ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER FOIP2026-27

August 10, 2026

EDMONTON POLICE SERVICE

Case File Number 016530

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Summary: The Applicant made an access to information request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the Edmonton Police Service (the Public Body) for all records related to a Professional Standards Branch investigation into police officer conduct. The Public Body withheld information under sections 17(1), 20(1), 27(1), and 29(1) of the FOIP Act. Information withheld under section 27(1)(a) was withheld on the basis that it was subject to solicitor-client privilege and a statutory privilege under section 51 of the *Police Act*. The Applicant did not challenge the Public Body's decision to withhold information as subject to solicitor-client privilege.

The Public Body ceased relying on section 20(1) to withhold information.

The Adjudicator found that the Public Body properly withheld some information under section 17(1) but ordered other information disclosed, including information about the Applicant and Applicant's Legal Counsel, information provided by the Applicant, information already disclosed to the Applicant in other records, and anonymous opinions.

The Adjudicator found that the Public Body properly withheld some information subject to privilege under section 51 of the *Police Act*. The Adjudicator also found that the scope of the

privilege was limited by regulatory disclosure throughout the complaint process under the *Police Act* and that, therefore, information disclosed through the complaint process was not privileged and could not be withheld on that basis.

The Adjudicator found that the Public Body improperly withheld information under section 29(1) since it neither identified public documents to the Applicant nor did it inform the Applicant of how the documents could be obtained. The Adjudicator ordered the Public Body to provide the identity and means of obtaining the documents or disclose the documents to the Applicant subject to mandatory exceptions to disclosure under the FOIP Act.

Statutes Cited: AB: *Calgary (City) Police Service v Alberta (Information & Privacy Commissioner),* 2010 ABQB 82; *Child, Youth and Family Enhancement Act*, R.S.A. 2000, C-12 s. 126.1(1); *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(1)(h)(ii), 1(1)(h)(iii), 1(n), 1(n)(i), 1(n)(viii), 1(n)(ix), 1(r), 17(1), 17(2), 17(3), 17(4), 17(4)(b), 17(4)(d), 17(4)(g), 17(4)(g)(i), 17(4)(g)(ii), 17(4)(h), 17(5), 17(5)(a), 17(5)(c), 17(5)(e), 17(5)(g), 17(5)(h), 17(5)(i), 20(1), 20(4), 27, 27(1)(a), 27(1)(b), 27(1)(c), 27(2), 29, 29(1), 29(1)(a), 71(2), 72; *Interpretation Act*, R.S.C. 1985, c. I-21; *Interpretation Act*, RSA 2000, c I-8, ss. 35(1), 35(1)(b), 35(1)(c), 35(1)(e), 35(2), 36(1), 36(1)(b), 36(1)(c), 36(1)(c)(i), 36(1)(c)(ii), 36(1)(c)(iii); *Police Act*, RSA 2000, c P-17 ss. 45, 45(2)(a), 45(2)(b), 45(4), 46.1, 46.1(4)(b), 51; *Police Amendment Act*, SA 2022 c 22; *Police Service Regulation,* Alberta Regulation 356/90 ss. 10(3), 19(1)(b); *Public Safety and Emergency Services Statutes Amendment Act*, 2025, SA 2025, c 14.

Authorities Cited: AB: Orders F2005-001, F2005-028, F2006-006, F2008-020, F2009-033, F2010-025, F2013-13, F2014-16, F2015-07, F2015-14, F2017-58, F2023-13, F2024-17, F2025-09

Cases Cited: *Calgary (City) Police Service v Alberta (Information & Privacy Commissioner),* 2010 ABQB 82; *Edmonton Police Service v Alberta (Information and Privacy Commissioner),* 2020 ABQB 10; *Newton v Criminal Trial Lawyers' Association*, 2010 ABCA 399; *R v. Archambault*, 2024 SCC 35; *R v Nedelcu*, 2012 SCC 59; *Rysdyk v Slaney*, 2022 ABQB 538; *Rysdyk v Slaney,* 2023 ABCA 305;

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V. ORDER

Table explaining general location of information to be disclosed to the Applicant

Not publicly produced: Addendum A to the order

I. BACKGROUND

[para 1] On October 30, 2019, under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the FOIP Act), an applicant (the Applicant) made an access to

information request to the Edmonton Police Service (the Public Body). The access request sought the following information:

> …all records relating to the Professional Standards Branch investigation on file number PSB2018-1051.

[para 2] The Professional Standards Branch file number relates to a complaint (the Complaint) made against a police officer (the Officer) under section 45 of the *Police Act*, RSA 2000, c P-17 (the *Police Act*) as it was at the time.[1] The Applicant in this inquiry made the Complaint. At the time of the Complaint, the matter was addressed in numerous media publications. The Complaint was resolved without a hearing pursuant to section 45(4) of *Police Act*. As permitted under section 19(1)(b) of the *Police Service Regulation,* Alberta Regulation 356/90 (the *Police Service Regulation*) in force at the time, the Complaint was concluded by an agreement between the Officer and the Chief of Police.

[para 3] The access request was submitted by legal counsel on behalf of the Applicant (Applicant's Counsel). Written consent from the Applicant permitting the Public Body to disclose any personal information about the Applicant to the Applicant's Counsel was included with the access request.

[para 4] In response to the access request, the Public Body identified 230 responsive records. The Public Body withheld information from some of those records under sections 17(1), 20(1), 27(1), and 29(1) of the FOIP Act. At times the same information was withheld under multiple sections.

[para 5] The Applicant sought a review of the Public Body's response to the access request from the Office of the Information and Privacy Commissioner. Investigation and mediation failed to resolve the matter and so it proceeded to the inquiry stage of the review process.

II. RECORDS AT ISSUE

[para 6] The records at issue consist of the pages the Public Body withheld totally or partially in response to the access request. The precise pages at issue are noted throughout this order.

III. ISSUES

[para 7] The issues set out in the Notice of Inquiry are follows:

1. **Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) require the head of the Public Body to refuse access?**

2. **Does section 20(1) of the Act (disclosure harmful to law enforcement) authorize the head of the Public Body to refuse access?**

3. **Does section 27(1) of the Act (privileged information) authorize the head of the Public Body to refuse access?**

4. **Does section 29 of the Act (information that is or will be available to the public) authorize the head of the Public Body to refuse access?**

IV. DISCUSSION OF ISSUES

Structure of Reasons

[para 8] In order to restrain the length of this decision, it is structured to address groups of pages of records/information that are subject to the same reasoning rather than engaging in an exacting page by page, line by line analysis, save where doing so is strictly required for certain pages. Page numbers and descriptions of information appear throughout to indicate what information is being considered.

Information described in End Table set out in Addendum A

[para 9] In order to make it easier for the Applicant to understand the scope of the information I order to be disclosed, the table at the end of this order sets out the general location of that information in the records

[para 10] In order to make clear to the Public Body precisely what information I order disclosed, it is specified in confidential Addendum A to this Order. Addendum A is only provided to the Public Body.

[para 11] Some further reasons for my decision also appear in Addendum A since they detail and discuss information withheld from the Applicant.

1. **Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) require the head of the Public Body to refuse access?**

Definition of "personal information"

[para 12] "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;

Applicant not seeking certain personal information

[para 13] The Applicant is not seeking all third party personal information withheld in the Records at issue. Specifically, the Applicant is not seeking personal information as defined in sections 1(n)(i)-(vii) of the FOIP Act. The personal information under consideration in this case is thus the types mentioned in sections 1(n)(viii) and (ix), and any other personal information not captured under sections 1(n)(i)-(vii). I do not consider the Public Body's redactions under section 17(1) to personal information described in sections 1(n)(i)-(vii); that information may remain withheld.

[para 14] The Applicant's decision not to seek personal information defined in section 1(n)(i), which includes names, simplifies the matter of seeking opinion information under sections 1(n)(viii) and (ix). The fact that the holder of an opinion holds that opinion has been found to be the opinion holder's personal information (Order F2006-006 at para. 115). Absent names that would identify the holder of an opinion, there is no concern that disclosing the opinion would be a disclosure of third party personal information. So long as an individual is not identifiable in the information disclosed, the disclosed information will not be personal information for the purposes of section 17.

Personal information at issue (page numbers) [para 15] The narrowed focus of the personal information sought by the Applicant significantly reduces the number of pages and the amount of information on those pages that needs to be considered. Opinion and other types of personal information not expressly mentioned in sections 1(n)(i)-(vii) appears on the following pages in the records at issue:

Pages: 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 106, 113, 115, 116, 117, 118, 119, 120, 125, 126, 127, 135, 147, 148, 149, 150, 151, 152, 158, 159, 160, 161, 162, 163, 164, 165, 169, 170, 175, 178, 179, 202, 203, 218, 223, 224, 226, and 227.

