ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Order FOIP2026-23/HIA2026-02

July 9, 2026

SHEPHERD'S CARE FOUNDATION

Case File Number 017691 and 037135

Office URL: www.oipc.ab.ca

Summary: An individual and his mother made an access request to Shepherd's Care Foundation (SCF) for copies of all records, including health records, relating to the mother, who resided at SCF. The individual (the Applicant's son) stated that he was making the request on behalf of his mother (the Applicant).

SCF responded to the request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act). SCF provided records, with information withheld under sections 17(1), 20, 24, and 27 of the FOIP Act.

The Applicant requested an inquiry into SCF's response. The first part of the inquiry confirmed that the Applicant's son had authority to act on behalf of his mother. It also confirmed that some information in the records was subject to the FOIP Act, while other information was subject to the *Health Information Act* (HIA) (Decision FOIP2025-D-02/HIA2025-D-01).

The Adjudicator directed SCF to reprocess certain information under the HIA and provide a new response to the Applicant under that Act. SCF provided a new response to the Applicant, withholding

some information under section 11 of the HIA. The Applicant was provided an opportunity to object to SCF's decision to withhold information under the HIA; the Applicant did not object to those decisions.

This part of the inquiry considers SCF's previous decision to withhold information under sections 17, 20, 24, and 27 of the FOIP Act; as well as its identification of some information as non-responsive. It also considers whether SCF met its duty to assist the Applicant under both the FOIP Act and the HIA.

The Adjudicator found that SCF conducted an adequate search for records under the FOIP Act but did not conduct an adequate search for records under the HIA because it did not include responsive health information from Netcare.

The Adjudicator found that section 17(1) of the FOIP Act required SCF to continue to withhold the personal information to which that exception had been applied.

The Adjudicator found that section 24(1) applied to the information withheld under that provision but ordered SCF to re-exercise its discretion to withhold the information.

The Adjudicator upheld SCF's application of section 27(1)(a), as well as its decision to withhold information as non-responsive to the Applicant's request.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 17, 20, 24, 27, 72, *Health Information Act*, R.S.A. 2000, c. H-5, ss. 1, 10, 80.

Authorities Cited: AB: Decisions F2014-D-01, FOIP2025-D-02/HIA2025-D-01; Orders 96-012, 96-020, 2001-013, F2003-002, F2004-026, F2007-013, F2008-016, F2008-028, F2009-025, F2010-002, F2010-031, F2010-036, F2013-34, F2013-53, F2014-23, F2015-29, F2015-32, F2018-75, F2019-07, H2023-10

Cases Cited: *Alberta (Municipal Affairs) v Alberta (Information and Privacy Commissioner)*, 2019 ABQB 274, *Edmonton (City) v Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110, *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10 (CanLII), *Ontario (Public Safety and Security) v. Criminal Lawyers' Association,* 2010 SCC 23 (CanLII), *Solosky v. The Queen*, 1979 CanLII 9 [1980] 1 S.C.R. 821

I. BACKGROUND

[para 1] On March 4, 2020, an individual (MS) and their mother (SS) made an access request to Shepherd's Care Foundation (SCF) for

> 1. "Copies of all of [SS]'s health records that your organization possesses. This includes any digital or physical format including, but not limited to: resident progress notes; care plans; Bedside Kardex Reports; Physiotherapy/Occupational Therapy notes; Social Worker notes;

> Doctor's notes; Health Care Aide notes; Nurse's notes; Pharmacist's notes; and reports/notes from outside organizations (such as from medical appointments/tests [SS] went to where the results of those were provided to your organization). This should also include any images/videos/audio recordings related to [SS's] care.
>
> 2. Copies of any information about [SS] contained outside health records (i.e. outside the scope of the above request). This includes any digital or physical format including, but not limited to: emails; meeting invitations, notes and minutes; messages/notes/orders to staff; and letters."

[para 2] MS confirmed that he was making the request on behalf of his mother, SS. In this order, I will refer to SS as the Applicant and MS as the Applicant's son.

[para 3] SCF responded to the request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act). SCF provided records, with information withheld under sections 17(1), 20, 24, and 27 of the FOIP Act.

[para 4] The Applicant requested an inquiry into SCF's response.

[para 5] The first part of the inquiry confirmed that the Applicant's son had authority to act on behalf of his mother. It also confirmed that some information in the records was subject to the FOIP Act, while other information was subject to the *Health Information Act* (HIA) (Decision FOIP2025-D-02/HIA2025-D-01).

[para 6] In that Decision, I found that some of the information SCF had withheld under the FOIP Act was health information under the HIA. I directed SCF to reprocess the information withheld under the FOIP Act on pages 49-50, 228, 304-305, 306-307, 343, the second email on page 344, the first withheld entry on page 431, 433-436, 570, 666, 676, and 686-722 under the HIA and provide a new response to the Applicant under that Act.

[para 7] SCF provided a new response to the Applicant dated November 10, 2025. In that response, SCF informed the Applicant that it decided to withhold some information under sections 11(1)(b) and 11(2)(b) of the HIA. The Applicant was provided an opportunity to object to SCF's decision to withhold information under the HIA; the Applicant did not object to those decisions (email dated January 16, 2026).

[para 8] Therefore, the issues relating to SCF's decisions to withhold information relate only to exceptions applied by SCF to personal information under the FOIP Act. SCF's decisions to withhold information under the HIA are not at issue.

[para 9] As will be set out below, whether SCF met its duty to assist the Applicant when processing the access request relates to both the duty to assist under the FOIP Act, as well as the duty to assist under the HIA.

[para 10] SCF is a public body under the FOIP Act and a custodian under the HIA. To avoid switching between these designations depending on whether the issue relates to the FOIP Act or the HIA, I will continue to refer to it as SCF throughout this Order.

II. INFORMATION AT ISSUE

[para 11] The pages and exceptions for the inquiry are as follows:

Section and subsection	Page numbers
s.17(1)	308-310, 431 (second withheld entry only)
s.17(1) & s. 18(1)(a) & s.18(3)	643
s. 17(1) & s.18(1)(a) & s.18(3) &20(1)(d)	737-742
s.24(1)(b)(i)	342, 344 (first email only), 621,626
s.24(1)(b)	635,637,777,780
s.24(1)(a)	685,735,736
s.24(1)(a) & 24(1)(b)	776
s.27(1)(a)	52,53,61,62,64,626,631,635,637
Records identified as non-responsive	52,61,62,64

III. ISSUES

[para 12] The Notice of Inquiry, dated January 26, 2026, states the issues for inquiry as follows:

1. Did the head of SCF meet its duty to assist the Applicant as provided by section 10(1) of the Act (duty to assist applicants)?

   This issue will consider whether SCF met its duty to assist the Applicant while processing the access request, as well as whether SCF conducted an adequate search for responsive records.

2. Does section 17(1) of the FOIP Act (disclosure an unreasonable invasion of personal privacy) require the head of SCF to refuse access?

3. Do sections 18(1) and 18(3) of the FOIP Act (disclosure harmful to individual or public safety) authorize the head of SCF to refuse access? SCF should also address its exercise of discretion in applying this provision.

4. Does section 20(1) of the FOIP Act (disclosure harmful to law enforcement) authorize the head of SCF to refuse access? SCF should also address its exercise of discretion in applying this provision.

5. Do sections 24(1)(a) and 24(1)(b) of the FOIP Act (advice from officials) authorize the head of SCF to refuse access? SCF should also address its exercise of discretion in applying this provision.

6. Does section 27(1) of the FOIP Act (privileged information) authorize the head of SCF to refuse access? SCF should also address its exercise of discretion in applying this provision.

