

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER FOIP 2025-43

December 18, 2025

City of Red Deer

Case File Number 025353

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) a media organization (the Applicant) made an access to information request to the City of Red Deer (the Public Body). Under sections 30 and 31 of the FOIP Act, the Public Body provided notice to a third party (the Third Party) that it was considering disclosing the Third Party's personal information in response to the access request. The Third Party objected to disclosure of their personal information and requested a review of the Public Body's decision to disclose it. The Third Party's position was that disclosing the information was contrary to section 17(1) of the FOIP Act, and further that the Public Body should have withheld all information under sections 18(1) and 24(1) of the FOIP Act. The Applicant participated in the resultant inquiry.

The Adjudicator found that the Public Body's proposed redactions obscured the identities of all third parties such that any information disclosed did not identify them. Since the third parties were not identifiable, none of the information the Public Body intended to disclose was their personal information.

The Adjudicator found that he did not have authority under the FOIP Act to review the Public Body's decision not to withhold information under sections 18(1) and 24(1) since those provisions are discretionary exceptions to disclosure not applied by the Public Body in response to the access request.

The Adjudicator ordered the Public Body to provide the Applicant with the information it proposed to disclose.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(e), 2(e), 1(n), 17(1), 17(4), 17(5), 17(5)(e), 18(1), 18(1)(a), 24(1), 24(1)(a), 27(2), 30, 31, 65(2), 69(3), 71(3)(a), 72, 72(2)(b)

Authorities Cited: AB: Orders 97-004, F2005-016, F2006-019, F2008-012, H2008-03, F2010-31, F2012-14, F2015-02, F2017-36, F2020-23, F2021-20, F2023-05

Cases Cited: *Beta Management Inc v Edmonton*, 2017 ABQB 571; *Freyberg v Fletcher Challenge Oil and Gas Inc*, 2005 ABCA 46; *R. v Al-Fartossy*, 2007 ABCA 427; *Snell v. Farell*, [1990] 2 S.C.R. 311; *University of Alberta v Alberta (Information and Privacy Commissioner)*, 2009 ABQB 112

I. BACKGROUND

[para 1] On November 4, 2021, a media organization (the Applicant) made an access to information request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the FOIP Act) to the City of Red Deer (the Public Body). The Applicant sought the following information:

- The independent report compiled by a third-party investigator into the second complaint made under the Council Conduct Code – for which the city was recently billed \$107,000.
- And any other written and electronic materials that pertains to this complaint [...]

[para 2] After discussion with the Public Body about clarifying applicable dates for the access request, the Applicant narrowed the request to exclude the second point above.

[para 3] In the course of responding to the access request, the Public Body identified at least one affected third party (the Third Party) whose personal information appears in records it identified as responsive to the access request. Pursuant to section 30 of the FOIP Act, the Public Body provided notice to the Third Party that it was considering disclosing records which contained the Third Party's personal information; the Third Party then had the opportunity to make representations about why the information should not be disclosed. The Third Party objected to disclosure of the responsive records in their entirety, arguing that all information had to be withheld under sections 17(1), 18, and/or 24 of the FOIP Act. In the alternative to withholding the records entirely, the Third Party proposed their own redactions to the responsive records.

[para 4] The Public Body did not adopt either of the Third Party's suggestions, deciding instead to disclose the records with redactions that it had determined were appropriate. It provided notice to the Third Party pursuant to section 31 of the FOIP Act. The pertinent redactions were made under section 17(1) of the FOIP Act, which requires public bodies to withhold third party personal information if disclosure would be an unreasonable invasion of a third party's personal privacy.

[para 5] Under section 65(2) of the FOIP Act, the Third Party sought review of the Public Body's decision to disclose the responsive records as redacted by the Public Body. The Third Party's position is that the Public Body intends to disclose their personal information contrary to the FOIP Act. Investigation and mediation were authorized to attempt to resolve the issues among the parties, but did not. The matter proceeded to inquiry.

[para 6] Since the Third Party's request for review concerns the Public Body's proposed response to the access request in its entirety, the Applicant has not received any responsive records.

II. RECORDS AT ISSUE

[para 7] The Records at Issue are the records which the Public Body has identified as responsive to the access request. I do not describe them in further detail in the public portion of this order since the entirety of the records is at issue, and it remains possible that either as a result of my decision here, or upon judicial review should one occur, the Applicant is not entitled to any portion of the records at all. The Records at Issue are more precisely described in Addendum A to this order, which is not made public.

