

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER ATIA2026-14

September 1, 2026

EDUCATION AND CHILDCARE

Case File Number 041204

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Summary: A corporate Third Party requested a review of the decision of Education and Childcare (the Public Body) to disclose information about it in response to an access request under the *Access to Information Act* (ATIA). The Adjudicator considered whether the Public Body's proposed disclosure complied with section 19(1) of ATIA (Disclosure harmful to business interests of a third party). The Adjudicator found that the proposed disclosure complied with section 19(1).

Statutes Cited: **AB:** *Access to Information Act*, S.A. 2024, c. A-1.4, ss. 1(w), 19(1), 19(1)(a), 19(1)(c), 19(1)(c)(i), 19(1)(c)(ii), 19(1)(c)(iii), 19(1)(c)(iv), 20(1), 36, 63(3), 63(3)(b), 64, 64(2)(a); *Early Learning and Child Care Act*, SA 2007 c E-0.1, s. 10(1); Schedule 1 to the *Early Learning and Child Care Regulation*, Alta. Reg, 143/2008 s. 7; *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25 ss. 1(s), 16(1)

Authorities Cited: **AB Orders:** Order 96-019, F2010-009

Cases Cited: *Imperial Oil Limited v Calgary (City)*, 2013 ABQB 393

I. BACKGROUND

[para 1] An individual (the Applicant) made an access request under the *Access to Information Act*, S.A. 2024, c. A-1.4 (ATIA) to Education and Childcare (the Public Body). The Applicant sought the following information:

...all incident reports (meaning records submitted by the program to Licensing under legislative requirements) and visit summaries for [Third Party] from January 1, 2022 to the present. Please include all correspondence attached to the incident reports and visit summaries. I understand that some information may need to be redacted to protect the privacy of individuals. However, I request that the substantive findings, dates, actions taken, and compliance details remain unredacted to the greatest extent possible so that the record's purpose of public accountability is preserved.

Timeframe: Jan 01, 2022 to Oct 03, 2025

[para 2] The Third Party is a corporation operating in the child-care industry. The Public Body determined that the Third Party had business interests in some of the requested information. The Public Body provided notice to the Third Party that it intended to partially disclose the requested information unless the Third Party submitted a request for review to the Office of the Information and Privacy Commissioner. The Applicant was provided notice of the same.

[para 3] The Third Party did not reply to the Public Body's notice but requested a review of the Public Body's decisions regarding the access request by the Office of the Information and Privacy Commissioner. The matter proceeded directly to the inquiry stage of the review process per standard procedure where a third party requests a review of a public body's decision.

[para 4] In light of the request for review, the Public Body provided the Applicant with only a portion of the information it proposed to disclose in response to the access request. The Public Body withheld 95 pages either partially or entirely pending the outcome of this inquiry.

[para 5] The Applicant was invited to participate in the inquiry and did.

II. RECORDS AT ISSUE

[para 6] The records at issue are the 95 pages withheld entirely or partially pending resolution of this inquiry (collectively, the "disputed information"). The following partially withheld pages contain information withheld pending the outcome of this inquiry. Subject to other redactions under ATIA not at issue in this inquiry, the balance of information on these pages was disclosed to the Applicant:

Pages: 77, 79, 80, 120, 145, 221, 224, 233, 238, 243, 284, 285, 288, 291, 292, 294, 296, 297, 298, 300, and 303.

[para 7] The disputed information withheld on the above pages provided to the Applicant is marked “Section 36”. That section of ATIA requires a public body to decide whether to disclose information and provide notice to the Third Party of the same. The Public Body appears to have used “Section 36” to distinguish disputed information from information that it concluded it must withhold under section 19(1) of ATIA, for example on page 38. Information that the Public Body withheld under section 19(1) is not considered in this inquiry. This inquiry only examines whether the Public Body was required to withhold *more* information under section 19(1), not less. That is the scope of the Third Party’s request for review.

III. ISSUE

[para 8] The issue in this inquiry is:

Is the Head of the Public Body required by section 19(1) (disclosure harmful to business interests of third party) to withhold information requested by the applicant?

IV. DISCUSSION OF ISSUE

[para 9] Section 19(1) of ATIA states:

19(1) The head of a public body must refuse to disclose to an applicant information

(a) that would reveal

(i) trade secrets of a third party, or

(ii) commercial, financial, labour relations, scientific or technical information of a third party,

(b) that is supplied, explicitly or implicitly, in confidence, and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person or organization, or

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

[para 10] “Trade Secret” is defined in section 1(w) of ATIA:

(w) “trade secret” means information, a formula, a pattern, a compilation, a program, a device, a product, a method, a technique or a process

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

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

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

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

[para 11] Section 19(1) and 1(w) of ATIA are identical sections 16(1) and 1(s) of its predecessor legislation, the *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25 (the FOIP Act). As with section 16(1) of the FOIP Act, all criteria under section 19(1) of ATIA must be met before a public body is required to withhold information under it (*Imperial Oil Limited v Calgary (City)*, 2013 ABQB 393 at para. 89).