7. Is the information in pages 52, 61, 62 and 64 of the records non-responsive to the Applicant's request?

[para 13] While the Applicant has objected to SCF's decisions to withhold information only under the FOIP Act and not under the HIA, the Applicant had raised concerns about SCF's search for records and duty to assist, both in relation to the FOIP Act as well as the HIA.

[para 14] By letter dated March 19, 2026, I informed the parties that the first issue for the inquiry, relating to SCF's duty to assist the Applicant, should encompass both the duty to assist under section 10 of the FOIP Act, as well as the duty to assist under section 10(a) of the HIA. Therefore, the following issue was added:

Did SCF meet its duty to assist the Applicant as provided by section 10(a) of the HIA?

IV. DISCUSSION OF ISSUES

Preliminary matter – submissions provided to the inquiry

[para 15] In their submission, the Applicant states:

> My submission is everything in the attached documents and this letter as well as all previous material I have provided to OIPC during the review/mediation/investigation process and the inquiry process (including all communications I provided to OIPC before/during/after those processes had started and is not limited to the official submissions, but includes emails).

[para 16] The Notice of Inquiry for both the first part of this inquiry and the Notice of Inquiry relating to this part of the inquiry both inform the parties that any information not contained in the documents attached to the Notice are not part of the inquiry; should the parties want me to consider additional information, that information should be included with the parties' submission. In the Notice relating to this part of the inquiry, I noted a particular document referred to by the Applicant in a prior submission that was not before me in the inquiry:

> **In his submission to the first part of this inquiry, [the Applicant's son]** states that he provided additional reasons for requesting an inquiry, by email dated June 16, 2023. That email is not attached to this Notice as it has not been provided to me for the inquiry. The Applicant can provide a copy of this email with his submission if he chooses.

[para 17] The parties have had adequate notice of what information is and is not before me. I will be considering only the information in the documents attached to the Notices of Inquiry and the parties' submissions.

[para 18] Both parties have made lengthy submissions. While I have read all submissions in full, I will cite or reference only what is necessary to explain my decisions.

1. **Did the head of SCF meet its duty to assist the Applicant as provided by section 10(1) of the Act (duty to assist applicants)?**

   and

   Did SCF meet its duty to assist the Applicant as provided by section 10(a) of the HIA?

[para 19] As stated in the Notice of Inquiry, this issue will consider whether SCF met its duty to assist the Applicant while processing the access request, as well as whether SCF conducted an adequate search for responsive records.

[para 20] The duty to assist under the FOIP Act includes a duty to make every reasonable effort to assist the Applicant and respond openly, accurately and completely. It also includes a duty to conduct an adequate search for responsive records (Order F2004-008). The same test applies under section 10(a) of the HIA. These provisions state:

> *10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.*
>
> *10 A custodian that has received a request for access to a record under section 8(1)*

> *(a) must make every reasonable effort to assist the applicant and to respond to each applicant openly, accurately and completely.*

[para 21] The Applicant has raised concerns about actions taken by SCF in responding to the access request. I will address this concern first, before addressing SCF's search.

Did SCF make every reasonable effort to assist the Applicant?

[para 22] Upon receipt of the Applicant's March 4, 2020 request, made on the Applicant's behalf by her son, SCF refused to process the request, informing the Applicant's son that he did not have authority to make the request on behalf of the Applicant. SCF later accepted that the Applicant's son had authority to make the request. The question for this part of Issue #1 is whether it was reasonable for SCF to question the Applicant's son as it did, before determining that he had authority to make the request on behalf of the Applicant.

[para 23] SCF sets out the relevant timeline of events in its submission. It states that the Applicant's son had previously made an access request to SCF on January 3, 2020, on his own behalf, for his own personal information. In providing responsive records, SCF withheld the mother's health information. This access request is not at issue in this inquiry; SCF argues that it provides context for its initial refusal to process the Applicant's request.

[para 24] On March 4, 2020, the Applicant's son made the access request at issue here, requesting his mother's personal and health information. In this request, the Applicant's son stated:

> I have Power of Attorney for and am a Supported Decision Maker for my mother, [SS], who is a resident in your facility (copies of these two documents have been filed with Shepherd's Care) and as such I can see any details/documents that may contain personal or health information about her. …This request has been made with the knowledge and support of [SS].

[para 25] The access request was signed by the Applicant and the Applicant's son.

[para 26] SCF has stated that upon receipt of the request from the Applicant's son, it was unclear that the Applicant was able to consent to her son making the request. SCF communicated this to the Applicant's son and suggested a discussion on this point (letter dated March 9, 2020).

[para 27] The Applicant's son responded via email, reiterating that he is a supported decision maker for the Applicant and noting that the Applicant's Personal Directive (PD) had not been enacted which implied she was competent to provide consent; the son further states that if the PD were enacted the son is an agent under the PD.

[para 28] SCF disagreed with the Applicant's son, at least initially, that he had authority to make the request without the Applicant's consent. SCF informed the Applicant's son that the *Adult Guardianship and Trusteeship Act* authorizes him, as a supported decision maker, to obtain the Applicant's

information in order to assist the Applicant to make relevant decisions. SCF informed the Applicant's son that he appears to be making the access request for his own purposes, which is contrary to the *Adult Guardianship and Trusteeship Act* (letter dated March 25, 2020).

[para 29] The Applicant's son responded via email (March 26, 2020), setting out the reasons for making the March 4, 2020 request:

> My mother and I have talked literally dozens of times since she has been living in your facility about the care she has received from your staff and we have discussed me reviewing her health records as one way for me to help her with this. This became more important after talking to the PPG investigator, [KB], in January and February of this year. In light of some of the things that [KB] told me about, I talked to my mother and we decided to formally request that I be given access to her health records (and any other records you have about her). This decision was made in February 2020, weeks after I had submitted my information request to you on January 4, 2019. We intentionally delayed giving you the second request until March 4, 2020, because that was the date you said you would get the response to my request to me by and as such we would not have been forcing your organization to conduct two information requests simultaneously (as an aside, I also delayed giving you my request before Christmas 2019, because I didn't want to force your staff to have to work on a request over the Christmas holidays, which is why you got it on January 4, 2020 instead of in December).

[para 30] The Applicant's son also provided a copy of a consent to disclose form, in which the Applicant consented to the disclosure of her health information to her son, dated June 27, 2019. The expiry date section of the form is not filled out; the form states that if no expiry date is given, the consent will expire 2 years after the date it was signed.

[para 31] By letter dated March 27, 2020, SCF informed the Applicant's son it would fulfill the access request, stating:

> You have now provided us with sufficient details to confirm that your request for your mother's information is made with the intention of assisting her with making decisions about her health and care.

[para 32] By letter dated May 21, 2026, I asked SCF to explain what additional information it relied on when it determined it could process the request submitted by the Applicant's son. I asked:

> Did SCF determine that the Applicant's son was acting as a supported decision-maker within the terms of the *Adult Guardianship and Trusteeship Act*? If so, what additional information provided by the Applicant's son was relevant to that determination? In the alternative, did SCF rely on the consent to disclose form? If so, did SCF determine that it could rely on this form despite concerns about the Applicant's competence, given the date the form was signed?

[para 33] In its response, SCF states that it relied on the consent to disclose form, as well as the information provided in the Applicant's son's March 26, 2020 letter, in deciding that the Applicant's son had authority to make the access request on behalf of the Applicant. SCF states that it did not have concerns about the Applicant's ability to consent at the time the consent form was signed. It further

states that it accepted the son's explanation in the March 26 letter, that he was requesting the information to assist the Applicant in making decisions regarding the Applicant's healthcare.

