines that only section 27(1)(b) is applicable to some or all of the records, it can submit those records to me to adjudicate whether section 27(1)(b) applies to the records.

Public Interest

[para 124] Section 32 of the Act outlines the public interest exception:

> *32(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people, to any person or to an applicant*
>
> > *(a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant, or*
> >
> > *(b) information the disclosure of which is, for any other reason, clearly in the public interest.*
>
> *(2) Subsection (1) applies despite any other provision of this Act. …*

[para 125] The Applicant did not raise the potential application of section 32 of the Act, which requires disclosure where in the public interest despite exceptions to disclosure under the Act. However, given the Applicant did make an argument that disclosure is in the public interest I will briefly consider whether section 32 applies.

[para 126] The Applicant made a request for records to the Public Body to get information "about unprecedented decisions that were made with significant implications for public finances, public health, public safety and the environment."[4] The Applicant submits that the records requested "may relate to significant policy decisions made by the Government of

[4] Applicant's Submission, October 19, 2023, para 3

Alberta in collaboration with officials from the Alberta Energy Regulator in 2020, after the start of the COVID-19 pandemic, affecting oversight of oil and gas companies operating in Alberta."[5]

[para 127] The Applicant's argument in favour of disclosure in the public interest centered around news articles, published by himself and one other person on Globalnews.ca and The Narwhal, in his submission he described the topic of the articles as relating to:

> *…deliberations of the Alberta government and Alberta Energy Regulator on a range of issues that are covered in these files, including public finances, public health, public safety and the environment. In the spring and summer of 2020, The Government of Alberta, in collaboration with officials at the regulator, made sweeping changes to public policy after the onset of the COVID-19 pandemic with direct implications on all of those issues and full transparency is needed to ensure that the public can review how the government acted in this unprecedented situation.*

[para 128] In Order F2006-10, the Adjudicator addressed the burden of proof to establish that section 32 applies:

> [para 155] As the previous Commissioner explained [Order 96-011], an applicant bears the onus of establishing that section 32 applies to the information he seeks disclosed under section 32. In other words, an applicant must establish through evidence that the benefits of disclosure to the public interest will override any of the public and private interests that the Act has created exceptions to preserve. If an applicant successfully establishes that section 32 applies to the information, then the burden shifts to the head of the Public Body, who must then establish that a decision not to disclose the information is rationally defensible.

[para 129] In Order F2004-024, the Adjudicator stated:

> [para 57] Order 96-011 established that an applicant has the burden of proof to show that a public body is required to disclose information under section 32. Due to section 32 overriding the Act, section 32 is interpreted narrowly and the burden of proof is difficult to meet. An applicant must show that the information concerns matters of compelling public interest and that there are "emergency-like" circumstances compelling disclosure. An applicant must show that a matter is "clearly in the public interest" as opposed to a matter that may be of interest to the public: see Orders 96-011, 2000-005 and 2000-031.

[para 130] I find that the Applicant has not met the requisite burden of proof. Rather, the Applicant submits that the Public Body should show how disclosure could harm a third party's interests. As stated in previous orders the onus shifts once the Applicant provides evidence that the public interest overrides any of the exceptions in the Act. In this instance, the Applicant has not met the onus.

V. ORDER

[para 131] I make this Order under section 72 of the Act.

[5] Ibid., para 2

[para 132] I find that section 16(1) does not apply to the records on pages 602, 603, 605, 606, 607, 608, 609, 610, 613, and 617. Accordingly, information withheld under section 16(1) should be released to the Applicant.

[para 133] I find that the Public Body applied the section 17 to parts of the records correctly; however, the information withheld under the ADR subheading on five pages (607, 608, 609, 610, and 613), is not personal information and therefore should be released to the Applicant.

[para 134] I find that the Public Body properly applied section 24(1)(a) of the Act to 235 pages of the records (13-14, 25, 26-28, 31-37, 153-165, 1714-174, 177-178, 238-239, 242-244, 245, 246, 249-259, 271-272, 322, 324, 325-326, 338, 339-344, 346, 347-349, 351, 352-354, 356, 357-359, 372, 373-390, 418, 419-421, 423-439, 445, 446-448, 451, 452-455, 464-465, 485, 486-487, 503, 504, 530-534, 536-545, 549-552, 559-582, 583, 597-599, 635, 653-665, 667, 668-669, 671-675, 677-683, 729, 730-755).

[para 135] I find that the Public Body properly applied section 24(1)(f) of the Act to 113 pages (1-2, 4-11, 15, 16, 23, 25, 29, 30, 38, 112, 151-152, 168, 170, 176, 179, 180, 183, 191, 196, 205, 214, 223, 227, 229-236, 240-241, 245, 247, 248, 262, 263, 265-269, 318, 324, 327, 337, 345, 350, 355, 371, 391-392, 415-417, 418, 422, 440, 444, 445, 449, 450, 451, 463, 466, 483-484, 485, 488, 495, 497, 499, 501-502, 503, 514, 517, 525, 527, 529, 535, 548, 558, 585-593, 595, 631, 636, 642, 651, 652, 666, 667, 670, 676, 684) of the record.

[para 136] I find that section 24(1)(g) was incorrectly applies to pages 225-226 and order the Public Body to re-exercise its discretion.

[para 137] I find that the Public Body incorrectly applied section 24(2.1) (b) to pages 113-150, These pages fall under section 4(1)(d) of the FOIP Act and I do not have jurisdiction.

[para 138] I find that the Public Body properly applied section 27(1)(a) of the Act to 29 pages of records (pages 181-182, 184-186, 187-190, 192-195, 197-204, and 206-213). I uphold the Public Body's decision to refuse to disclose those records.

[para 139] With respect to the information withheld by the Public Body on the basis of section 27(1)(a) and (b) concurrently (pages 16-22, 39-45, 489-494, 515-516, 518-524, 637-641, and 643-650):

i. the Public Body may provide evidence and argument to me on how section 27(1)(a) applies;
ii. if upon review the Public Body determines that only section 27(1)(b) is applicable to some or all of the records, it can submit those records to me to adjudicate whether section 27(1)(b) applies to the records.

[para 140] If the Public Body chooses not to provide me with evidence that supports its position that sections 27(1)(a) and (b) apply, then I order the Public Body to provide the Applicant with access to the records withheld on the basis of those sections.

[para 141] If the Public Body chooses not to provide me with evidence to support their claims of section 27(1)(a) and (b), then I order the Public Body to provide the Applicant with access to the records withheld on the basis of those sections.

[para 142] I further order the Public Body to notify me and the Applicant in writing, within 50 days of receiving a copy of this Order that it has complied with the Order.

_____

Pam Gill
Adjudicator