Burden of Proof

[para 12] Section 63(3) of ATIA prescribes different burdens of proof depending upon whether a public body proposes to disclose the personal information of an individual or information about a third party.

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

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

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

[para 13] The disputed information contains both personal information and information about the Third Party. However, I can see in the copy of the records provided to me for review that the

Public Body has made decisions to withhold personal information under section 20(1). The Public Body's decisions with respect to personal information are not under review in this inquiry and so any personal information will remain withheld. Moreover, as a corporation, the Third Party does not have any personal information and could not argue that any of its information must be withheld by reason that it is personal information (Order 96-019 at paras. 67-69; Order F2010-009 at paras. 15-16). Accordingly, per section 63(3)(b) of ATIA, the Third Party must prove that the Applicant has no right to the disputed information.

[para 14] The Third Party did not make a submission in this inquiry; the only arguments it made appear in its Request for Review form. The arguments are little more than bald assertions consisting of a general objection to disclosure and statements that the disputed information contains personal information that must be withheld, records provided in confidence, information protected by solicitor-client privilege, and could reasonably be expected to cause harm to third party interests if disclosed. None of the arguments are supported by particulars or refer to any particular information in the records. Regarding solicitor-client privilege, I observe that none of the records appear to involve communications with any legal counsel and further that the records are that of the Public Body. If, somehow, any of the disputed information is privileged, I cannot see that the privilege would be anyone's other than the Public Body's; it is certainly not that of the Third Party. The Public Body has not argued that any of the disputed information is privileged.

[para 15] The Third Party also submits that disclosure would violate its internal policies governing disclosure of personal and confidential information. That argument is irrelevant to the issue in this inquiry. Section 19(1) sets criteria which, if met, require the Public Body to withhold information; none of them engage a third party's internal policies.

[para 16] The Third Party has not established that any of the criteria in section 19(1) are met. It has not even explained what, if any, of the disputed information is of a type mentioned in section 19(1)(a).

[para 17] Noting the applicable burden of proof, the Applicant argues that the Third Party's failure to establish that section 19(1) applies to the disputed information is fatal to its case. That is not entirely correct. Section 19(1) is a mandatory exception to disclosure of information, which means a public body must apply it properly when responding to an access request. If, even in the absence of a compelling argument from the Third Party, upon a review of disputed information it is self-evident that it meets the criteria under section 19(1), then an order directing the Public Body to withhold that information can be issued unless the Public Body can explain why section 19(1) would not apply.

[para 18] Upon a review of the information, it is not self-evident that any of the disputed information even fits any of the categories of information mentioned in section 19(1)(a). Moreover, the Public Body argues, and I agree, that none of the harms in section 19(1)(c) will

result from disclosure. Neither upon receiving notice from the Public Body nor in this inquiry did the Third Party explain how the harms in sections 19(1)(c)(i) or (iii) may occur. Section 10(1) of the *Early Learning and Child Care Act*, SA 2007 c E-0.1 (the ELCCA) and section 7 of Schedule 1 to the *Early Learning and Child Care Regulation*, Alta. Reg, 143/2008 (the ELCC Regs.) respectively permit the inspection and production, and compel the Third Party to provide, much of the disputed information to the Public Body, with the result that the harm in section 19(1)(c)(ii) could not reasonably be expected. Section 7 of Schedule 1 to the ELCC Regs. is specific to incident reports as mentioned the access request. Section 10(1) of the ELCAA is broad and provides its statutory director with the right to compel production of any records relevant to the operation of child-care facility-based program which would seem to cover any of the records requested by the Applicant. I also agree with the Public Body that section 19(1)(c)(iv) of ATIA is not engaged in this case; there is no indication that disclosing the disputed information would reveal information provided to any person or body appointed to address a labour relations dispute.

[para 19] In view of the above, I find that the Public Body is not required to withhold any of the disputed information in response to the access request under section 19(1).

Proper Order

[para 20] The Applicant made an argument about the appropriate order in this case. My order powers are set out in section 64 of ATIA. The proper order is the one contemplated in section 64(2)(a):

(2) If the inquiry relates to a decision to give or to refuse to give access to all or part of a record, the Commissioner may, by order, do the following:

(a) require the head to give the applicant access to all or part of the record, if the Commissioner determines that the head is not authorized or required to refuse access;

...

[para 21] Specifically, I will order the Public Body to give access to the disputed information as it had originally proposed to do prior to the Third Party's unsuccessful challenge to that decision.

V. ORDER

[para 22] I make this order under section 64 of ATIA.

[para 23] I order the Public Body to provide the records to the Applicant as it had originally proposed to do prior to the Third Party's unsuccessful challenge to that decision; that is without withholding the disputed information under section 19(1).

[para 24] I further order the Public Body to notify me in writing, within 50 business days of receiving a copy of this Order, that it has complied with the Order.

John Gabriele
Adjudicator