[para 34] The Applicant's son argues that he informed SCF of the Power of Attorney (PoA) at the time of the request, and that it was clear from the request itself that he was making the request on behalf of the Applicant. The Applicant's son argues that SCF was purposely obfuscating due to the investigation into SCF under the *Protection for Persons in Care Act*.

[para 35] With respect to the PoA, in my May 21 letter, I asked:

> The Applicant's son referenced the PoA in the March 4, 2020 access request. In its submissions SCF has stated that the Applicant's Power of Attorney (PoA) was not enacted at the time of the Applicant's March 4, 2020 access request. However, this does not appear to be the case.
>
> The Applicant provided a copy of the notarized PoA with their submission to the first part of this inquiry (by email dated August 14, 2025). That PoA is dated July 9, 2018 states:
>
> > 7. This Power of Attorney will start immediately and will continue notwithstanding my mental incapacity or mental infirmity which may occur after my execution of this Power of Attorney.
>
> Further, with their submission provided on May 6, 2026, the Applicant provided a copy of an access request made by the Applicant's son dated January 24, 2019, for access to his mother's health information. That access request was accompanied by a PoA for the Applicant. Presumably, SCF responded to that 2019 request, although the Applicant has not stated what information was provided to the Applicant's son in response to that request.
>
> On page 2 of the October 15, 2021 letter from the Applicant's son to SCF's counsel[1] the Applicant's son seems to indicate that the PoA authorized the son to obtain only his mother's non-health information, stating (emphasis added):
>
> > It should be noted that the request my mother and I made on March 4, 2020 was for my mother's health information and non-health information and yet the only thing Lynn referenced in her letter was my mother's health information. This is important to understand because even if Lynn, erroneously, thought there was a problem with my mother's consent for her health information, she did not raise any issue about the non-health information. **SCF knew I had Power of Attorney for my mother which also allowed me to have access to my mother's non-health records SCF possessed** and so [LH] should have referenced that part of the request, but failed to and therefore failed to act on the request in a timely manner in that regard.
>
> The January 2019 request and response are not at issue in this inquiry. However, the question arises whether the PoA was accepted by SCF for the purpose of responding to the January 2019 request and if so, why it was not accepted for the 2020 request (the PoA was referenced in the March 4, 2020 request). If SCF responded to the 2019 request on the basis of something other than the PoA, please explain. If SCF is unable to speak to the 2019 request with certainty given the amount of time that has passed, please provide information about SCF's policy for providing access to health information of a resident to a supported decision maker or individual having power of attorney.

[1] Exhibit K of the affidavit of D. O'Neill provided with SCF's March 9, 2026 submission

> Even if the PoA was not relevant to SCF's response to the 2019 request, I am asking SCF to state why it did not consider the PoA in responding to the 2020 request.

[para 36] SCF states that the person who responded to the Applicant's March 2020 access request is no longer with SCF and as such, SCF cannot say whether that person was aware of the PoA. Nor does SCF have information about its response to the 2019 access request. SCF did not provide any information about whether it has a policy regarding the authority of a PoA to request access to health information on behalf of a resident.

[para 37] It further states that the subsequent communications with the Applicant's son did not reference the PoA and instead focussed on the PD, and the Applicant's son's role of supported decision-maker for the Applicant.

Analysis regarding whether every reasonable effort was made

[para 38] SCF has stated that with its initial response to the Applicant's son, it had reason to believe that the son was seeking information for his own benefit, and that it had an obligation to ensure that the request was being made on the Applicant's behalf. I agree that SCF had a duty under both the HIA and the FOIP Act to ensure that it was disclosing the Applicant's health information and personal information only with authority. This required SCF to ensure that the Applicant's son had authority to make the access request on behalf of the Applicant.

[para 39] The Applicant's son has argued that his own previous access request was made separately from the request he made on behalf of his mother, and that he had authority to do both. Therefore, the fact that he had previously made a request on his own behalf was not a reason for SCF to question his authority to make a request on behalf of his mother. I agree that the Applicant's son made two requests, wearing two hats, and ultimately had authority to do both things.

[para 40] In *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110, the Alberta Court of Appeal discussed the standard to apply in considering whether a public body made every reasonable effort to assist an applicant under section 10 of the FOIP Act. It said (at para. 40):

> [40] It could not have been the intention of the Legislature that there would be a breach of s. 10 every time a public body put forward, in good faith, an interpretation of the statute that the Commissioner eventually disagreed with. As this litigation demonstrates, privacy law can generate some tricky questions. Public bodies are required to do their best to comply with their obligations to disclose documents, and must act in good faith in interpreting the statute, but it is unreasonable to think that they must be "correct" every time. There is a marked difference between "being wrong", "using reasonable efforts", and "failing to be of assistance". Just because a public body misinterprets the statute or its obligations does not mean that it has not used "every reasonable effort" in reaching its interpretation.

[para 41] This is not a situation in which SCF misinterpreted a statute; rather, SCF delayed the processing of an access request by questioning whether it was made by a person with authority to do so. Nevertheless, the Court of Appeal's finding above is relevant.

[para 42] With respect to the PoA, SCF's submission indicates that the reference made by the Applicant's son to the PoA in the access request may have been overlooked, as SCF's initial refusal to process the request was made on other grounds. The PoA was not mentioned in the subsequent communications with the Applicant's son, which referred to other reasons the son was authorized to make the request. SCF's decision to process the request was also made on other grounds. The Applicant's son states that he has brought up the existence of the PoA to SCF staff on several occasions and that SCF ought to have been aware of it.

[para 43] The *Powers of Attorney Act*, RSA 2000, c. P-20 provides that an individual may, in an Enduring Power of Attorney, give to their attorney only the powers that can be provided to an attorney. Section 7 of that Act states:

> *7 Subject to this Act and any terms contained in an enduring power of attorney, an attorney*
>
> *(a) has authority to do anything on behalf of the donor that the donor may lawfully do by an attorney…*

[para 44] Under the PoA, the Applicant's son can act on behalf of the Applicant, but not on his own behalf.

[para 45] SCF's initial response to the Applicant's son (March 9, 2020) questioned whether the Applicant had capacity to consent to the request being made on her behalf by her son. SCF should have explained to the Applicant's son if the PoA was not sufficient for him to make the request on behalf of the Applicant.

[para 46] It seems possible that SCF was already of the view at the time of its March 9, 2020 response that the Applicant's son was not acting on behalf of the Applicant in making the access request. SCF's March 25, 2020 response to the Applicant's son stated this expressly. It informed the Applicant's son that as such, neither the Applicant's son role as a supported decision-maker, nor the PD (had it been enacted) would authorize the son's request. Although the author of this response did not expressly state as much, the PoA would not have authorized the Applicant's son to make the request for the same reason. Again, it would have been helpful if SCF had expressly said this.

[para 47] Had SCF stopped engaging with the Applicant's son after its March 9 and March 25 refusals, it would have failed to meet its duty to assist the Applicant. However, SCF continued to discuss the matter with the Applicant's son, and changed its decision after receiving additional information from the son.

[para 48] I understand that the relationship between SCF and the Applicant's son was challenging at the time the request was made. The Applicant's son alleges that SCF acted in bad faith due to the breakdown in this relationship. Although SCF's initial refusal to process the access request led to some delay, the information before me does not indicate that SCF was acting in bad faith.