Section 17 and burden of proof

[para 16] Section 17(1) of the FOIP Act requires public bodies to withhold personal information where the presumptions in sections 17(4) and considerations in section 17(5) weigh in favour of finding that disclosure would be an unreasonable invasion of third party personal privacy. Sections 17(2) and (3) are not engaged in this case. Sections 17(1) and the portions of sections (4), and (5) germane to this case 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*
>
> > *…*
> >
> > *(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation,*
> >
> > *…*
> >
> > *(d) the personal information relates to employment or educational history,*
> >
> > *…*
> >
> > *(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,*

or

(h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,

…

(c) the personal information is relevant to a fair determination of the applicant's rights,

…

(e) the third party will be exposed unfairly to financial or other harm,

…

(g) the personal information is likely to be inaccurate or unreliable,

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and

(i) the personal information was originally provided by the applicant.

[para 17] The Public Body must first show that section 17 applies so that it may withhold the personal information of a third party. Then the burden of proof for demonstrating that disclosure of third party personal information is not an unreasonable invasion of personal privacy falls on the Applicant per section 71(2) of the FOIP Act:

(2) Despite subsection (1), if the record or part of the record that the applicant is refused access to contains personal information about a third party, 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.

[para 18] I now consider the parties arguments regarding section 17.

Arguments and the law relating to presumed unreasonable invasion of personal privacy – section 17(4) [para 19] The Public Body's position is that presumptions against disclosure in sections 17(4)(b), (d), and (g)(i) apply to the information withheld under section 17(1). The Third Party takes the same position and adds that section 17(4)(g)(ii) would also apply. I find that the presumption in section 17(4)(h) also applies to some information.

[para 20] Section 17(4)(b) applies to personal information identifiable as part of law enforcement records. "Law enforcement" is defined in section 1(h) of the FOIP Act and includes the following in sections 1(1)(h)(ii) and (iii):

> *(h) "law enforcement" means*
>
> *…*
>
> *(ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or*
>
> *(iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred;*

[para 21] Previous orders have found that investigations and proceedings regarding complaints under the *Police Act* are law enforcement matters under sections 1(h)(ii) and (iii) of the FOIP Act, as are the records generated through those processes (For example, Order F2015-14 at para. 18). The same applies in this case. As the Complaint under the *Police Act* has concluded, disclosing any personal information is not necessary to dispose of the Complaint (Order F2013-13 at para. 52). However, not all records containing the personal information sought by the Applicant are law enforcement records; neither is all personal information in the responsive records an identifiable part of a law enforcement record. The details of such pages and information are discussed in my consideration of the records at issue.

[para 22] The complaint process under the *Police Act* concerned the conduct of the Officer and resulted in disciplinary action. The personal information in the records at issue is part of the Officer's employment history. Section 17(4)(d) also applies to that information.

[para 23] The criteria under section 17(4)(g) are met in almost every instance of personal information contained in the records at issue. Third party names frequently appear in the records at issue along with other third party personal information or would reveal personal information if disclosed. However, the Public Body has redacted names associated with other personal information, and the Applicant is not seeking names, which will remain redacted. Accordingly, with one exception, the presumptions against disclosure in section 17(4)(g) do not

apply in this case. The lone exception is related to information appearing on page 162 which accompanies the title and surname of a third party individual.

Arguments and the law relating to relevant circumstances in determining whether unreasonable invasion of personal privacy– section 17(5)

[para 24] The parties made significant arguments about the factors under section 17(5) that are relevant to the personal information of the Officer; those arguments are discussed below. Little was said by any of them regarding the personal information of any other third parties.

[para 25] The parties made arguments in respect of the factors listed in sections 17(5)(a), (c), (e), (g), and (h). I consider them in turn.

Section 17(5)(a) – public scrutiny

[para 26] Order F2014-16 set out several factors applicable to considering whether section 17(5)(a) weighs in favour of disclosure:

> 1. whether more than one person has suggested public scrutiny is necessary;
>
> 2. whether the applicant's concerns are about the actions of more than one person within the public body; and
>
> 3. whether the public body has not previously disclosed sufficient information or investigated the matter in question.

The list of factors is non-exhaustive; there is no need to demonstrate that all factors are met in order to conclude that section 17(5)(a) applies. (Order F2014-16 at paras 35-36).

[para 27] The Public Body argues that none of the factors above support a finding that section 17(5)(a) weighs in favour of disclosure; I agree.

[para 28] In considering the first factor, I keep in mind that section 17(5)(a) is concerned with whether disclosure of personal information in response to an access request is necessary for the purposes of public scrutiny, and not whether there is a call for scrutiny in general. In the present case the amount of media attention the Complaint first received (as evidenced by news articles discussed under Issue 4. suggests that a multitude of people were interested in the matter, however much personal information was revealed through the media. There is no indication that many people feel disclosure under the FOIP Act is necessary for further scrutiny following resolution of the Complaint.

[para 29] Regarding the second factor, the Applicant’s concerns are primarily about the actions of one person within the Public Body: the Officer. There is a second individual the

Applicant is concerned about; a person who the Applicant describes as the Officer's superior (the Superior).

[para 30] Regarding the third factor, I can see from the records at issue that the Public Body has investigated the matter complained of and disclosed the results to the Applicant through the complaint process under the *Police Act* and *Police Service Regulations*.

[para 31] The Applicant argues that section 17(5)(a) weighs in favour of disclosure for reasons other than the factors mentioned in Order F2014-16. The Applicant notes that the Complaint resolved without a public hearing, with the result that the public has no access to a record of such a hearing. The Applicant draws my attention to *Newton v Criminal Trial Lawyers' Association*, 2010 ABCA 399 (*Newton*). In *Newton,* the Court of Appeal discussed the *Police Act* and the role its terms play in maintaining public confidence in police services. I note the following from paragraphs 58 and 59:

> The objectives of the Act were summarized in *Plimmer* at para. 32:
>
> > The particular purpose of the hearing and appeal provisions at issue in this appeal, is to allow an avenue for public complaint and a mechanism for inquiring into such complaints, with a view to balancing the need for public confidence with the employment rights of the officer in the context of the safe, efficient and effective operation of the police service.
>
> The *Act* attempts to balance the interests of four groups: complainants, police officers, the public and the police services.
>
> Because of the extraordinary powers they have to use force and to put restraints on liberty, the misconduct of police officers is always a matter of public interest. Some argue that all police discipline should be internal to the police force, because of the police force's quasi-military nature and the need of the chief of police to maintain discipline. Others argue that police forces cannot effectively discipline themselves, and that civilian oversight of police conduct is the only acceptable model. Alberta has adopted a hybrid model. The initial investigation and prosecution of police misconduct is done within the police forces. Appeals are then available to the Law Enforcement Review Board, which is a civilian tribunal. Further appeals on points of law are available with leave to the Court of Appeal.

[para 32] The Applicant further argues that the events which are the subject of the Complaint call into question the integrity of one officer's police investigations, and the activities of the Public Body itself.

[para 33] The Applicant also argues section 17(5)(a) weighs in favour of disclosing personal information of the Superior at paragraph 19 of the Applicant's submission. The Applicant observes that at the time of the events that were the subject of the Complaint, the Superior held what I will describe here as a significant position within the justice system in Alberta. The Applicant observes that the Superior would have been aware of the Officer's "unacceptable" actions and that the Superior's involvement in them would be of public interest given the Superior's role in the justice system.

[para 34] The Third Party argues that the FOIP Act serves dual purposes: to provide access to information and to protect privacy; neither of which has priority over the other. With respect to section 17(5)(a) the Third Party's refers to *Calgary (City) Police Service v Alberta (Information & Privacy Commissioner),* 2010 ABQB 82 (*Calgary Police Service*).

[para 35] *Calgary Police Service* concerned judicial review of Order F2008-009 wherein an applicant sought review of the Calgary Police Service's response to an access request specifically for disciplinary decisions involving Calgary Police Service Members. (*Calgary Police Service*, at para. 4).

[para 36] In reaching its decision, the Court divided complaints under the *Police Act* into two categories: those under sections 45(2)(a) and 46.1, which the Chief of Police must refer to the Minister of Justice because they may constitute a federal or provincial offence, and those under sections 45(2)(b) and 46.1(4)(b), which may constitute a contravention of regulations governing discipline or the performance of duty. (*Calgary Police Service*, at para. 101). Regarding the latter, the Court stated,

> The result then is that for this category of disciplinary decisions, Section 17(5)(a) of the *Act* does not weigh sufficiently against the presumption in Section 17(4) and so the right to the police officer's privacy remains.

[para 37] While the Court's conclusion on which complaint decisions should be disclosed followed its categorization scheme and reasoning, the Court also took care to note that the considerations under section 17(5) of the FOIP Act must be applied to each decision or document (*Calgary Police Service,* at para. 91). The Court further noted that there was no single reasonable answer to the question of whether disclosure of a disciplinary decision was unreasonable invasion of personal privacy given section 17(5)(a) (*Calgary Police Service*, at para. 99).

