

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER FOIP2026-32

October 21, 2026

ALBERTA HUMAN RIGHTS COMMISSION

Case File Number 027503

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request for access under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the Alberta Human Rights Commission (the Public Body) for specific records, including a report of an investigation, a report regarding the Public Body, and a tracking document.

The Public Body located records, but refused access to some information in them under sections 19 (confidential evaluations) and 24 (advice from officials), and as “non-responsive”.

The Applicant requested review of the Public Body’s severing decisions and the adequacy of its search.

The Adjudicator determined that the information was responsive and that most of the information the Public Body referred to as “non-responsive” was properly withheld under section 17(1) of the FOIP Act (disclosure harmful to personal privacy). The adjudicator determined that section 17(1) required the Public Body to refuse access to personal information in the records, but not to some information regarding employees lacking a personal dimension. The adjudicator determined that section 19 of the FOIP Act did not apply. The adjudicator found that section 24 applied to some information severed by the Public Body, but that it had not demonstrated that it had properly exercised its discretion to refuse access. The adjudicator also found that section 24 did not apply to some of the information to which the Public Body had applied it.

The adjudicator found that the Public Body had failed to establish that it had conducted an adequate search for responsive records and directed it to conduct a new search.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 6, 10, 17, 19, 24, 72

Authorities Cited: **AB:** Orders 96-017, F2004-026, F2007-029, F2012-06, P2015-06, F2015-09, F2023-42, F2024-35, FOIP2026-24; **ON:** Order MO-2911

Cases Cited: *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23; *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3; *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2010 ABQB 89 (CanLII); *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23

I. BACKGROUND

[para 1] The Applicant made a request for access under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the Alberta Human Rights Commission (the Public Body) for the following information:

- Public Service Investigation report and investigator notes - related to sexual harassment investigation where I was a witness and interviewed.
- Report prepared by [an employee] for Chief [...] - related to the workplace - I was interviewed and advised that staff concerns would be included in report.
- Case Inventory Resolution Project tracking document used to track work while I was on the project
- Occupation Health and Safety Complaint (COMPLAINT-005803) that I filed.
- Fact Finding interview notes for Respectful Workplace Complaint I filed March 1, 2021

[para 2] The Public Body located records, but severed information from them on the basis of sections 19 (confidential evaluations) and 24 (advice from officials) of the Act. It refused access to some information in the records as "non-responsive".

[para 3] The Applicant requested review by the Commissioner regarding the Public Body's severing decisions and the adequacy of its search for records.

[para 4] The Commissioner appointed a senior information and privacy manager to investigate and attempt to settle the matter. At the conclusion of this process the Commissioner agreed to conduct an inquiry.

[para 5] The Commissioner delegated the authority to conduct the inquiry to me. After I reviewed the records at issue and the submissions of the parties, I determined that the Public

Body's decision to refuse access on the basis of "non-responsiveness" was based on its view that the information was "personal information" within the terms of section 1(n) of the FOIP Act and that the Applicant had not requested personal information of third parties. As section 17(1) is a mandatory provision when it applies, and as the Public Body removed information it considered to be personal information from records expressly requested by the Applicant, I added the issue of whether section 17(1) requires the Public Body to refuse access to information in the records to the issues for inquiry.

II. RECORDS AT ISSUE

[para 6] Information severed from the records and records not located or produced by the Public Body are at issue.

III. ISSUES

Issue A: Is the head of the Public Body authorized to refuse access to information in the records under section 24(1) (advice from officials) of the Act?

Issue B: Is the head of the Public Body authorized to refuse access to information in the records under section 19 (confidential evaluations) of the Act?

Issue C: Did the head of the Public Body meet the duty under section 10 of the Act (responding completely, openly and accurately)? In this case, the Commissioner will consider whether the head met the included duty to conduct a reasonable search for responsive records and also whether the head provided responsive records subject to the application of exceptions?

ISSUE D: Does section 17(1) of the Act (disclosure harmful to personal privacy) require the head of the Public Body to refuse access to information in the records?

IV. DISCUSSION OF ISSUES

Issue A: Is the head of the Public Body authorized to refuse access to information in the records under section 24(1) of the Act?

[para 7] Section 24(1) of the FOIP Act states, in part:

24(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal

(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council,

(b) consultations or deliberations involving

(i) officers or employees of a public body,

(ii) a member of the Executive Council, or

(iii) the staff of a member of the Executive Council,

[...]

(d) plans relating to the management of personnel or the administration of a public body that have not yet been implemented [...]

The Public Body refused access to information in records 25 – 35 under sections 24(1)(a) and (d), cited above.

[para 8] Under section 71(1) of the Act, the Public Body has the burden of proving that the Applicant has no right of access to the information that it refused to disclose under section 24 of the FOIP Act.

[para 9] The test for sections 24(1)(a), as stated in past Orders, is that the advice, recommendations etc. should:

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

[para 12] In Order F2012-06, I considered the foregoing points and said:

It is not enough that records record discussions or communications between employees of a public body; rather, a consultation takes place only when the individuals listed in section 24(1)(b) are asked for their views regarding a potential course of action, and a deliberation occurs when those individuals discuss a decision that they are responsible for, and are in the process of, making.

[para 13] In Order F2015-29, the Director of Adjudication interpreted sections 24(1)(a) and (b) of the FOIP Act and described the kinds of information that fall within the terms of these provisions. She said:

The intent of section 24(1)(a) is to ensure that internal advice and like information may be developed for the use of a decision maker without interference. So long as the information described in section 24(1)(a) is developed by a public body, or for the benefit or use of a public body or a member of the Executive Counsel, by someone whose responsibility it is to do so, then the information falls under section 24(1)(a).