[para 49] The Applicant's son argues that an applicant under the FOIP Act does not have to provide reasons for making an access request. This is true; however, as stated above, SCF had a duty under both the HIA and the FOIP Act to ensure that it was disclosing the Applicant's health information and personal information only with authority. The intent of the Applicant's son was therefore relevant.

[para 50] Following the Court of Appeal's decision, I find that SCF acted reasonably in taking steps to ensure that the access request made by the Applicant's son was made on the Applicant's behalf. Whether SCF should have initially refused the request as it did is not the deciding factor with respect to section 10. SCF continued to work with the Applicant's son, and reconsidered its decision in light of additional information. I find that SCF made every reasonable effort to assist the Applicant under section 10 of the FOIP Act and 10(a) of the HIA.

Did SCF conduct an adequate search for records?

[para 51] In Order F2007-029, the former Commissioner described the kind of evidence that assists a decision-maker to determine whether a public body has made reasonable efforts to search for records:

> In general, evidence as to the adequacy of a search should cover the following points:
>
> - The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request
> - The scope of the search conducted - for example: physical sites, program areas, specific databases, off-site storage areas, etc.
> - The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
> - Who did the search
> - Why the Public Body believes no more responsive records exist than what has been found or produced (at para. 66)

[para 52] The affidavit provided with SCF's initial submission details the steps taken to locate responsive records. The person who processed the request, LH, is no longer with SCF and the affidavit was sworn by the current Privacy Officer, based on their knowledge of the file.

[para 53] The affiant states that the Applicant's son had made an access request in January 2020 under the FOIP Act for any information about him. In responding to this request, the affiant states that LH requested SCF's information technology support provider to search for all emails containing the Applicant's first name, last name, or initials; and the first name, last name, or initials of the Applicant's son. LH asked each staff member who had interactions with the Applicant or the Applicant's son to search their own files for responsive records. LH also requested that SCF's medical records clerk, who maintains the records related to resident care, search for records relating to the Applicant. The affiant

states that the clerk searched hard copy and electronic health records, including Progress Notes, Incident Notes, Communications Books Physician's Notes, and Kardex.

[para 54] With respect to the Applicant's March 2020 request, the affiant states that many of the records obtained from the January search described above were also responsive to the Applicant's request. The medical records clerk also conducted an updated search for additional medical records created or received since the January request, and the information technology support provider also conducted an updated search for emails.

[para 55] The affiant states that additional searches were conducted during the settlement phase of this office's review process. The additional searches included email searches using a misspelling of the Applicant's name. The affiant states that the additional searches used the same process described above, involved several staff, and took 87 hours to complete. The affiant further states that some records identified in the Applicant's request for review were located but not all.

[para 56] The affiant states that SCF does not have a policy regarding the retention of staff members' emails. They further state (March 9, 2026 affidavit):

> 19. I believe records were missed in the original search because the keyword "[misspelling of Applicant's name]" was not used in the email search. I cannot explain why other types of records were missed in the original search. I believe the fact that the COVID-19 pandemic was underway and resources were spread thin may have affected the search.

[para 57] Lastly, the affiant states that records in Netcare are not in SCF's custody or control.

[para 58] The Applicant argues the fact that SCF failed to locate all responsive records in its initial search indicates that SCF did not conduct and adequate search. The Applicant states that she and her son made an access request to Alberta Health Services (AHS) and received emails that the Applicant believes SCF also possessed; the Applicant indicates that some emails may have been between AHS and SCF employees.

[para 59] The Applicant states that most of the emails in the records initially provided by SCF were between the Applicant (or the Applicant's son) and LH, and that emails involving other SCF employees were not provided until after the subsequent search. The Applicant argues that this is because the initial search of included only LH's emails and not those of other employees.

[para 60] The Applicant also states that SCF should have provided records from Netcare that SCF used or had access to in providing care to the Applicant. She argues (initial submission, at page 15):

> If [SCF] used Netcare to create/access records to provide the health services in the first place, then those records are justifiably able to be provided as records in an information request. They don't cease to be

relevant records or justifiably accessible to SCF just because the act of providing that specific bit of health care is over. If there were health records in Netcare that SCF had nothing to do with (i.e., were not involved in the provision of the health care services in anyway), then they would not be required to provide those records as part of an information request because they had nothing to do with providing that health care.

In this case, we are requesting all records that SCF would have been involved in, hence why we asked for the records that were in their "possession" as well as ones from outside of SCF but that they were involved in, again, hence why we asked for records "from outside organizations...results [which] were provided to your organization". However, SCF in their Part 2 HIA Submission seemingly tries to weasel out of their responsibilities by claiming they aren't required to provide this or by trying to define "possession" as some sort of physical only idea.

[para 61] With respect to Netcare, by letter dated March 19, 2026, I asked SCF to provide further information regarding its statement that it is not required to provide records from Netcare. I said:

> A document titled "An Overview of Alberta's Electronic Health Record Information System"[2], published by Alberta Health (as it then was) in 2015 states (at page 37):
>
> > "Authorized custodians" who contribute to or access health information made available through the ANP [Alberta Netcare Portal] are participating in the integrated electronic health information system established to provide shared access to health information. Custody and control of this information, and the duties to use, disclose and protect the information in the AB EHR is shared amongst all participating custodians.
>
> The matter of custody and control over records in Netcare was also discussed in Order H2022-06. In that Order, the adjudicator discusses the Alberta Netcare Electronic Health Record Information Exchange Protocol (IEP), which sets out terms for use of Netcare by authorized custodians; see especially paras. 61-74 of the Order. The excerpts from the IEP included in the Order indicate that custodians have discretion to provide records from Netcare in response to an access request in some situations, and may be required to in other situations.
>
> Is SCF familiar with the IEP document? Does it have a copy of this document; if so, can SCF provide a copy for the inquiry? Does SCF have a copy of any other information management agreement it entered into for access to Netcare that addresses responsibility for responding to an access request? If so, can a copy of that agreement be provided for the inquiry? Specifically I am interested in agreements that would have been in force or applicable at the time of the Applicant's access request.
>
> I am also asking SCF to comment on the discussion of custody or control of information in Netcare set out in the documents and Order referenced above. More specifically, I am seeking additional arguments about whether and how the IEP as discussed in Order H2022-06, or any other information manager agreement, is applicable here. I am also asking whether the IEP or other agreement affects whether SCF could have, or was obliged to, obtain records from Netcare that were responsive to the Applicant's request. SCF may also address any other Order or document it believes is relevant. If SCF maintains its position that it does not have custody or control over records in Netcare, I am asking for further support for this argument.

[2] https://www.albertanetcare.ca/documents/An_Overview_of_Albertas_ERHIS.pdf

[para 62] SCF reiterates that it was not obliged to provide the Applicant with records from Netcare in response to their request. SCF provided an additional affidavit with its response to the above, sworn by the Privacy Officer. The affiant states that they understand that SCF's access to Netcare is limited to what is required to provide care to a resident of SCF. With respect to the Alberta Netcare Electronic Health Record Information Exchange Protocol (IEP), the affiant states:

> 7. I have been advised by [BW], Manager, Quality and Best Practice, and I verily believe that SCF does not have a copy of, nor has been directed to follow, the Alberta Netcare Electronic Health Record Information Exchange Protocol (the "lEP"). There is no record of the lEP in SCPs Netcare folder.
> 8. In providing continuing care services to Albertans, SCF Is a service provider for Alberta Health Services (as it was at the relevant time) ("AHS") and entered into a Master Services Agreement ("MSA") with AHS. The MSA sets out SCF's responsibilities with respect to confidential information, personal information and health information collected by SCF in providing the services. Section 16.11 of the MSA provides that if SCF is deemed to be AHS's information manager under the HIA, the MSA constitutes an information manager agreement as required by section 66(2) of the HIA.