[para 8] It is important to note that The Third Party does not argue against the Public Body redacting any information; the Third Party argues that the information the Public Body intends to disclose must also be redacted. Thus, the Records at Issue consist of the version of the records to which the Public Body has proposed redactions. It is the Public Body's position that the redacted version should be provided to the Applicant.

III. ISSUES

[para 9] The issues set out in the Notice of Inquiry in this matter are:

- 1. What, if any, information in the records at issue is "personal information" as defined under section 1(n) of the Act?**
- 2. Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information to which the Public Body has not applied this provision?**

Would disclosure of the records/information that the Public Body proposes to disclose to the Applicant be an unreasonable invasion of a third party's personal privacy under section 17 of the Act?

[para 10] In its submissions, the Third Party argued that the Public Body should have withheld information under sections 18(1)(a) and 24(1)(a) of the Act. I address those matters as well under the following heading:

3. Is the Public Body required to withhold information under section 18(1) (disclosure harmful to individual or public safety) and 24(1) (advice from officials) of the Act?

IV. DISCUSSION OF ISSUES

Preliminary Matter – Applicant participated in the Inquiry

[para 11] Since the result of the inquiry will affect what information, if any, the Applicant will receive in response to its access request, the Applicant was invited to participate and did. The Applicant elected to disclose its identity as a participant in the inquiry.

Preliminary Matter – In Camera Submissions and Reasons in Confidential Addenda

[para 12] In order to avoid disclosure of information which the Public Body may be required to withhold under section 17(1), the Public Body and Third Party were both permitted to provide portions of their submissions *in camera* vis-à-vis the Applicant. For the same reason, some information was redacted from the copies of the Third Party's Request for Review and Request for Inquiry forms provided to the Applicant.

[para 13] The Third Party was also permitted to provide portions of their submissions *in camera*, such that those portions were redacted from the copy of submissions provided to both the Applicant and the Public Body.

[para 14] The Applicant did not make any *in camera* submissions.

[para 15] In order to maintain the confidentiality of *in camera* submissions, where my reasons require detailed discussion of *in camera* material they appear only in confidential addenda to this Order, only provided to parties with whom *in camera* information has been shared. While the other parties will not have access to the information, in the event of judicial review, a reviewing judge will have access to my full reasons, under a sealing order.

[para 16] Addendum A is provided to the Public Body and the Third Party. Addendum B is only provided to the Third Party. Neither Addenda is provided to the Applicant.

Preliminary Matter – Considering the Third Party's in camera information

[para 17] The Public Body observes that throughout the process of responding to the access request, including this inquiry, it has been denied information that the Third Party argues requires the Public Body to withhold information. The Third Party did not share this information with the Public Body when provided notice under section 30 of the FOIP Act or during the investigation and mediation steps of the review process. I accepted this information on an *in camera* basis during the inquiry and it was not shared with either the Public Body or the Applicant. The Public Body thus argues that it has been put in an impossible position where it was expected to consider information it did not have when responding to the access request, and further that it is expected to meet its burden in this inquiry which would involve properly considering that information. The Public Body argues that these circumstances have denied it a fair process.

[para 18] *In camera* submissions are permitted under section 69(3) of the FOIP Act.

(3) The person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review must be given an opportunity to make representations to the Commissioner during the inquiry, but no one is entitled to be present during, to have access to or to comment on representations made to the Commissioner by another person.

[underlining added]

[para 19] Section 69(3) abridges the duty of procedural fairness by removing the right of any party to review or comment upon any other party's submission. Other orders have previously acknowledged the same. Similar circumstances were at work in Order F2006-019 where a complainant submitted *in camera* medical information in order to avoid further disclosing their personal information to a public body. Citing section 69(3) of the FOIP Act, the adjudicator found that the public body had no right to review the *in camera* information as section 69(3) deviates from the normal rules of procedural fairness. (Order F2006-019 at paras. 61 – 63).

[para 20] Given that section 69(3) permits an inquiry to deviate from the normal rules of procedural fairness, perfect fairness will not always be the case in an inquiry.

[para 21] I do not consider this matter further since in the end it was not necessary for me to consider the Third Party's *in camera* information shared only with me, meaning that the Public Body was not prejudiced by it. The information was relevant to sections 17(5) and 18 but, for the reasons given in this order, I have not had to consider those sections. Further discussion of this conclusion and the *in camera* information appears in Addendum B to this order, provided only to the Third Party.

1. What, if any, information in the records at issue is “personal information” as defined under section 1(n) of the Act?

Burden of Proof

[para 22] The Third Party and Public Body made arguments about the applicable burden of proof and what each party is responsible for establishing during the inquiry. Section 71(3)(a) of the FOIP Act applies in this case and assigns a burden to the Applicant:

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

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

...