[para 38] The Complaint in this case is of the second type described above. This case is distinguishable from *Calgary Police Service* in one material way that applies to the disciplinary decision in the records at issue. The Applicant was the complainant under the *Police Act* and has already received a copy of the decision and other correspondence prepared as part of the complaint process. That said, I observe that the reasoning from *Calgary Police Service* indicates

that the type of Complaint in this case does not attract a need for public scrutiny via disclosure under the FOIP Act the way that the more serious category of complaints do. The Court in *Calgary Police Service* noted that the balance between public and private interests in the *Police Act* and the *Public Service Regulation* generally satisfy the desire for public scrutiny, (*Calgary Police Service,* at para. 96).

[para 39] In addition to the above, the Third Party also argues that the Applicant carries the burden of proof here and has not demonstrated how disclosure of personal information would subject the Public Body to further scrutiny.

[para 40] The arguments of all three parties offer something for consideration. I agree with the Applicant that the manner in which the Complaint was resolved deprives the public of information which it might have had, had there been a hearing, and renders the Complaint process opaque from the general public. This is particularly so regarding the conclusion of the matter by agreement between the Officer and the Chief of Police. As far as I can see based on the evidence before me, the public has neither had a chance to react to the agreement, nor a chance to scrutinize it to see if the agreement properly balances the public and private interests of the *Police Act* and *Police Service Regulations* described in *Newton* and *Calgary Police Service*.

[para 41] I also agree with the argument of the Public Body that there are no factors indicating a need for public scrutiny in this case insofar as it regards the actions of the Officer. The Complaint was made, and the Officer subsequently punished through the complaint process. While there was public attention via media reporting initially, no party has identified any particular facet of the case that cries out for further scrutiny. From the perspective of the public who may be concerned about how and when police are disciplined, the system in place under the *Police Act* and *Regulation* appears to have worked as intended.

[para 42] The Applicant's argument regarding the Superior's information is cogent, but I find that section 17(5)(a) does not weigh in favour of disclosure of it. This conclusion is based upon my review of the information in the records, which the Applicant has not seen. I provide more detailed reasons in Addendum A in order to protect that information which I discuss in my reasons. In brief, there is no information in the records regarding the Superior disclosure of which is desirable for the purposes of public scrutiny. The Applicant also makes an argument about a private interest in the Superior's information that I discuss below as an unenumerated factor under section 17(5).

[para 43] Given the foregoing, I find that the Third Party's arguments support a finding that section 17(5)(a) does not weigh in favour of disclosure in this case. The Complaint is one that does not attract a need for public scrutiny as described in *Calgary Police Service*. Given that, and the lack of any particular facet of the complaint or the handling of it that suggests a need for further public scrutiny, the balance of public and private interests appears to have been met through the *Police Act* complaint process. That conclusion is not to ignore that the complaint

process concluded in private; it is to say that simply concluding in private does not, on its own, necessarily mean disclosure of personal information under the FOIP Act is necessary for public scrutiny. Accordingly, I find that section 17(5)(a) does not weigh in favour of disclosure in this case.

Section 17(5)(c) – fair determination of applicant's rights

[para 44] The Applicant mentioned section 17(5)(c) in the Request for Inquiry document, suggesting that personal information in the records may be relevant to another complaint, separate from the one under the *Police Act*. While the Applicant expressed interest in obtaining further records regarding this person, the Applicant did not explain how any information is relevant to a fair determination of the Applicant's rights, or what right or rights were engaged. I find that section 17(5)(c) does not weigh in favour of disclosure.

Section 17(5)(e) - unfair exposure to financial or other harm

[para 45] The Public Body argued that 17(5)(e) weighs in favour of withholding information. The Public Body argued that 17(5)(e) and 17(5)(h) apply because disclosure could harm the reputation of an individual whom the information is about. Harm to reputation is explicitly dealt with under section 17(5)(h), I consider it under that heading. The Public Body does not explain how financial or other harm would result from disclosure, so I find that section 17(5)(e) does not apply in this case.

Section 17(5)(g) - personal information likely to be inaccurate or unreliable

[para 46] The Applicant references section 17(5)(g) asserting that the records contain "inaccurate information about [the Applicant] and [Applicant's Counsel]." Based upon partial disclosure of information on these pages, the Applicant infers that information on pages 148, 159, and 162 indicate that some of what was said about them by an individual communicating with the Public Body is untrue.

[para 47] This factor is not relevant in respect of any information about the Applicant by reason that the Applicant is not a third party, and as such any information about the Applicant is not third party personal information to which section 17 would apply.

[para 48] This factor is also not relevant in respect of information about Applicant's Counsel. With respect to statements provided to a public body about a third party, the word "accuracy" in section 17(5)(g) has been found to refer to a correct reflection of the information received, in the sense that information must be accurately transcribed; it does not refer to the accuracy of the content of the information received (See Order F2005-001 at para 73). Having had the benefit of reviewing all of the information on pages 148, 159, and 162 as well as related

documentation in the records at issue, I can see that there is no error in transcription. Accordingly, section 17(5)(g) is not relevant to this case.

Section 17(5)(h) – unfair damage to reputation

[para 49] Before turning to the arguments of the parties regarding section 17(5)(h), I note that *Calgary Police Service* contained reference to section 17(5)(h) with respect to the category of less serious complaints under the *Police Ac*t. The Court found that disclosure of disciplinary decisions not involving federal or provincial offences serves no public interest, would not warrant the resulting reputational damage, and so would be unfair. (*Calgary Police Service*, at para. 101)

[para 50] The Public Body and the Third Party argued that this section weighs in favour of withholding personal information. The Public Body argues that disclosing information that would be the employment history of the Officer after the Complaint has been resolved would be unfair. The Applicant is not interested in employment history information, so I do not consider that point any further.

[para 51] Both the Public Body and the Third Party argue that disclosure would be unfair to the Officer due to the passage of time since the Complaint was made, resolved, and last appeared in the news. I note that the arguments of the Third Party and Public Body are not tied to any specific information in the records. In the case of the Third Party, who has not had access to the records, that is understandable. In the case of the Public Body, which does have access to the records, I would consider that it is arguing generally that disclosing personal information related to the Complaint would be unfair by reason that it may pull the Complaint out of obscurity and reflect upon the Officer's reputation again. Elsewise, the Public Body's argument does not point to any unfairness.

[para 52] The Third Party refers to the passage from *Edmonton Police Service v Alberta (Information and Privacy Commissioner),* 2020 ABQB 10 (*EPS*) at para. 642:

> Instead, the Officer relied on a commonly recognised aspect of fairness in our social relations relating to reputation. We cannot erase our actions. Sometimes an action, however long ago set into the world, will forever define us, for good or for ill. But sometimes, we can and should be "released from the consequences of what we have done:" Hannah Arendt, "Labor, Work, Action," in J.W. Bernauer, ed, Amor Mundi: Explorations in the Faith and Thought of Hannah Arendt (Dordrecht: Springer, 1987) 29 at 41. Some have erred and their reputation has never recovered. Others have erred and have remade their lives, no longer defined by their flaw but on what they have built since their flaw was exposed: *R v Handy*, 2002 SCC 56, Binnie J at para 38. This was the point of the Officer's reputation arguments. An act and publication of that act do not mean that

> reputation cannot be recovered. The effect of disclosure must be set against reputation regained -- whatever reputation has been regained.

[para 53] The Applicant raises an argument that the passage of time is irrelevant since the access request was made just 15 days after the Chief of Police reached his decision in the Complaint, and the rest of the passage of time has been occupied by the review and inquiry process under the FOIP Act. There has been considerable administrative lag in the review of the Applicant's access request. The original request for review was received by the Office of the Information and Privacy Commissioner on February 14, 2020.

[para 54] The timelines at work in *EPS* are considerably longer than those in this case. *EPS* was a judicial review of three orders, including Order F2017-58. That Order concerned an access request for the following:

> Please provide me with all records as defined by s. 1(q) relating to the investigation into the findings of misconduct by Judge Wenden against [Officer A] in the matter of *R v Kubusch* (2003) ABPC 156 copy enclosed.

[para 55] *EPS* sets out the timing of relevant events at paragraph 637: "The *Kubusch* decision was released in 2003. The investigation concluded that year. The CTLA applied for records relating to the *Kubusch* decision in 2013. The Adjudicator's decision was released in 2017."

[para 56] At the judicial review in *EPS,* a police officer filed a brief (*EPS*, at para. 27), which was quoted at paragraph 643:

> Para 36 of the Officer Brief read as follows:
>
>> Here, over 10 years have passed since the events leading to the investigation and the investigation itself occurred. Memories of the events have faded from the public memory, and many people likely have no idea that the trial or investigation ever occurred, or do not remember specifics. Releasing the records has the potential to bring these events to the forefront again, damaging [the Officer's] reputation, which he has spent the last decade rebuilding.
>
> Considering all the circumstances around original disclosure and what has transpired respecting the personal information since original disclosure is only "fair" to a third party such as the Officer, and fairness must be considered under ss. 17(5)(e) and (h). The Adjudicator failed to engage in such an assessment. That was not reasonable on the evidence and on the submissions before the Adjudicator.