[para 63] The affiant states that the Master Services Agreement (MSA) does not address SCF's access to Netcare. SCF provided portions of the MSA with the affidavit. The affiant also states that SCF entered into a Provincial Organizational Readiness Assessment (pORA) with Alberta Health. This document addresses security requirements to be granted access to Netcare; the affiant states that it does not address obligations regarding providing access to records in Netcare. A copy of this pORA was provided with the affidavit.

Analysis regarding the search for records

[para 64] In Order F2009-009, the adjudicator found (at para. 48):

> The Public Body submits that its initial inability to locate records in February 2007 was due to human error, which was apparently the filing of records by date incorrectly. It also says that workload volume and the fact that the Applicant had a large file existing in various areas contributed to the overlooked records. I accept these explanations, but particularly the fact that there was a filing error. An adequate search does not require perfection; a public body is required only to make every reasonable effort (Order 2000-021 at para 68; Order F2008-006 at para. 38). Failing to find records during an initial search does not preclude a finding that a public body made every reasonable effort (Order F2003-001 at para. 40).

[para 65] In Order H2005-003, former Commissioner Work found that this analysis also applies under the HIA (at para. 20). Commissioner Work further stated (at para. 24):

> In Order F2003-001, I determined that a public body had discharged its duty to conduct an adequate search although additional records were overlooked during the initial search and located during the second search. In my view, the fact that the Custodian located additional records during a subsequent search does not necessarily mean the Custodian failed to conduct an adequate search. The details of all the efforts made including the thoroughness of the searches must be considered.

[para 66] With respect to the search for records containing personal information under the FOIP Act, I find that SCF conducted an adequate search for records. This is despite the fact that many additional records were located in a subsequent search. The affidavit evidence states that these records were located after a search was conducted using a misspelling of the Applicant's (and the Applicant's son's) name. Using the Applicant's actual spelling of her name in the initial search did not render it unreasonable. Regarding the records the Applicant may have received from AHS, I do not know when the Applicant made that request, or the language of the request. SCF's affidavit states that it does not specify a records retention period for emails; it may well be that emails were maintained by AHS that had been deleted by SCF employees.

[para 67] With respect to SCF's search for records containing health information under the HIA, for the same reasons above, I find that the search was adequate, subject to my findings specific to Netcare, below.

[para 68] With respect to whether SCF was required to provide records from Netcare in response to the Applicant's request, I have reviewed the portions of the MSA provided and agree that they do not appear to address the provision of Netcare records in response to an access request.

[para 69] I must therefore consider what the HIA authorizes or requires SCF to do.

[para 70] As set out in Decision FOIP2025-D-02/HIA2025-D-01, section 1(f)(ii) of the HIA includes as a custodian "the operator of a nursing home as defined in the *Nursing Homes Act* other than a nursing home that is owned and operated by a regional health authority under the *Regional health Authorities Act*". In March 2020, the *Nursing Homes Act*, R.S.A. 2000, c. N-7 defined a nursing home as a "facility for the provision of nursing home care" (at section 1(j)).

[para 71] SCF is also an "authorized custodian" within the terms of section 56.1 of the HIA, which states:

> *56.1 In this Part,*
>
> *…*
>
> *(b) "authorized custodian" means*
>
> *(i) a custodian referred to in section 1(1)(f)(iii), (iv), (vii), (xii) or (xiii), other than the Health Quality Council of Alberta, and*
>
> *(ii) any other custodian that meets the eligibility requirements to be an authorized custodian;*

[para 72] The custodians referred to in section 1(1)(f)(iii), (iv), (vii), (xii) or (xiii), that fall within the scope of section 56.1(b)(i), are provincial health boards, regional health authorities, and the Department and Minister responsible for the HIA. All other custodians, such as the operator of a nursing home, fall under section 56.1(b)(ii); this includes SCF.

[para 73] Section 56.5(1)(ii) of the HIA sets out how authorized custodians such as SCF can use health information in the EHR/Netcare. It states (emphasis added):

> *56.5(1) Subject to the regulations,*
>
> *…*
>
> *(b) an authorized custodian referred to in section 56.1(b)(ii) may use prescribed health information that is accessible via the Alberta EHR, and that is not otherwise in the custody or under the control of that authorized custodian, only for a purpose that is authorized by*
>
> *(i) section 27(1)(a), (b) or (f), or*
>
> *(ii) section 27(1)(g), but only to the extent necessary for obtaining or processing payment for health services.*

[para 74] In Order H2022-06, the adjudicator concluded that the underlined portion of section 56.5(1) above "could sensibly be interpreted to confer custody or control where that is not otherwise the case, thus enabling the permitted uses under section 27(1)."

[para 75] This analysis was also applied in Order H2023-10, in which the adjudicator considered whether a physician was required to provide records from Netcare in response to a patient's access request. In that case, the adjudicator found that the physician had custody or control of records in Netcare for the purposes authorized by sections 27(1)(a), (b), and (f) per section 56.5(1)(b)(i). These provisions state:

> *27(1) A custodian may use individually identifying health information in its custody or under its control for the following purposes:*
>
> *(a) providing health services;*
>
> *(b) determining or verifying the eligibility of an individual to receive a health service;*
>
> *…*
>
> *(f) carrying out any purpose authorized by an enactment of Alberta or Canada;*
>
> *(g) for internal management purposes, including planning, resource allocation, policy development, quality improvement, monitoring, audit, evaluation, reporting, obtaining or processing payment for health services and human resource management.*

[para 76] The adjudicator concluded (at paras. 22-24):

> Section 27(1)(f) permits use of health information for the purpose of carrying out the purpose of an enactment; it states,
>
> > *27(1) A custodian may use individually identifying health information in its custody or under its control for the following purposes:*
> > …
> > *(f) carrying out any purpose authorized by an enactment of Alberta or Canada;*
> > …
>
> The HIA is an enactment of Alberta. One of its purposes, as set out in section 2(d) is,
>
> > …
> > *(d) to provide individuals with a right of access to health information about themselves, subject to limited and specific exceptions as set out in this Act,*
> > …
>
> Providing health information in response to an access request is necessary to carrying out the purpose stated in section 2(d); as such, section 56.5(1)(b)(i) confers on a custodian custody or control over health information for the purposes of responding to an access request. Thus the Custodian had the requisite control over records on Netcare to respond to the access request, even if the records were consultations from before the time when the Custodian treated the Applicant, or were referrals neither sent to nor from the Custodian.

[para 77] I agree with this analysis. In this case, the Applicant is a resident of SCF, which provides long-term care to the Applicant. Residents in long-term care may have limited ability to request health information from their various providers, even if they see these providers in the residence. For this reason, custodians that are also continuing care providers may be the only reasonable source for residents to obtain their health information. Given this and the interpretation of the HIA above, I conclude that SCF is authorized to provide an individual with access to their health information in Netcare.

[para 78] In this case, while the Applicant did not specify Netcare in the access request, they did specify that they were seeking physiotherapy notes, doctors' notes, and reports or notes from outside organizations such as medical appointments. SCF should have, at minimum, clarified with the Applicant whether they were seeking records from Netcare. As SCF did not do this, I will order it to confirm with the Applicant whether they still want this information responsive to their March 4, 2020 request from January 1, 2018 to March 4, 2020 and if so, to provide those records in accordance with the HIA.

2. Does section 17(1) of the FOIP Act (disclosure an unreasonable invasion of personal privacy) require the head of SCF to refuse access?