[para 23] Section 71(3)(a) settles the matter of which party carries the legal burden where a public body proposes to disclose third party personal information. It does not, however, address which party bears the burden of demonstrating whether information that a public body proposes to disclose is third party personal information in the first place.

[para 24] The Third Party argues that it bears the burden of establishing that the records contain personal information which would be provided to the Applicant if disclosed. The Third Party argues that the Public Body and the Applicant would bear the burden of demonstrating that disclosure *would not be* an unreasonable invasion of personal privacy. The Public Body disagrees and argues that the Third Party must demonstrate that disclosure of personal information *would be* an unreasonable invasion of personal privacy. Both parties argue for their preferred assignment of the burden on the basis that it is the other party who raised an issue, and is in the best position to meet the burden of proof. With respect to the latter, the Public Body observes that the Third Party is the only party in this matter with access to information relevant to allegations of potential harm since that information was accepted *in camera*.

[para 25] The approach to assigning a burden on the basis of who raised an issue and is in the best position to meet the burden has been adopted in cases of complaints under the FOIP Act where the FOIP Act does not state who has the burden (See, for example, Order 97-004). However, access requests are a different matter; section 71 of the FOIP Act clarifies who carries a burden.

[para 26] In *University of Alberta v Alberta (Information and Privacy Commissioner)*, 2009 ABQB 112 at para. 108, the Court noted the distinction between using the test argued by the Parties to determine the burden in complaint cases and applying the burdens specified in

section 71 of the Act in cases concerning access requests, with approval. Other orders considering similar circumstances have not considered the burden beyond what section 71(3)(a) states. In Order F2005-016, for example, the Former Commissioner observed the burden in section 71(3)(a) and then proceeded to consider the evidence and arguments of the parties without further elaboration. Accordingly, I find that it is not proper to assign burdens of proof using the test referred to by the parties in this case. To the contrary, I find that the burden of demonstrating that information is or is not third party personal information is the same in this case as it is in any case where a public body's response to an access request is under review.

[para 27] Section 2(e) of the FOIP Act is the starting point. The FOIP Act provides for independent reviews of decisions of public bodies. It falls to a public body whose response to an access request is under review to demonstrate that it complied with the FOIP Act, including the mandatory obligation to withhold third party personal information under section 17(1):

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.

[para 28] A public body may argue that information is or is not third party personal information at all or that disclosure of any third party personal information is or is not an unreasonable invasion of personal privacy. Whether a review is brought by an applicant arguing that information has been improperly withheld under section 17(1), or a third party arguing that information will be disclosed contrary to section 17(1), only affects what information is under scrutiny in the review. In the former case it will be withheld information, in the latter case, as here, it will be information that the Public Body proposes to disclose. A public body must justify whichever decision is under review.

[para 29] As to whether the Third Party carries any burden to demonstrate that information is third party personal information at any point in the inquiry at any point in the inquiry, it may, but the burden will be an evidentiary or "tactical" burden of the sort described in *Snell v. Farrell*, [1990] 2 S.C.R. 311 at paras. 30 to 32 and *Freyberg v Fletcher Challenge Oil and Gas Inc*, 2005 ABCA 46 at paras. 183 – 184; further discussed in *Beta Management Inc v Edmonton*, 2017 ABQB 571 at para. 150, and by C.M. Conrad J.A. dissenting in *R. v. Al-Fartossy*, 2007 ABCA 427 at para. 51. Such a burden is one that arises depending upon the practical need for parties to introduce evidence to support their respective cases, or else risk an adverse decision.

[para 30] In practical terms, the Public Body, whose decision is under review, bears the responsibility to explain the reasoning behind its decision to disclose and how disclosure complies with section 17(1) of the FOIP Act; i.e. that disclosure is not a disclosure of third party personal information or is not an unreasonable invasion of third party personal privacy. If the Public Body's explanation is adequate, then the Third Party would be responsible for introducing evidence demonstrating the contrary: that the Public Body's proposed response to the access

request contains third party personal information, disclosure of which would be an unreasonable invasion of third party personal privacy. This is the tactical burden described above. If the result is that information the Public Body proposes to disclose is third party personal information and disclosure would be an unreasonable invasion of a third party's personal privacy, the Applicant has the burden of demonstrating that disclosure is not an unreasonable invasion of third party personal privacy.

[para 31] I now turn to the arguments of the parties and the content of the records at issue.