[para 57] Based on the above it appears that in *EPS* the time between the events and the access request was the relevant period of time against which to assess fairness of harm to

reputation which may result from disclosure. The Court did not appear to include the four-year period between the request for review and decision in the inquiry or the additional three years that passed before the *EPS* decision was released in 2020. Time lost due to administrative or judicial lag was not expressly considered as a factor. That said, there remains some ambiguity in the Court's decision. I do not make a final determination on this point since regardless of which point in time is the proper one to assess reputation, I do not have evidence as to reputation regained by the Officer or any description of efforts to rebuild reputation as did the Court in *EPS*. The Third Party argues that the Officer would have "moved on" from the matters discussed in the records and even retired, but, in my view, that speaks to a desire to leave the events in the past, rather than a statement about regaining or rehabilitating reputation.

[para 58] In this case, the access request was made two weeks after the Complaint was concluded and information damaging to the Officer was released into the public, and I have nothing upon which to rest a conclusion that reputation has been regained. I find that the age of the information does not indicate that disclosure would be unfair under section 17(5)(h). Other considerations under section 17(5)(h) remain.

[para 59] Other relevant factors to assessing the unfairness of damage to reputation include whether any allegations made against the Officer were unsubstantiated or unfounded (Order F2025-09 at para. 24), whether the Officer was sanctioned (F2010-025 at para. 32), whether the information appears in an interim or final decision, and whether the process of determining whether allegations were substantiated was carried out properly, including whether an individual had a chance to defend him/herself (Order F2008-020 at para. 66). Regarding statements about third parties made to the Public Body, assessing unfairness would also include considering whether the Public Body found the opinions to be credible or whether it considered them at all (Order F2023-13 at para. 60). Whether the information is publicly available is also a consideration (*EPS*, at para. 640). These considerations are not applied in a blanket manner; they may be relevant to some information but not other information in the records at issue. As well, any positive information regarding third parties – information that would enhance rather than damage reputation – escapes scrutiny under section 17(5)(h) altogether.

[para 60] None of the factors mentioned in the preceding paragraph indicate any damage to reputation of the Officer would be unfair. The allegations made in the Complaint were founded, as was the final decision of the Public Body, for which the Officer subject to the Complaint was sanctioned. None of the parties have alleged that the Complaint process was unfair; the Officer subject to the Complaint had the chance to defend against the allegations. Particular to opinion information, while there are opinion statements in the record relating to the Officer in the withheld information, they tend to be positive and do not damage reputation.

Section 17(5)(i) – personal information originally provided by applicant [para 61] At one point in the records at issue there appears third party personal information that was originally provided by the Applicant. I find that this factor outweighs any presumption against disclosure that may apply to that information. There is nothing unreasonably invasive about releasing the Applicant's own thoughts back to the Applicant.

Unenumerated section 17(5) factor – Applicant's private interest in information

[para 62] The Applicant observes that information already disclosed via the access request indicates that the Superior was involved in the Complaint. The Applicant believes that the Superior made a statement used in the Complaint and takes the position that some of what the Superior said was untrue. The Applicant naturally has a private interest in knowing if information submitted to the Public Body to influence the Complaint is inaccurate. The Applicant's assertions appear to relate to information disclosed on pages 148, 159, 162, and 163.

[para 63] While I note this factor argued by the Applicant, I do not discuss it further. The reason is that consideration of information to which this consideration would be relevant is overshadowed by the one that follows: such information has already been disclosed through the access request.

Unenumerated Section 17(5) factor – Information already disclosed elsewhere in the records

[para 64] This factor applies to information that remains withheld on some pages but has already been disclosed to the Applicant on others. This factor outweighs any presumption against disclosure under section 17(4). It is not unreasonable to disclose information which has already been disclosed to the Applicant. This reasoning also applies where disclosed information is a paraphrase of information that remains withheld. Given the specific information to which this factor is relevant disclosing the longer version which remains withheld may reveal more words to the Applicant, but not more information. The substantial information has already been disclosed.

Application of section 17 to the records at issue

[para 65] I now turn to the records at issue. I divide the information in them into several categories, each of which attracts different considerations.

Approach to Applicant's Counsel's Personal Information

[para 66] At various points in the record at issue, the personal information of Applicant's Counsel appears on its own or intertwined with the personal information of the Applicant.

Applicant's Counsel is a third party for purposes of the access request. "Third Party" is defined in section 1(r) of the FOIP Act:

> *(r) "third party" means a person, a group of persons or an organization other than an applicant or a public body;*

[para 67] Further, while the access request contained the Applicant's consent for Applicant's Counsel to receive the Applicant's personal information, it did not contain Applicant's Counsel's consent for the Applicant to receive Applicant's Counsel's personal information.

[para 68] This type of situation typically requires consideration of whether the personal information of Applicant's Counsel could be reasonably severed from the Applicant's personal information, such that the former could be disclosed without revealing the latter where disclosing the latter would be an unreasonable invasion of third party personal privacy. However, this is a unique case in that the Applicant's interests in the information sought by the access request are strictly in line with those of, and would be known to, Applicant's Counsel.

[para 69] Applicant's Counsel made the Complaint and the access request as the Applicant's agent and is familiar with the content of and reasons for both. Applicant's Counsel has also furthered the argument that the records contain inaccurate information about their self as well as inaccurate information about the Applicant. Finally, the Applicant and Applicant's Counsel are known to each other outside of the solicitor-client relationship. In sum, I have no hesitation in concluding that the Applicant and Legal Counsel are "in it together" so far as the information sought in the access request goes.

[para 70] In view of the above, and having the benefit of reviewing the Complaint, and how the Applicant and Applicant's Counsel are involved in it, it is plain and obvious that disclosing the personal information of the Applicant's Counsel to the Applicant is not an unreasonable invasion of the privacy of Applicant's Counsel in this case. That is so regardless of any presumptions against disclosure that may apply under section 17(4) that may apply to that information.

[para 71] I note where the above reasoning applies in discussion about particular pages below.

Information already provided to the Applicant and/or Applicant's Counsel through the complaint process

[para 72] Discussion under this heading concerns pages 169, 170, 178, and 179.

[para 73] Information on pages 169, 170, 178, and 179 appears in letters to the Applicant from the Public Body. All information in the letters has already been disclosed to the Applicant. Regardless of any presumptions against disclosure that apply, the fact that this information has

already been disclosed to the Applicant leads to the conclusion that further disclosure of it is not an unreasonable invasion of third party personal privacy. The Public Body is not required to withhold any information under section 17(1) from these pages.

Information already disclosed to the Applicant elsewhere in the records at issue

[para 74] Discussion under this heading concerns withheld information found on pages 117, 118, and 148 in relation to the same or paraphrased information already disclosed to the Applicant on pages 148, 159, 162, and 163.

[para 75] Pages 117, 118, and 148 are identifiable as law enforcement records in the context of knowledge of the Complaint. The presumption against disclosure of personal information in section 17(4)(b) applies to personal information on these pages. Since the name of an individual is disclosed on page 162, the presumptions against disclosure in section 17(4)(g) applies to that individual's personal information as well.

[para 76] Some of the personal information on these pages is opinion information about individuals other than the Applicant and Applicant's Counsel. Opinions about them are those individuals' personal information. The nature of context of these opinions is such that disclosing the opinions will necessarily reveal the identity of the holder of the opinions, which is that individual's personal information.

[para 77] Some of the personal information on pages 117, 118, and 148 is that of the Applicant and Applicant's Counsel. This information is a mix of factual information and opinion information about the Applicant and Applicant's Counsel. The nature of the information will disclose the identity of the opinion holder even though the name of the opinion holder will remain withheld.

[para 78] Much of the information, (whether about the Applicant, Applicant's Counsel, or other individuals) on these pages has already been disclosed to the Applicant in the records at issue. The title of the author of the information on these pages was disclosed on pages 148, 159, 162, and 163. Page 162 also discloses the author's surname and salutation. Disclosed information on page 148 also reveals that the author sent the information to the Public Body in an e-mail.[2] Notwithstanding that presumptions against disclosure in section 17(4)(b) and 17(4)(g) apply to this information, the fact that it has already been disclosed leads to the conclusion that disclosing it would not be an unreasonable invasion of third party personal privacy. The precise information is discussed in Addendum A.

[para 79] There is also personal information in the form of the identified author's opinions about a matter other than an individual on these pages. That information has not been disclosed. As there are no factors under section 17(5) that weigh in favour of disclosure of it, the

presumptions against disclosure apply to this information and it should remain withheld. The precise information is discussed in Addendum A.

Information in records at issue that does not need to be considered under section 17 - Information properly withheld as subject to privilege

[para 80] Discussion under this heading concerns pages 40-46, 113-114, 115-116, 149-152, and 159-163.