[para 79] SCF applied section 17(1) to information of third party individuals on pages 308-310, 431, 643, 737-738, 739-740, and 741-742 of the records at issue.

[para 80] If a record contains personal information of a third party, section 71(2) of the FOIP Act states that it is then up to the applicant to prove that the disclosure would not be an unreasonable invasion of a third party's personal privacy.

[para 81] Section 1(n) defines personal information under the FOIP Act:

> *1 In this Act,*
>
> *…*
>
> *(n) "personal information" means recorded information about an identifiable individual, including*
>
> *(i) the individual's name, home or business address or home or business telephone number,*
>
> *(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*
>
> *(iii) the individual's age, sex, marital status or family status,*
>
> *(iv) an identifying number, symbol or other particular assigned to the individual,*
>
> *(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
>
> *(vi) information about the individual's health and health care history, including information about a physical or mental disability,*
>
> *(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*
>
> *(viii) anyone else's opinions about the individual, and*
>
> *(ix) the individual's personal views or opinions, except if they are about someone else;*

[para 82] While the Applicant has the burden of proving that it would not be an unreasonable invasion of privacy to disclose personal information to which section 17(1) applies, the SCF has the burden of establishing that the information withheld under section 17(1) is personal information to which that provision can apply (Order F2010-002, at para. 9).

[para 83] Past Orders of this Office state that the disclosure of the names, contact information and other information about public body employees, that relates only to the employees acting in their professional capacities is not an unreasonable invasion of personal privacy under section 17(1) (see Orders 2001-013 at paras. 89-90, F2003-002 at para. 62, F2008-028 at para. 53) unless that information has a personal dimension in the circumstances.

[para 84] In other words, in the absence of a personal dimension, such information cannot be withheld under section 17(1).

[para 85] Past Orders of this office have also found there to be a personal dimension to information about an employee's work duties where it appears in the context of allegations of wrongdoing (e.g. investigations into the conduct, disciplinary proceedings, etc.). In Order F2010-031 the adjudicator stated (at para. 53):

> Information about an individual's performance of work duties may be personal information in a context where it is suggested or alleged that the individual has acted improperly or wrongfully (Order F2008-020, para. 28).

See also Orders F2004-026, F2013-53, F2014-23.

[para 86] In this case, the information withheld under section 17(1) consists of names, contact information, and statements made about the Applicant or the Applicant's son, by third party individuals.

[para 87] SCF states that the withheld information on pages 308-310 and 431 relate to complaints made about the behaviour of the Applicant's son. The information includes the names and contact information of the complainants, as well as the details of the complaints. SCF states that even without the name of the complainant, the complainant may be identifiable by the details contained in the complaint itself.

[para 88] I agree that the information withheld on pages 308-310 and 431 is personal information to which section 17(1) can apply. The complainants were residents or visitors of SCF and provided this information in a personal capacity. I also agree that this information cannot be rendered non-identifiable by removing the name of the complainant, as the details of the complaint could reasonably identify that complainant to the Applicant or the Applicant's son. Therefore, section 17(1) can apply to this information.

[para 89] SCF states that the information withheld on pages 643 and 737-742 identifies an individual who had recorded a video of the Applicant and the Applicant's son; this individual was concerned about the behaviour of the Applicant's son toward the Applicant. This individual was on SCF's premises as part of their job duties. The withheld information includes the individual's name, as well as the name of the individual's supervisor, who provided the video to SCF. SCF argues that the individual who provided the video could be identified if the name of their supervisor was disclosed.

[para 90] It is clear from the records that the individual who took the video did not do so in the performance of their job duties. The records name the company this individual worked for, and that company provides services to SCF that is not related to patient or resident care or well-being. Rather, I

find that while the individual was on the SCF premises for reasons relating to their job, they took the video in a personal capacity. For similar reasons, I find that the supervisor provided the video to SCF in a personal capacity. The information withheld by SCF in these pages is limited to the names and job titles of these individuals; I find that section 17(1) can apply to this information.

[para 91] The personal information described above also includes personal information of the Applicant's son. As the Applicant's son has made the request on behalf of the Applicant, it stands to reason that the son would consent to the disclosure of his own personal information to the Applicant. However, in each case, any personal information of the Applicant's son contained in the information described above is inextricably intertwined with the personal information of the third parties. This means that if section 17(1) requires the personal information of the third parties to be withheld, any personal information of the Applicant's son also contained in these portions of the records must also be withheld.

[para 92] Section 17 is a mandatory exception: if the information falls within the scope of the exception, it must be withheld. In Order F2019-07 the adjudicator described how section 17(1) operates as follows (at paras. 22-23):

> Section 17 does not say that a public body is *never* allowed to disclose third party personal information. It is only when the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy that a public body must refuse to disclose the information to an applicant (such as the Applicant in this case) under section 17(1). Section 17(2) (not reproduced) establishes that disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.
>
> When the specific types of personal information set out in section 17(4) are involved, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. To determine whether disclosure of personal information would be an unreasonable invasion of the personal privacy of a third party, a public body must consider and weigh all relevant circumstances under section 17(5), (unless section 17(3), which is restricted in its application, applies). Section 17(5) is not an exhaustive list and any other relevant circumstances must be considered.

[para 93] SCF argues that sections 17(4)(g) and 17(5)(f) apply to the personal information withheld in the records.

[para 94] Applicant's submission is brief with respect to the application of section 17(1). It states:

> 1) I do not know what has been redacted and so can't speak to whether it would qualify or not for being redacted. I have never been opposed to the proper application of the law. The issue has always been SCF's ability to understand and interpret the law correctly, as evidence by the many factual and legal mistakes they have made in their claims across all of the submissions/communications.

[para 95] The Applicant's son also states that he is aware of the identity of the third party who took a video of him that SCF states was taken by that third party surreptitiously. The Applicant's son states that he has not retaliated against that individual, nor any other individual who has complained about him.

[para 96] The relevant portions of section 17 state:

> *17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.*
>
> *…*
>
> *(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
>
> *…*
>
> *…*
>
> *(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,*
>
> *…*
>
> *(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*
>
> *…*
>
> *(f) the personal information has been supplied in confidence,*
>
> *…*

[para 97] I agree that section 17(4)(g) applies to the third party personal information withheld under section 17(1). I also agree that the context in which this information was provided to SCF indicates that it was provided in confidence such that section 17(5)(f) applies. Whether or not the Applicant's son is aware of the identity of one of the third parties whose information has been withheld under section 17(1) is not sufficient to outweigh the presumptions against disclosure.

[para 98] The Applicant has not specified any other factors that weigh in favour of disclosure and none appear to apply.

[para 99] I find that SCF is required to continue to withhold the personal information of third parties under section 17(1).

3. Do sections 18(1) and 18(3) of the FOIP Act (disclosure harmful to individual or public safety) authorize the head of SCF to refuse access? SCF should also address its exercise of discretion in applying this provision.

[para 100] SCF applied section 18(3) to the information on pages 643 and 737-742 that I have found must be withheld under section 17(1). Therefore, I do not need to also consider whether section 18 also applies to that information.

4. Does section 20(1) of the FOIP Act (disclosure harmful to law enforcement) authorize the head of SCF to refuse access? SCF should also address its exercise of discretion in applying this provision.

[para 101] SCF applied section 20(1)(d) to the information on pages 643 and 737-742 that I have found must be withheld under section 17(1). Therefore, I do not need to also consider whether section 20(1)(d) also applies to that information.