Arguments and contents of the records at issue

[para 32] The records at issue contain the personal information of multiple third parties, including the Third Party participating in this inquiry. Though the records at issue do not name those third parties, the totality of their information (all of the information in the records, whether proposed to be disclosed or not) is sufficient to identify some of them by reason that it could only come from or refer to specific individuals. However, the totality of the information is not considered here. The precise information under consideration is that which the Public Body proposes to disclose.

[para 33] There are two considerations in this case. The first is whether, as the Third Party argues, all information the Public Body intends to disclose is their personal information or is so intertwined with the personal information of other third parties that the Public Body must withhold the records in their entirety under section 17(1).

[para 34] If the entirety of the information the Public Body proposes to disclose is not third party personal information or inextricably intertwined therewith, then the question is whether the information the Public Body intends to disclose contains any third party personal information. The Third Party argues that the Public Body's proposed redactions are insufficient to protect the Third Party's privacy. The Public Body argues that its redactions remove third party personal information.

Whether all of the information is third party Personal Information or inextricably intertwined with third party personal information

[para 35] "Personal Information" is defined in section 1(n) of the FOIP 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 36] The Third Party described the records at issue as follows:

There is scarcely a page [...] that does not contain multiple instances of the Affected Third Party's personal information coupled with the names and other personal information of various other third parties. The result is that any person reading the [records] could easily identify the Affected Third Party and other third parties, whether by direct implication or inference. Any person who is marginally familiar with municipal politics or the organization structure of the City, for example, would easily be able to identify the Affected Third Party as well as numerous other third-party individuals referenced in the [records].

[para 37] I note that the Third Party's description of the records at issue set out above is inaccurate with respect to names. Names only appear on the first page of the records, and nowhere else. Those names are not third party personal information by reason that they are names of employees of the Public Body as defined in section 1(e) of the FOIP Act¹, and the names are used only in conjunction with the performance of their duties as employees in a way that does not contain a personal dimension (See, for example, Orders F2020-23 at paras. 158 – 161 and F2021-20 at para. 26).

[para 38] In an *in camera* portion of its initial submission - shared with the Public Body but not the Applicant - the Third Party provides an example from the Records at Issue in support of their argument (the example information). The example information includes the Public Body's proposed redactions.

[para 39] I agree with the Third Party that a person with some knowledge of the Public Body's organizational structure could infer which roles are involved in the example information. I also find, however, that the Public Body's redactions - looking at the example information only - obscure who is referred to in that section. I also observe that roles referred to in the example information are, where possible, referred to in broad terms and not in respect of any particular individual. Viewed in isolation, it is not the case that the example information contains or would reveal the identity of the Third Party as the Third Party alleges.

[para 40] I further consider the Third Party's argument with regard to *all* of the information that the Public Body intends to disclose. While the example information alone may not lead to the conclusion argued for by the Third Party, I consider that other passages or combinations of information that the Public Body intends to disclose may.

[para 41] Further, more detailed reasons for my conclusions appear in Addendum A.

[para 42] In general terms, I find that when compiled all together, the proposed disclosed information enables the reader to accurately deduce that one of the third parties mentioned therein is part of a specific group, and another is expressly identifiable. I find however that such information does not amount to personal information.

[para 43] While the information identifies a third party as a member of a specific group, it stops short of enabling the reader to trace the individual's identity down to one person; the Public Body's redactions eliminate that possibility. The reader may have or form their own beliefs, perceptions, or speculations about which member of the small group is referred to but that does not render the information personal information (Order F2012-14 at para. 66). Essentially, the Public Body has "de-identified" the member of a small group via its redactions. As such, the information it intends to disclose is not personal information. See, for example, Order F2008-012, H2008-03 at para. 71, Order F2010-31 at paras. 25 & 36, and F2015-02 at para. 17, and F2023-05 at para. 98.

[para 44] With the exception of one third party who is expressly identifiable, the above conclusion is true for other third parties, including the Third Party participating in the inquiry. They have been rendered unidentifiable; as such the remaining information the Public Body intends to disclose is not their personal information.

[para 45] The identity of the expressly identifiable third party is discussed in Addendum A. However, I find that the information at issue does not contain this third party's personal information for the same reasons that the names appearing on page 1 of the records at issue are not personal information. This third party is referred to only in a way that engages their participation in workplace duties, without a personal dimension.

[para 46] In light of the above, I find that none of the information the Public Body intends to disclose is third party personal information.

2. Does Section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information to which the Public Body has not applied this provision?

Would disclosure of the records/information that the Public Body proposes to disclose to the Applicant be an unreasonable invasion of a third party's personal privacy under section 17 of the Act?