[para 81] Below I find that information withheld on pages 113-114 and 115-116 will remain withheld under section 27(1)(a) as subject to solicitor-client privilege. Accordingly, I do not need to consider redactions under section 17(1) made to those pages.

[para 82] Below I find that information from the Explanatory Report made by the Officer on pages 40-46, 149-152, and 159-163 was properly withheld under section 27(2) of the FOIP Act as subject to statutory privilege under section 51 of the *Police Act*. All information withheld under section 17(1) of the type the Applicant seeks is included in information withheld under section 27(2). Accordingly, I do not need to consider those redactions under section 17(1) made to those pages.

Personal Information subject to the presumption against disclosure in section17(4)(b)

[para 83] Discussion under this heading concerns information on pages 34, 35, 37, 38, 39, 106, 119, 120, 147, 158, 164, 165, 175, 223, 224, 226, and 227.

[para 84] Whether about the Officer or another third party, with few exceptions, the pages containing the personal information sought by the Applicant are law enforcement records, and the personal information on those pages is an identifiable part of such. These are pages consisting of documents and e-mails generated or compiled directly in response to the Complaint in the course of addressing it. The presumption against disclosure in section 17(4)(b) of the FOIP Act applies to the personal information in these records.

[para 85] Since there were no factors under section 17(5) that weighed in favour of disclosure, the presumption against disclosure in section 17(4)(b) remains undisturbed. I find that the Public Body correctly withheld this information.

[para 86] The above conclusion leaves little third party personal information to be further considered. What remains is either information that is not subject to the presumption or is information the Public Body is not required to withhold despite the presumption against disclosure in section 17(4)(b).

Personal Information that is not subject to the presumption in section 17(4)(b) [para 87] Discussion under this heading concerns information on pages 125, 126, 127, 202, and 203.

[para 88] Pages 125, 126, 127, 202, and 203 are not self-evidently law enforcement records or identifiable as part of such. They are communications from members of the public sent to the Public Body. They appear to have been composed in response to what the media reported about the Complaint. To be clear, these are not statements from witnesses or that contain any information that appears relevant to the Complaint itself, or that factored into the resolution of the Complaint. The Public Body did not specifically address these pages in its submission. It appears to have applied the presumption against disclosure under section 17(4)(b) to all records responsive to the access request.

[para 89] Similar records were discussed in Order F2015-07. In that Order, the City of Calgary received an access request which included records relating to an investigation into a taxi company; the adjudicator found the investigation was a law enforcement matter under the FOIP Act. Among the records at issue were letters of complaint sent by members of the public to the City of Calgary. The Adjudicator said of them, at paragraph 35:

> Some of the letters of complaint sent to the Public Body (and the letters sent from the Public Body in response to the complaints) are not identifiable as being part of a law enforcement record. While it is possible that these letters formed part of the investigation, this is not apparent from the records themselves. Therefore, I cannot find the presumption in section 17(4)(b) applies to the personal information in those records.

[para 90] In another order, correspondence about a law enforcement matter was found not to be a law enforcement record at all. Order F2005-028 considered whether records were law enforcement records for the purposes of section 20(4) of the FOIP Act. In that Order an access request was made to the Medicine Hat Police Service for records related to two incidents in which the police became involved. The Adjudicator stated at paragraph 17:

> One of the records for Request C is correspondence of a person who has knowledge of the police investigation concerning Request B and who is referring in a general way to that police investigation. The other record for Request C does not mention any police investigation. Although the information in the two records for Request C is recorded, in my view the records do not concern a police investigation as contemplated by section 1(h) of the FOIP Act.

[para 91] The communications on pages 125, 126, 127, 202 and 203 are substantially similar to those discussed in Order F2015-07 and F2005-028. They are either not identifiable as part of a law enforcement record even if they formed part of the investigation into the Complaint, or do

not compose law enforcement records at all despite referring to the Complaint. Accordingly, the presumption against disclosure in section 17(4)(b) does not apply to them.

[para 92] I deal with information on pages 125, 126, and 127 first.

[para 93] Pages 125, 126, and 127 contain opinion statements attributable to identifiable individuals. The fact that those individuals hold those opinions is their personal information. However, since the Applicant is does not seek names, and the names associated with those opinions are the information that would identify the holder, the opinion itself without the name can be disclosed. Absent the identifying name, the opinion information is no longer personal information and the Public Body is not required to withhold it under section 17(1).

[para 94] In order to make it easier for the Public Body to understand precisely what information should be disclosed, I have quoted it in Addendum A only provided to the Public Body.

[para 95] I now turn to pages 202 and 203.

[para 96] The Public Body withheld information on pages 202 and 203 almost entirely. All information was withheld under section 17(1). Sorting out whether all of it was properly withheld requires dissection of the information on the pages.

[para 97] A small amount of information on these pages is the personal information of the Applicant and Applicant's Counsel. It is set out on the page such that it may be severed from other personal information. Some of this information is factual; some is opinion about the Applicant and Applicant's Counsel. Since factual information is only the Applicant's and Applicant's Counsel's personal information, disclosing it to the Applicant is not an unreasonable invasion of third party personal privacy, and it should not be withheld under section 17(1).

[para 98] Regarding opinion information about the Applicant and Applicant's Counsel, the total redactions made to pages 202 and 203 effectively conceal the identity of the individual holding the opinion. As a result, the opinion about the Applicant and Applicant's Counsel, (which is their personal information) may be disclosed.

[para 99] Some of the information on these pages consists of opinion information which is not about another individual. This information may be disclosed on the same basis as information on pages 125 and 126. Once the name identifying the holder of an opinion is removed, the opinion – which is not about another individual – ceases to be identifiable and cannot be withheld under section 17(1).

[para 100] The information on pages 202 and 203 also contains third party personal information about numerous individuals. Significant amounts of that information consist of names, individuals' criminal history, employment history, and political beliefs and associations. I also note that the details of the information of the other third parties is such that even if their names remain withheld, they will be identifiable if the balance of the information were disclosed.

[para 101] Some of the criminal history information on page 202 is easily severable from other information on the page. As it is one of the types of information not sought by the Applicant it will remain withheld nevertheless.

[para 102] The remainder of the criminal, employment, and political personal information is intertwined together along with some other personal information which is about the Applicant's Counsel. It is so intertwined with the aforementioned personal information of other individuals that it cannot be reasonably severed from it without including information that would reveal other individuals' political, criminal, and employment information. What would remain after severing would be nonsensical fragments. Under these circumstances, if disclosing the information of the other third parties is an unreasonable invasion of their personal privacy, the information about the Applicant's Counsel will also have to remain withheld (Order F2006-006 at paras. 111-112).

[para 103] The presumption against disclosure in sections 17(4)(d) and (h) apply to employment history information and political beliefs and associations, respectively. As there are no factors weighing in favour of disclosure of this information, it will remain withheld and the intertwined information of the Applicant's Counsel along with it. There is no presumption against disclosure of criminal history personal information. However, as noted, the criminal history information is itself intertwined with employment and political information. It cannot be reasonably severed and so must remain withheld as well.

[para 104] The remainder of the withheld information on these pages consists of information and opinions about the Officer. Since the information comes from a third party, it is not surprising that none of it is particularly sensitive such as intimate details or inner thoughts of the Officer.

[para 105] The information and opinions are supportive, even praising, and would not harm the reputation of the Officer. To the extent that the information and opinions may recall the Complaint, as concluded earlier, the passage of time does not indicate that any harm to reputation caused by recalling the incident would be unfair. Section 17(5)(h) is therefore not relevant; neither are any of the other section 17(5) factors argued by the parties.

[para 106] Ultimately, I cannot see that it would be an unreasonable invasion of third party personal privacy to disclose the opinions and information about the Officer on pages 202 and 203. I can see no harm or that may be caused by disclosing the positive words someone has said about the Officer and therefore no reason to refuse to disclose this information to the Applicant. The Public Body is not required to withhold this information.

[para 107] The precise information to be disclosed in light of the above discussion appears in Addendum A.

Information provided by the Applicant

[para 108] Discussion under this heading concerns only pages 135 and 218.

[para 109] Pages 135 and 218 contain a summary which includes the Applicant's opinions about the Officer. Under section 17(5)(i) of the FOIP Act, whether third party personal information is provided by the Applicant is a factor in assessing whether disclosure of it is an unreasonable invasion of third party personal privacy.

[para 110] I cannot see any reason that disclosing the Applicant's opinion back to the Applicant is an unreasonable invasion of personal privacy, even if presumptions against disclosure apply. The information is simply a record of the Applicant's own thoughts and for that reason it is not unreasonable to discuss the information back to the Applicant. The Public Body is not required to withhold this information. The precise information to be disclosed appears in Addendum A.

2. Does section 20(1) of the Act (disclosure harmful to law enforcement) authorize the head of the Public Body to refuse access.

[para 111] In the course of the inquiry the Public Body decided that it would no longer rely on section 20(1) of the FOIP Act to withhold any information. Accordingly, I do not need to consider this issue.