5. Do sections 24(1)(a) and 24(1)(b) of the FOIP Act (advice from officials) authorize the head of SCF to refuse access? SCF should also address its exercise of discretion in applying this provision.

[para 102] SCF applied section 24(1)(a) or (b) to information on pages 685 and 735-736, and section 24(1)(b) to information on pages 342, 621, 626, 776-777, and 780. These provisions state:

> *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,*

[para 103] Under section 71(1) of the Act, SCF has the burden of proving that the Applicant has no right of access to the information that it refused to disclose under section 24.

[para 104] The test for sections 24(1)(a) and (b), as stated in past Orders, is that the advice, recommendations etc. (section 24(1)(a)) and/or the consultations and deliberations (section 24(1)(b)) should:

1. be sought or expected, or be part of the responsibility of a person by virtue of that person's position,
2. be directed toward taking an action,
3. be created for the benefit of someone who can take or implement the action (see Order F2013-13).

[para 105] In Order F2015-29, the Director of Adjudication interpreted sections 24(1)(a) and (b) of the FOIP Act and described the kinds of information that fall within the terms of these provisions. She said (at paras. 33-34):

> 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. 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).
>
> A consultation within the terms of section 24(1)(b) takes place when one of the persons enumerated in that provision solicits information of the kind subject to section 24(1)(a) regarding that decision or action. A deliberation for the purposes of section 24(1)(b) takes place when a decision maker (or decision makers) weighs the reasons for or against a particular decision or action. Section 24(1)(b) protects the decision maker's request for advice or views to assist him or her in making the decision, and any information that would otherwise reveal the considerations involved in making the decision. Moreover, like section 24(1)(a), section 24(1)(b) does not apply so as to protect the final decision, but rather, the process by which a decision maker makes a decision.

[para 106] Sections 24(1)(a) and (b) apply only to the records (or parts thereof) that reveal substantive information about which advice was sought or consultations or deliberations were being held. Information such as the names of individuals involved in the advice or consultations, or dates, and information that reveals only the fact that advice is being sought or consultations held on a particular topic (and not the *substance* of the advice or consultations) cannot generally be withheld under section 24(1) (see Order F2004-026, at para. 71).

[para 107] Bare recitation of facts or summaries of information also cannot be withheld under sections 24(1)(a) or (b) unless the facts are interwoven with the advice, proposals, recommendations etc. such that they cannot be separated (Order F2007-013 at para. 108, Decision F2014-D-01 at para. 48). As well, neither section 24(1)(a) nor (b) apply to a decision itself (Order 96-012, at para. 31).

[para 108] The first step in determining whether section 24(1)(a) and/or (b) were properly applied is to consider whether a record would reveal advice, proposals, recommendations, analyses, or policy options (which I will refer to as "advice" (section 24(1)(a)); and consultations or deliberations between specified individuals (section 24(1)(b)).

[para 109] In its submission, SCF states that upon review of the records, it noted that in some instances it withheld the same information appearing on different pages under section 24(1)(a) in one instance and section 24(1)(b) in another. It states that it applies each subsection in the alternative.

[para 110] All of the information withheld under sections 24(1)(a) and (b) appear in email correspondence between SCF employees, discussing how to address complaints made to SCF by or about the Applicant's son. In this correspondence, discussion participants are variably asking for input, discussing relevant factors, and providing opinions or advice. In my view, section 24(1)(b) is the more appropriate provision for these discussions, though I can understand why SCF applied section 24(1)(a) where one discussion participant was providing their opinion or advice on the matter. In Order F2013-34 the adjudicator discussed the application of sections 24(1)(a) and (b) to similar information. She said (at para. 45):

> While some of the information that was severed may pass this test [for the application of section 24(1)(a)], I think section 24(1)(b) of the Act is the more appropriate section for the Public Body to have relied on. The applicability of section 24(1)(b) of the Act is different from that of section 24(1)(a) in that it covers consultations and deliberations rather than just "advice". Therefore, it applies to the process of officers and employees of a public body exchanging ideas to come to a decision.

[para 111] In past Orders, adjudicators have considered the application of an exception other than the one provided by a public body, where the public body's arguments support the application. In other words, citing the wrong provision is not necessarily fatal where the head of the public body has exercised discretion to withhold information and the rationale for doing so supports a different exception. In Order F2008-016, the adjudicator considered whether it was appropriate to find that an exception applies, even though the public body did not apply it, but applied a different provision. She said:

> Although sections 27(1)(b) and 27(1)(c) were not explicitly referred to on the responsive documents or in the EPS' submissions, I find that the substance of the EPS submissions allows me to find that it took into consideration all appropriate elements of sections 27(1)(b) and 27(1)(c) when severing the records, even though the EPS ultimately decided to sever under a provision of the Act that was not correct. Since the principle the EPS used to withhold these records (the confidential seeking of advice or consultations with lawyers employed at the Ministry of Justice) fits within section 27(1)(c), I see no reason to deprive the EPS of its ability to apply section 27(1)(c) at this point.

[para 112] This rationale was applied in Order F2019-07, where the adjudicator considered the application of section 24(1)(a) to information the public body had withheld under section 24(1)(b) or (c), given the arguments for withholding the information provided in the public body's submissions (at paras. 48-49).

[para 113] In this case, as SCF has applied section 24(1)(a) to an employees' opinions, advice, or recommendations made in the course of consultations among staff, I have decided to review the information all under section 24(1)(b), rather than section 24(1)(a).

[para 114] As stated above, all of the information withheld under section 24(1) is comprised of discussions among SCF staff regarding how to address complaints made to SCF by or about the Applicant's son. Some of the communications discuss advice that had been provided by Alberta Health Services, and how or whether to implement that advice. From the information itself and SCF's submissions, it is clear that these discussions involve staff members who are tasked with deciding how to proceed. I find that section 24(1)(b) applies to the information withheld by SCF under section 24(1).

Exercise of discretion

[para 115] Section 24(1) is a discretionary exception to disclosure. In *Ontario (Public Safety and Security) v. Criminal Lawyers' Association,* 2010 SCC 23 (CanLII), the Supreme Court of Canada commented on the authority of Ontario's Information and Privacy Commissioner to review a public body's exercise of discretion.

[para 116] The Supreme Court of Canada confirmed the authority of the Information and Privacy Commissioner of Ontario to quash a decision not to disclose information pursuant to a discretionary exception and to return the matter for reconsideration by the head of a public body. The Court also considered the following factors to be relevant to the review of discretion:

- the decision was made in bad faith
- the decision was made for an improper purpose
- the decision took into account irrelevant considerations
- the decision failed to take into account relevant considerations

[para 117] In Order F2010-036 the adjudicator considered the application of the above decision of the Court to Alberta's FOIP Act, as well as considered how a public body's exercise of discretion had been treated in past orders of this Office. She concluded (at para. 104):

> In my view, these approaches to review of the exercise of discretion are similar to that approved by the Supreme Court of Canada in relation to information not subject to solicitor-client privilege in *Ontario (Public Safety and Security)*.

[para 118] In *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10 (CanLII) (*EPS*), the Court provided detailed instructions for public bodies exercising discretion to withhold information under the Act. The Court said (at para. 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.

[para 119] It further explained the weighing of factors at paragraph 419:

> …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.