[para 47] I find that the Public Body's proposed redactions meet its duty under section 17(1) to withhold third party personal information. With the redactions in place, none of the information the Public Body intends to disclose is third party personal information. Section 17(1) does not apply to that information and disclosing it is not an unreasonable invasion of a third party's or the Third Party's personal privacy.

[para 48] Since section 17(1) does not apply to any information the Public Body intends to disclose, I need not consider whether any intended disclosure is an unreasonable invasion of third party personal privacy. Accordingly, I do not consider the parties' arguments with respect to sections 17(4) and 17(5). This includes arguments regarding journalistic purposes as a factor under section 17(5) which would have been relevant in respect of the fact that the Applicant is a media organization. It also includes arguments the Third Party submitted *in camera* in respect of section 18, which would have been relevant to section 17(5)(e) since both relate to the concept of harm.

3. Was the Public Body required to withhold information under section 18(1) and 24(1) of the Act?

[para 49] The Third Party argues that the Public Body should withhold the entirety of the responsive records under sections 18(1)(a) and 24(1)(a) of the FOIP Act. Unlike section 17(1) which requires public bodies to withhold information, sections 18 and 24 are discretionary exceptions to disclosure under which public bodies may, but not must, withhold information.

[para 50] The same situation arose in Order F2005-016. In that order, a third party also argued that information should have been withheld under several discretionary exceptions to disclosure. Former Commissioner Work did not consider those arguments, finding that he did not have authority to apply discretionary exceptions to disclosure for public bodies, and further that he did not have the ability to review a public body's decision to *give* access when discretionary exceptions were involved, owing to the wording of the Commissioner's order-making power in section 72(2)(b) of the FOIP Act (Order F2005-016 at paras. 10 to 13). The order-making power in section 72(2)(b) only allows the Commissioner to make an order where a

public body has *refused* access pursuant to a discretionary exception to disclosure and does not apply where a public body discloses information.

[para 51] The same reasoning from Order F2005-016 applies in this case. The Public Body declined to exercise discretion to withhold discretion under sections 18 and 24 despite the Third Party's position that it should. Accordingly, I do not consider arguments that the Public Body should have withheld information under sections 18 and 24.

[para 52] In reaching the above conclusion, I have considered the more recent decision of this Office in Order F2017-82. In that order, the Adjudicator considered a third party's argument that a public body should withhold information under section 27(2) of the FOIP Act. In deciding that she would consider the section 27(2) argument, the Adjudicator stated at para. 100:

Section 65(2) authorizes a third party that has received notice of a decision to give access under section 31 to request review. It does not limit the Third Party to requesting review of decisions as they relate to section 16 or 17 of the FOIP Act. Moreover, if the Commissioner considers that a public body is required to withhold information, as in the case when a mandatory exception such as section 27(2) applies, the Commissioner may require the public body to refuse access under section 72(2)(c).

[para 53] The wording of the above paragraph suggests that a third party enjoys a wide right to request a review under section 65(2), which could potentially include application of discretionary exceptions to disclosure. I note, however, the third party in Order F2017-82 had not argued that any discretionary exceptions to disclosure should have been applied. The matter was limited to review of section 27(2), which is a mandatory exception to disclosure that applies where certain privileged information relates to a person other than a public body. Neither did the Adjudicator consider Order F2005-016 or the wording of section 72(2)(b) of the FOIP Act. In view of the foregoing, I do not see that decision in Order F2005-16 has been disturbed. Indeed, even in Order F2005-016, former Commissioner work also agreed to consider the third party's arguments related to section 27(2) on the basis that it is mandatory exception to disclosure, rather than a discretionary one (Order F2005-016 at paras. 14 – 15).

Scope of Order

[para 54] In this order I have considered whether the Public Body's proposed redactions comply with section 17(1) of the FOIP Act and found that they have. The information that the Public Body intends to disclose does not reveal any third party personal information. I have not, however, considered whether any of the information contained in the Public Body's proposed redactions could also be disclosed. As noted earlier, that information was not at issue. Thus, as was also the case in Order F2017-36, it remains open to the Applicant to seek a review of whether the Public Body's proposed redactions under section 17(1) exceed what section 17(1) requires of it, once it has received the information the Public Body intends to disclose.

V. ORDER

[para 55] I make this Order under section 72 of the FOIP Act.

[para 56] I find that the Public Body's intended disclosure of information in the records at issue does not contain the personal information of the Third Party or other third parties and therefore complies with section 17(1). I order the Public Body to provide the Records at Issue bearing the Public Body's proposed redactions to the Applicant.

[para 57] I further order the Public Body to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

John Gabriele
Adjudicator

¹ (e) "employee", in relation to a public body, includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body;