3. Does section 27(1) of the Act (privileged information) authorize the head of the Public Body to refuse access.

[para 112] The Public Body withheld information under sections 27(1)(a), 27(1)(b), and 27(1)(c) in response to the access request. For the reasons below, I do not consider sections 27(1)(b) or (c) in this inquiry.

Information withheld under section 27(1)(b)

[para 113] In the course of the inquiry the Public Body decided that it would no longer rely on section 27(1)(b) of the FOIP Act to withhold any information. Accordingly, I do not need to consider this issue.

Information withheld under section 27(1)(c)

[para 114] The Public Body initially withheld information under section 27(1)(c) only from page 20 of the records at issue. The Public Body has since decided not to withhold information from page 20 under section 27(1)(c). The Public Body argues that section 27(1)(c) should apply to pages 113-114 and 115-116 concurrently with section 27(1)(a). The Public Body asserts that the withheld information on pages 113-114 and 115-116 is subject to solicitor-client privilege, and is withheld under section 27(1)(a) on that basis. However, the Applicant does not contest information withheld as subject to solicitor-client privilege. Accordingly, I do not need to consider the application of section 27(1)(c) to that information.

[para 115] I now turn to considering information withheld under section 27(1)(a).

Information withheld under section 27(1)(a)

[para 116] The Public Body withheld information under section 27(1)(a) on the basis that the information is subject to either solicitor-privilege or a statutory evidentiary privilege arising under section 51 of the *Police Act*.

Records withheld as subject to solicitor-client privilege

[para 117] The Applicant does not contest information withheld as subject to solicitor-client privilege. Accordingly, I do not consider the matter further and make no order regarding those decisions. The information will remain withheld. The pages on which such information appears are pages 113-114, 115-116, and 221-222.

Information withheld as privileged information pursuant to section 51 of the Police Act

[para 118] The Public Body withheld information on the following pages under section 27(1)(a) of the FOIP Act on the basis that they are subject to a statutory privilege created under section 51 of the *Police Act*:

> **Pages:** 40-46, 149-152, 159-163, 169-170, and 178-179

[para 119] Section 27(1)(a) of the FOIP Act states:

> *27(1) The head of a public body may refuse to disclose to an applicant*
>
> *(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege,*
>
> *…*

[para 120] After reviewing the information at issue and the decision in *Rysdyk v Slaney*, 2022 ABQB 538 (*Rysdyk*); affirmed in 2023 ABCA 305; it appears that section 27(2) of the FOIP Act is engaged with respect to the withheld information; it states:

> *(2) The head of a public body must refuse to disclose information described in subsection (1)(a) that relates to a person other than a public body.*

[para 121] At the time of the access request, section 51 of the *Police Act* stated,

> *51 Where a police officer or peace officer appointed under the* Peace Officer Act *gives evidence during*
>
> > *(a) a hearing under this Act, or*
> >
> > *(b) an appeal under this Act arising out of a hearing referred to in clause (a),*
>
> *that evidence, or an explanatory report made to an investigator on a voluntary or involuntary basis by a police officer in respect of whom an investigation is being carried out, if it tends to incriminate him or her, subject him or her to punishment or establish his or her liability, shall not be used or received against the police officer or peace officer appointed under the* Peace Officer Act *in any civil proceeding or in any proceeding under any other Act, except in a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence.*

[para 122] In support of its case, the Public Body cites the decision in *Rysdyk*.

[para 123] In *Rysdyk*, the plaintiff sued several members of the Calgary Police Service, alleging that they assaulted him, breached his *Charter* rights, and exercised their authority in a malicious manner (*Rysdyk* at para. 1). In the course of the legal proceedings, counsel for the Plaintiff disclosed an explanatory report (of the type mentioned in section 51 of the *Police Act*) in a draft affidavit of records, intending to use it in the legal proceedings. Plaintiff's counsel had obtained the explanatory report through an access to information request under the FOIP Act (*Rysdyk*, at paras. 38 and 39). The defendants argued that the explanatory report was privileged and moreover was disclosed contrary to section 27 of the FOIP Act.

[para 124] The Court of Queen's Bench (now King's Bench) found that section 51 of the *Police Act* creates a statutory privilege which applies to explanatory reports. The Court also considered whether the privilege under section 51 of the *Police Act* applied to all explanatory reports or whether it only applied where an explanatory report tended to "…incriminate him or her, subject him or her to punishment or establish his or her liability…" *(Rysdyk,* at para. 87*)*. Justice Eamon used the term "inculpatory" to refer to those elements of section 51 of the *Police Act* (*Rysdyk* at para 21). I use the same term here; he concluded that the privilege only applied to inculpatory explanatory reports (*Rysdyk*, at para. 89).

[para 125] The Court further found that the privilege falls within the ambit of the words "any type of legal privilege" under section 27(1) of the FOIP Act at paragraphs 130 - 131:

> Taking the above into account, I conclude the legislature imposed a statutory evidentiary privilege over hearing evidence and explanatory reports under s 51. This privilege applies to a police officer's inculpatory hearing evidence or explanatory report in civil actions and provincial offence proceedings against the officer, but does not limit regulatory disclosure or use for regulatory purposes, and is subject to the statutory exceptions relating to perjury or giving inconsistent evidence. Section 51 is aimed at proceedings against an officer. It follows that the privilege has no potential application in offence proceedings against other accused persons.
>
> Although this evidentiary privilege has limitations in scope and duration, it appears to fall within "any type of legal privilege" under s 27(1) of the FOIP Act.

[para 126] While remarking that the privilege was "any type of legal privilege" under section 27(1)(a), the Court did not comment upon when, in view of the privilege's limitations on scope and duration, records would be "subject to" the privilege, which is also a consideration of section 27(1)(a). In *Rysdyk*, the Court did not determine that an explanatory report is, for all time, subject to privilege under section 51 of the *Police Act*. Rather, it concluded that the explanatory report was privileged in the context of the plaintiff's civil proceeding, which was ongoing at the time, and in that context indicated that disclosure was contrary to section 27(2) of the FOIP Act. This is evident from the Court's comments at paragraph 155:

> The Records were provided to the Plaintiff by CPS's Privacy and Access Section in response to a lawful request under the *FOIP Act*. Where s 27(2) of the *FOIP Act* applied, the Plaintiff did not violate the privilege, rather CPS violated the privilege. Although the privilege holders objected to production of the Records in the civil action, CPS has not provided evidence that it overlooked the issue or acted inadvertently. At best, it changed its interpretation of its obligations in early 2021.

[para 127] There is no similar civil or other statutory proceeding in this case in which the officer who made the explanatory report has objected to disclosure. Further, as noted by the Applicant, an access request is not a proceeding against a police officer and the privilege is not operative in the immediate context of the access request. There is no indication that the privilege is or has been operative anywhere or at any time at all. The question then arises whether the explanatory record in this case is subject to the privilege when in circumstances outside of both the scope and duration of the privilege as it would be understood in a civil proceeding or proceeding under another statute.

[para 128] Previous orders of this Office have considered records withheld pursuant to the statutory privilege under section 126.1(1) of the *Child, Youth and Family Enhancement Act*, R.S.A. 2000, C-12 (the CYFEA). That privilege operates in a similar way to the one in section 51 of the *Police Act* in that it prescribes that certain information is not admissible in other proceedings. Section 126.1(1) of the CYFEA states,

> *126.1(1) Despite section 126(1), the name of a person who makes a report to the director or a police officer under section 4 or 5 and information that would identify that person is privileged information of the person making the report and is not admissible in evidence in any action or proceeding before any court or an Appeal Panel or before any inquiry without the consent of the person.*

[para 129] The previous orders are consistent in their finding that information captured under section 126.1 of the CYFEA is subject to the privilege for the purposes of section 27(1) of the FOIP Act. Whether or not there is another proceeding in which the CYFEA privilege may take effect does not appear to have affected the analysis. For example, in Order F2009-033 records were found to be subject to the CYFEA privilege under section 27 of the FOIP Act without mention of any proceeding in which the privilege took effect. In Order F2023-13, there was a custody dispute between the applicant and her former partner operating in the background of the review but the result was the same.

[para 130] Neither in Orders F2009-033 and F2023-13 was the issue of the scope and duration of a statutory privilege considered, including whether information is subject to such a privilege absent its application in legal proceedings where its introduction is barred by the privilege.

[para 131] In my view, the records at issue are subject to statutory privilege despite the absence of proceeding in which it might take effect.

[para 132] Regarding *Rysdyk,* it seems to me that when referencing limitations on scope and duration of the statutory privilege at paragraphs 130 and 131, Justice Eamon was speaking of the applicability of the privilege to the immediate case brought against the police officers therein in contrast to regulatory purposes for which the explanatory report could be disclosed or used. I do not understand him to be making any comment about how limitations on scope and duration affect whether or when the explanatory report is subject to statutory privilege for the purposes of the FOIP Act.