[para 120] Lastly, the Court described burden of showing that discretion was properly exercised (at para. 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 121] With respect to the information withheld under section 24(1) on page 342, SCF states (at page 15-16):

> Employees must be able to seek internal advice as to whether things they observe are acceptable, or whether it should be elevated and reported to the authorities. As reporting behaviour could have serious consequences for the individual accused of abuse, employees must be able to have candid discussions without worrying that they will be disclosed to third parties or to the individual who has engaged in the potentially problematic behaviour

[para 122] With respect to all of the remaining information withheld under section 24(1), SCF provided the same rationale (at pages 15-19):

> Staff should be able to discuss freely with respect to interactions with client's family members to ensure they are handling interactions correctly, or that their proposed strategy is correct. Staff should not feel that they have to downplay or qualify the issues they are discussing, or be afraid of asking for advice (in case what they have proposed is judged to be incorrect). They should also not need to be concerned that their questions or concerns will be disclosed to a third party. This will only occur if these conversations are protected from disclosure to third parties and the individuals who are being discussed

[para 123] SCF further states (at para 69):

> SCF exercised its discretion to refuse to disclose internal advice, recommendations, consultation and deliberation of SCF staff to ensure these can be shared and conducted freely and candidly and to make sure that their actions are consistent, supported and reasonable. Staff should not have to downplay or qualify serious issues that need to be dealt with because of a concern that their advice, recommendations, consultations and deliberations will be disclosed to third parties or the individual who is being discussed.

[para 124] I agree that SCF has properly identified the purpose of the exception. However, SCF appears to have exercised its discretion in a blanket manner. A public body is required to consider, in each instance in which a discretionary provision could be applied, whether or not to apply it. If a public body simply withheld all information to which a discretionary exception applied without a consideration of each case, it would not be properly exercising its discretion.

[para 125] In this case, SCF did not address how withholding the specific information at issue serves the purposes of section 24(1), and what factors it considered with respect to the specific information at issue. SCF also did not identify whether it considered any factors that may weigh in favour of disclosure.

[para 126] Given this, I will order the head of SCF to re-exercise its discretion to withhold information in the records to which section 24(1) applies, with a view to the guidance provided by the Court in *EPS*, discussed above.

6. Does section 27(1) of the FOIP Act (privileged information) authorize the head of SCF to refuse access? SCF should also address its exercise of discretion in applying this provision.

[para 127] SCF withheld items of information on pages 52, 626, 631, 635 and 637 under section 27(1)(a). Page 53 was withheld in its entirety under section 27(1)(a). SCF has claimed solicitor-client privilege over this information.

[para 128] The test to establish whether communications are subject to solicitor-client privilege is set out by the Supreme Court of Canada in *Solosky v. The Queen*, 1979 CanLII 9 [1980] 1 S.C.R. 821. The Court said:

> … privilege can only be claimed document by document, with each document being required to meet the criteria for the privilege--(i) a communication between solicitor and client; (ii) which entails the seeking or giving of legal advice; and (iii) which is intended to be confidential by the parties.

[para 129] The requirements of this privilege are met if information is a communication between a solicitor and a client, which was made for the purpose of seeking or giving of legal advice and intended to be kept confidential by the parties.

[para 130] Past Orders have accepted that where a public body has obtained legal advice on a matter, solicitor-client privilege extends to communications between public body employees quoting or discussing the legal advice given by the public body's counsel (see Orders 96-020, F2015-32). This follows the principle set out by courts regarding the discussion of legal advice within a public body or organization (see *Alberta (Municipal Affairs) v. Alberta (Information and Privacy Commissioner)*, 2019 ABQB 274, at paras. 17-18, *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10, at para. 271).

[para 131] Pages 52 and 53 are comprised of handwritten notes. With respect to page 52, SCF states that the withheld information is contained notes taken during a meeting of SCF employees where legal advice that had been provided to SCF was discussed. With respect to page 53, SCF states that the notes were taken during a conversation with SCF's counsel and the notes reflect discussions that took place for the purpose of obtaining legal advice. In both instances, SCF states that the discussions were presumed to be confidential.

[para 132] SCF has provided an unredacted copy of these records. From the content of the records it is clear that SCF sought legal advice on a matter, and that the handwritten notes relate to that legal advice. Confidentiality is implicit from the context of the information. I find that section 27(1)(a) applies to this information.

[para 133] Pages 626, 631, 635 and 637 are comprised of emails; only portions of these emails were withheld under section 27(1)(a).

[para 134] Section 27(1)(a) was applied to a portion of an email on the top half of page 626 and a portion of another email on the bottom half of the page. The information withheld on the bottom half of page 626 is repeated on pages 631, the bottom half of page 635, and the bottom half of page 637. The portion of an email on the top half of page 635 that was withheld under section 27(1)(a) is repeated on the top half of page 637.

[para 135] SCF states that these emails are between SCF employees discussing the seeking of legal advice. Having reviewed this information I agree that the withheld information reveals details of legal advice sought and/or obtained. Confidentiality is implicit from the context of the emails. I find that section 27(1)(a) applies.

Exercise of discretion

[para 136] Past Orders have consistently held that once it has been established that solicitor-client privilege applies, it is not necessary to further assess the exercise of discretion by the public body (see *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 207).

7. Is the information in pages 52, 61, 62 and 64 of the records non-responsive to the Applicant's request?

[para 137] SCF withheld portions of pages 52, 62 and 64, as well as all of page 61, as non-responsive.

[para 138] As stated in Order F2009-025, 'non-responsive' is not an exception to access set out in the Act. In Order F2018-75 I discussed how public bodies should properly characterize information as non-responsive. I said (at paras. 55-58):

> Separate items of information in a record cannot be viewed out of context of the record as a whole when determining if they are separate and distinct from the remaining record…
>
> Information must be considered in the context of the record as a whole, in determining whether it is separate and distinct from the remainder of the record. In the case of a personal information request like the Applicant's, in order to withhold portions of a record as non-responsive, the Public Body must consider whether that portion contains the Applicant's personal information *or* whether that portion provides context to the remainder of the record that *is* the Applicant's personal information.
>
> An example of 'separate and distinct' might be distinct emails in an email chain. Another example relates to police officers' notebooks, which often contain notes on unrelated incidents on a single page. In response to an access request for police records relating to one incident, the part of the notebook page that relates to a different incident might be non-responsive. Another example is where a personal note is added to a work email, such as a note referencing a medical absence, holiday or so on. Where that personal note does not have any relation to the remainder of the email or to the access request, it might be non-responsive.

[para 139] The relevant pages are all handwritten notes of an employee of SCF. The portions withheld as non-responsive are about matters or individuals other than the Applicant or the Applicant's family. I agree that this information is separate and distinct from the information relating to the Applicant, and is also not responsive to the Applicant's request.

V. ORDER

[para 140] I make this Order under section 72 of the FOIP Act and section 80 of the HIA.

[para 141] I find that SCF conducted an adequate search for records under the FOIP Act.

[para 142] I find that SCF did not conduct an adequate search for records under the HIA for the reason that it did not including health information from Netcare. I order SCF to confirm with the Applicant whether the Applicant remains interested in the records from Netcare that are responsive to the March 4, 2020 request and if so, conduct a search for those records, as set out in paragraph 78 of this Order.

[para 143] I find that SCF is required to continue to withhold information under section 17(1).

[para 144] I find that section 24(1) applies to the information withheld under that provision. However, I order SCF to re-exercise its discretion to withhold information in the records to which section 24(1) applies, in accordance with paragraphs 115-126 of this Order. SCF is to provide a new response to the Applicant, either providing the relevant information in the records or explaining how it exercised its discretion to continue to withhold that information, as appropriate.

[para 145] I uphold SCF's application of section 27(1)(a).

[para 146] I find that the information identified by SCF as non-responsive is not responsive to the Applicant's request.

[para 147] I further order SCF to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

_____
Amanda Swanek
Adjudicator