[para 133] Upon reviewing the language of section 51 of the *Police Act* I have no hesitation in concluding that the privilege in the records captured thereunder is subject to the privilege for the purposes of section 27(1)(a) of the FOIP Act, even in the absence of a proceeding in which the privilege takes effect.

[para 134] Section 51 of the *Police Act* does not prescribe an expiry date on the privilege granted therein. While the privilege may not be actively doing anything in the absence of proceeding in which it is asserted, the privilege remains, even if silently. The records therein are always privileged under the *Police Act*, and thus always subject to the privilege for the purposes of section 27(1)(a) of the FOIP Act.

[para 135] As to the fact that the statutory privilege is not applicable in the immediate context of the access request on a reading of section 51 of the *Police Act* alone, that makes no difference. While records must be subject to a privilege under section 27(1)(a) there are no words limiting the section to privileges to which records are subject directly in the context of an access request. Such an understanding would be contrary to phrase “any type of legal privilege” as used in section 27(1)(a) by removing significant numbers of privileges from its scope, not the least of which would be evidentiary privileges that would not otherwise take effect in response to an access request since records are not disclosed as evidence in response to an access request.

[para 136] I now turn to the records at issue in this case.

[para 137] The records withheld as subject to the privilege under section 51 of the *Police Act* fall into two categories: 1) an involuntary explanatory report as mentioned in section 51 of the *Police Act*, and; 2) records that include direct references to the information in the explanatory report. I consider each category separately.

The explanatory report

[para 138] The explanatory report is at pages 40-46 of the records at issue. There is no doubt that those pages are an explanatory report as referred to in section 51 *Police Act*. I can see from the records that the Officer was explicitly directed to provide an explanatory report pursuant to section 10 of the *Police Service Regulation*.[3] The Officer made the statement on an involuntary basis as contemplated by section 10 of the *Police Service Regulation*.

[para 139] The first question I must consider is whether the explanatory report is inculpatory. If it is not, it is not subject to privilege under section 51 of the *Police Act*.

[para 140] The Public Body did not explicitly opine on whether the explanatory report in this case is inculpatory. In an affidavit sworn by its Supervisor in the Information and Privacy Unit (the Supervisor) the explanatory report is described to contain “certain admissions, views and opinions in response to the complaint made against the EPS member.” That description is accurate.

[para 141] *Rysdyk* provides some guidance on when a statement is inculpatory, or to use the language from section 51, tends to incriminate, subject to punishment, or establish liability. The Court found helpful the discussion of when information could be incriminating in *R v Nedelcu*, 2012 SCC 59 at paras. 16-30, as do I. Speaking of the case under consideration in *Rysdyk*, the Court noted at paragraph 91: “The statements in the present case meet the requirement of being inculpatory under section 51 because they tend to establish one or more of the elements of the alleged civil wrongs." That would appear to be one of the types of an inculpatory statement contemplated in section 51 of the *Police Act*: the statement tends to establish the liability of the police officer in a civil proceeding.

[para 142] While there is no civil proceeding in this case in which the Officer may be found liable, section 51 of the *Police Act* also states that a record is privileged if it tends to subject the police officer to punishment. That would be another way in which a statement may be inculpatory.

[para 143] I have the benefit of being able to review the explanatory report in this case and the resultant decision on the Complaint. Upon review, it is clear that the explanatory report is inculpatory. The statements and admissions therein tend to establish that the Officer did what was complained of, and for which the Officer was subsequently punished. Since the explanatory report is inculpatory, it is privileged.

[para 144] There is a question of who holds the privilege that is not entirely clarified in *Rysdyk*. It may be held by the Public Body, an officer complained of, or both. Whatever the case is, in *Rysdyk*, the privilege was treated as one that engages section 27(2) of FOIP Act. The applicants in *Rysdyk* were several officers who had made various statements regarding complaints against them under the *Police Act.* The Court considered whether those applicants had waived the privilege and found that, "…the Applicants have not waived their rights." (*Rysdyk*, at paras. 143 – 145). Further on in *Rysdyk*, the Court also stated in regard to the fact that the Calgary Police Service disclosed the statements in response to an access request, "Where section 27(2) of the *FOIP Act* applied, the Plaintiff did not violate the privilege, rather CPS violated the privilege." (*Rysdyk*, at para. 155). The privilege, and information subject to it, thus relates to a person other than a public body and engaged section 27(2) of FOIP Act, which requires public bodies to withhold such information. Accordingly, I find that the Public Body must withhold the explanatory report.

Records referencing the explanatory report

[para 145] The pages on which the Public Body withheld references to information in the explanatory report are as follows:

Pages: 149-152, 159-163, 169-170, and 178-179.

[para 146] Information withheld on these pages consists of summaries of what is written in the explanatory report, at times almost quoting material from the explanatory report verbatim. The redactions are specific to that information.

[para 147] The redacted information on pages 149-152 is contained in a report concerning the Complaint. The report is in a memo format and is expressly addressed to the Investigative Manager of the Professional Standards Branch.

[para 148] The redacted information on pages 159-163 is contained in a disposition document prepared by the File Review Manager.

[para 149] The redacted information on pages 169-170 and 178-179 is contained in letters addressed to the Applicant who made the Complaint. The letters were created as part of the complaint process under the *Police Act.* The first explains how and why the complaint process was resolved without a hearing; the second sets out the findings of the investigator and a determination of the merits of the allegations made in the complaint.

[para 150] As explained in *Rysdyk* at para. 130, the privilege under section 51 does not apply to regulatory disclosure or use for regulatory purposes. Specific to regulatory disclosure, the Court in *Rysdyk* also considered whether section 10 of the *Police Service Regulation* also created a privilege over involuntary explanatory reports for the purposes of FOIP. The Court found it did not, stating at paragraph 142:

> As with s 51, the *Wigmore* test assists in deciding if the drafter of s 10 intended to make explanatory reports privileged. I accept the regulatory structure implies confidentiality over the reports unless and until their content is released under the regulatory process, such as through reasons for disposing of a complaint. However, the narrow limitation on admissibility imposed by s 10 of the *Regulation* alone is not enough to demonstrate an intention by the drafter that the reports are privileged.

[para 151] I understand from the above that the privilege under section 51 of the *Police Act* protects the content of explanatory reports only to the extent their contents are disclosed in the context of the regulatory disciplinary process under the *Police Act* and the *Police Service Regulation*. That is precisely the type of disclosure that occurs in letters to the Applicant at pages 169-170 and 178-179. Accordingly, I find that the statements appearing in the letters are not subject to any privilege and cannot be withheld under sections 27(1)(a) or 27(2) of the FOIP Act.

[para 152] As for the records at pages 149-152 and 159-163, these records do not appear to have been disclosed to anyone other than the internal staff of the Public Body charged with carrying out the regulatory disciplinary process. As described in *Rysdyk*, internal staff's use of the involuntary explanatory report and the information therein for regulatory purposes is not a violation of the privilege under section 51 of the *Police Act*. Less clear is whether the information from the explanatory report which appears in those records remains privileged for the purposes an access request under the FOIP Act. The Court did not make a specific pronouncement on that point. For the following reasons, I believe the statements in these records remains subject to the statutory privilege.

[para 153] Section 51 of the *Police Act* explicitly mentions explanatory reports. It is silent on other records that may contain information taken from explanatory reports, creating some ambiguity. The broader wording of section 51 and its role in the regulatory disciplinary process under the *Police Act* and *Police Service Regulation* suggests that information stemming from an explanatory report would remain privileged so long as it is not disclosed throughout the regulatory process.

[para 154] Section 51 applies where a police officer gives evidence at hearing or an appeal arising out of hearing per sections (a) and (b). When read in conjunction with sections (a) and (b) the reference to explanatory reports in the closing portion of the section reads like a separate set of circumstances wherein a police officer may "give evidence" except it is not listed in a subsection as such (*Rysdyk*, at para. 68). It seems to me that this construction is a reflection of how explanatory reports are used in the regulatory disciplinary process as set out in section 10(3) of the *Police Service Regulation*:

> *(3) Where*
>
> > *(a) a police officer in respect of whom an investigation is being carried out is directed by the investigator to provide an explanatory report referred to in subsection (2) setting out the police officer's version of the subject-matter of the complaint, and*
> >
> > *(b) pursuant to that direction the police officer provides an explanatory report,*
>
> *that explanatory report shall be regarded as an involuntary statement and shall not be admissible in evidence in any proceedings carried out under the Act, except to prove that the statement is false.*

[para 155] Absent circumstances where an explanatory report is used to prove that it is a false statement, the report will not be used as evidence, so an officer is not considered to "give evidence" when making one. Despite that difference, explanatory reports are specifically included in section 51 as privileged statements along with any evidence given. Given their inclusion in section 51 it seems to me that explanatory reports fall into the same sort of category as "any evidence given" in that both consist of information *no part of which* is intended to be used in civil proceedings, proceedings under other acts, except for cases of perjury. As explained in *Rysdyk*, the privilege is only abridged by disclosure through the regulatory process. It seems to me then that unless the statutory privilege over any information stemming from a police officer's explanatory report has been abridged through the regulatory process, the privilege remains intact, and information in records not disclosed through the regulatory process remains subject to the privilege for the purpose of sections 27(1) and 27(2) of the FOIP Act.

[para 156] In light of the above, the information from the explanatory report appearing the records at pages 149-152 and 159-163 must be withheld by the Public Body under section 27(2).

[para 157] I describe the information to be disclosed in light of my findings regarding information withheld as subject to privilege under section 51 of the *Police Act* in Addendum A.

Change to section 51 of the Police Act

[para 158] In between the time I received the submissions of the parties and this order was issued, section 51 of the *Police Act* was amended.[4] As of December 1, 2025, it reads as follows:

> *51 The following evidence or statement given by a police officer or peace officer appointed under the* Peace Officer Act *shall not be used in any civil proceeding or in any proceeding under any other Act, except in a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence:*
>
> *(a) evidence during*
>
> *(i) a hearing under this Act, or*
>
> *(ii) an appeal under this Act arising out of a hearing referred to in subclause (i);*
>
> *(b) a voluntary or involuntary statement during an investigation under this Act in an explanatory report or through an interview.*

[para 159] In view of the changes to section 51, I asked the parties for submissions on whether the section still creates a privilege as described in *Rysdyk*, and if not, what, if any, effect that has in this inquiry. I noted to the parties that unlike the earlier version of section 51, the current version omits language that restricts evidence from being "…*used or received against the police officer or peace officer appointed under the* Peace Officer Act…" The current wording is general, and would apply to any proceeding, not just those against police or peace officers.

[para 160] The Public Body and Third Party argue that the new wording maintains the privilege. The Public Body refers to certain passages of the *Rysdyk* decision as well as the timing of amendments following the decision of the Court of Appeal upholding *Rysdyk*. In brief, the Public Body submits that the legislature intended to broaden the privilege by making it applicable to all proceedings, rather than just those against police or peace officers. The Third Party agrees with the Public Body's argument. The Applicant did not make an argument on whether the privilege continues.

[para 161] I do not consider whether the change to section 51 of the *Police Act* alters the privilege identified in *Rysdyk*. All of the parties argue that the change, if there were one, would not apply retroactively, and would not affect this inquiry in case. I also agree.

[para 162] The Public Body refers to the discussion of transitional law espoused by the majority in *R v. Archambault*, 2024 SCC 35 (*Archambault*). In *Archambault*, the Supreme Court reviewed precedents regarding transitional law and found that the provisions of the federal *Interpretation Act*, R.S.C. 1985, c. I-21 codified a presumption against interference with vested rights, with an exception of the immediate application of purely procedural questions. If a new provision is purely procedural then the time at which a right was vested must be determined. If the right vested before the changes, the right is preserved for those in whom it was vested. (*Archambault*, paras. 29-32).

[para 163] The Alberta *Interpretation Act*, RSA 2000, c I-8 (the *Interpretation Act*) contains substantially similar provisions as its federal counterpart discussed in *Archambault*. Sections 35 and 36 of the *Interpretation Act* contain the pertinent provisions, they are as follows:

> *35(1) When an enactment is repealed in whole or in part, the repeal does not*
>
> *…*
>
> *(b) affect the previous operation of the enactment so repealed or anything done or suffered under it,*
>
> *(c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed,*
>
> *…*
>
> *(e) affect any investigation, proceeding or remedy in respect of the right, privilege, obligation, liability, penalty, forfeiture or punishment.*
>
> *(2) An investigation, proceeding or remedy described in subsection (1)(e) may be instituted, continued or enforced and the penalty, forfeiture or punishment imposed as if the enactment had not been repealed.*
>
> *36(1) If an enactment is repealed and a new enactment is substituted for it,*
>
> *…*

(b) every proceeding commenced under the repealed enactment shall be continued under and in conformity with the new enactment so far as may be consistent with the new enactment;

(c) the procedure established by the new enactment shall be followed as far as it can be adapted

> *(i) in the recovery or enforcement of penalties and forfeitures incurred under the repealed enactment,*
>
> *(ii) in the enforcement of rights existing or accruing under the repealed enactment, and*
>
> *(iii) in a proceeding in relation to matters that have happened before the repeal;*

…

[para 164] The above sections of the *Interpretation Act* codify the presumption against interference with vested rights and exception for purely procedural provisions in the manner discussed in *Archambeault*. As discussed above, *Rysdyk* found that the privilege was a right of the officers making the application in that case, which predates the amendment to section 51 of the *Police Act* by years.

[para 165] In view of the above, the privilege under section 51 of the *Police Act* continues for the purposes of this inquiry, even if it were changed by the 2025 amendment. The information that I found above is subject to it must remain withheld under section 27(2) of the FOIP Act.

4. Does section 29 of the Act (information that is or will be available to the public) authorize the head of the Public Body to refuse access?

[para 166] Section 29 of the FOIP Act states,

29(1) The head of a public body may refuse to disclose to an applicant information

> *(a) that is readily available to the public,*
>
> *(a.1) that is available for purchase by the public, or*
>
> *(b) that is to be published or released to the public within 60 days after the applicant's request is received.*

(2) The head of a public body must notify an applicant of the publication or release of information that the head has refused to disclose under subsection (1)(b).

(3) If the information is not published or released within 60 days after the applicant's request is received, the head of the public body must reconsider the request as if it were a new request received on the last day of that period, and access to the information requested must not be refused under subsection (1)(b).

[para 167] Despite quoting this issue in its submission, the Public Body did not address it. The Applicant did not address the issue either. The Third Party limited its submission to matters concerning section 17(1) of the FOIP Act.

[para 168] The Public Body's letter to the Applicant in response to the access request states that records were withheld under section 29(1)(a). The Public Body's Index of Records provided to me during the inquiry specified the withheld pages as pages 181-201 of the Records at Issue. These pages consist of news articles and, in some cases, comments posted online regarding the articles.

[para 169] Section 29(1)(a) of the FOIP Act was recently considered in Order F2024-17. In that order, the Adjudicator found that section 29(1)(a) includes a requirement that public bodies identify the records to an applicant or inform an applicant of how to obtain the records. (Order F2024-17 at paras. 143-145). There is no evidence that the Public Body took those steps in this case. Accordingly, I find that the Public Body has not established that it properly withheld information under section 29(1)(a).

V. ORDER

[para 170] I make this Order under section 72 the FOIP Act.

[para 171] In order to help the Applicant understand the scope of this order, the information I order the Public Body to disclose is described by its general location in the records at issue in the table at the end of this order.

[para 172] With respect to information withheld under section 17(1), I order the Public Body to disclose to the Applicant the information identified as improperly withheld under section 17(1) in Addendum A to this order.

[para 173] With respect to information withheld on the basis that it is subject to statutory privilege under section 51 of the *Police Act*, I order the Public Body to disclose information identified as improperly withheld pursuant to statutory privilege in Addendum A to this Order.

[para 174] With respect to information withheld under section 29(1)(a), I order the Public Body to identify the records to the Applicant and inform the Applicant of how they may be obtained. In the event the records are no longer publicly available, in lieu of taking the foregoing steps, I order the Public Body to provide information withheld under section 29(1)(a) to the Applicant, subject to mandatory exceptions to disclosure under the FOIP Act.

[para 175] I 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

The following table explains the general location of information to be disclosed to the Applicant.

Page Number	**Location of Information to be disclosed to Applicant**
117	Four paragraphs or portions of paragraphs below “**Support Letters**”
118	One paragraph and one portion of a paragraph beginning at the top of the page
125	Two lines following “**MESSAGE**”
126	Two lines under “**Subject:** No Guts”
127	Partial sentence after “**MESSAGE**”
135	Four lines under “Factors for Consideration”
148	Information appearing in 12 bullet points near the top of the page
169	All information on the page
170	All information on the page
178	All information on the page
179	All information on the page
202	Several sentences in the mid-part of the page.
203	Four paragraphs or portions of paragraphs on the page.
218	Information appearing on two lines in the first paragraph below “Executive Summary”

[1] The *Police Act*, including section 45, has since been amended.

[2] The fact that the Public Body disclosed the author’s name is inconsequential in this case. The Applicant and Applicant’s Counsel were already well aware of the name, title, and role of the author as a result of their collective involvement in the Complaint.

[3] The *Police Service Regulation* was in force at the time of the events that were the subject of the Complaint; as of the time of this order it is no longer in force.

[4] The current version of section 51 of the *Police Act*, in force since December 1, 2025 was implemented via section 3(19) of the *Public Safety and Emergency Services Statutes Amendment Act*, 2025, SA 2025, c 14 which amended the *Police Amendment Act*, SA 2022 c 22, which in turn amends the *Police Act.*