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

so as to protect the final decision, but rather, the process by which a decision maker makes a decision.

[para 10] In Order F2004-026 at paragraph 77 former Commissioner Work determined that information revealing only the topic of advice, but not its substance, was not subject to section 24(1)(a) or (b). If a topic or title of advice reveals something of the substance of advice, then it too may be subject to section 24(1)(a) or (b); otherwise, a topic or title is not subject to section 24(1)(a) or (b).

[para 11] Section 24(1)(d) applies to information regarding a public body's plans in relation to the management of personnel or its administration that it has not yet implemented. The ordinary meaning of the word "plan" is a "formulation of a course of action". In the context of section 24(1)(d), a plan is a course of action that a public body has decided to implement, but has not yet done so. In other words, it refers to information revealing a decision that has been made regarding the management or administration of a public body, but is not yet in effect. I have reviewed the report and find that there is no information that could be said to reveal a "plan" adopted or made by the Public Body that had not yet been implemented.

[para 12] I turn now to the question of whether the Public Body has established that section 24(1)(a) authorizes it to refuse access to information in records 25 - 35.

[para 13] The Public Body argues:

Pages 25 to 35 consist of a strategic report and are advice to the Chief Commissioner on proposals, recommendations, and policy options and plans that have not yet been implemented.

The Public body applied section 24(1)(a) and 24(1)(d) to the information contained on pages 25 to 35 as the report would reveal advice, proposals, recommendations, analyses and policy options, which was directed toward taking action or making a decision, was prepared for the Chief Commissioner, an individual who had the authority to take action, and could reveal plans relating to the management of personnel or the administration of a public body that have not yet been implemented.

The Chief Commissioner requested the report when he was first appointed so that he could understand the challenges and environment within the Public Body. The Chief Commissioner is the head of the Public Body and was appointed at a time when the Commission's case management processes needed a complete review and overhaul. This included looking at morale problems of staff at the Commission.

Section 24(1)(a) and (d) is a discretionary exception that is intended to foster candid exchanges of view and protect the deliberation process from public scrutiny.

The report was a very early view of potential "pathways" that the Chief Commissioner could explore in renewing processes to manage complaints at the Commission, and address staff issues. It was an analysis of possible issues, and it provided some expertise from the investigator on possible ideas to proceed in the long-term. It was a very early exploration of plans or actions that could be taken, and it provided analysis and some policy options.

The report project was scaled down from eight months to three months, due to circumstantial changes. In fact, the investigator's contribution to any changes at the Commission, or advice on those potential changes, was cut short because the investigator had another opportunity and

ended his contract early. The investigator was a prior employee of the Commission but was a contractor at the time of writing the report. As a result, the report was in a very preliminary stage in providing advice and recommendations to the Chief Commissioner.

The report was dated September 9, 2020. The investigator did no further work for the Public Body on the report after that. The Chief Commissioner read the information provided in the report and used it to generate further ideas on proceeding forward. However, much more work was done before any decisions were made to implement and define long term policies, plans and actions that the Commission ultimately used to address the shortcomings in case management, and to strategize on staff morale and other issues at the Commission.

[para 14] While the foregoing statement is consistent with the idea that the report was created to make recommendations for the Public Body, it contradicts the Public Body's argument that the report contains plans. There is nothing in the report that can be characterized as a "plan". Moreover, as the Public Body did "much more work" before making long term policy decisions, it is unclear that the information in the report reflects the advice the Public Body considered in making strategic decisions regarding case management and staff morale.

[para 15] I have read the report appearing on pages 25 – 35. While I find that there are some recommendations in the report that fall within the terms of section 24(1)(a), there is information in the report that cannot be characterized as advice or other information contemplated by section 24(1)(a) of the FOIP Act.

[para 16] There are four blocks of severing on page 25. I will review the Public Body's severing block by block.

First block of redacted text, page 24

[para 17] The first block contains four paragraphs. I am unable to identify information subject to section 24(1)(a) in the first block. As discussed above, advice within the terms of section 24(1)(a) is directed at taking a course of action. The information in the paragraphs in the first block does not reveal a course of action being advised or propose steps that could be taken to achieve an outcome. Instead, the four paragraphs in the first block of text indicates the purpose in writing the paper.

[para 18] I am unable to identify information regarding plans of the Public Body that have not been implemented in the first block of text.

[para 19] I find neither section 24(1)(a) nor (d) applies to the first block of text on page 25.

Second block of redacted text on page 25

[para 20] The paragraph in the second redacted text block appears to be topics that will be discussed later in the paper on the subject of education. The topics are discussed later in the report. This paragraph does not reveal advice within the terms of section 24(1)(a) or plans within the terms of section 24(1)(b). The topics themselves do not reveal information subject to section 24(1). I am unable to view the topics as advice as to what action the Public Body should take.

Third block of redacted text on page 25

[para 21] The third block of text contains topics that will be discussed later in the report on the subject of early dispute resolution. I find that the topics themselves do not reveal advice or plans that have not been implemented. In its submissions regarding its exercise of discretion, which I will discuss in depth below, the Public Body stated:

In deciding whether the Commission should use its discretion to release pages 25-35, the Chief Commissioner considered the very early stage that the report was written, the fact that the investigator was a contractor and ended his work early, and that there was really no direct line between the investigator's recommendations, and the ultimate plans the Commission implemented. In fact, many of the recommendations, or pathways, were clearly not implemented, or in a very early draft format.

It is unclear from the Public Body's submissions what the investigator was asked to investigate, or what the authority of the investigator was. As a result, it is unclear what was within the purview of the investigator to discuss. It is also unclear whether or how the report factored into the Public Body's decision making. As a result, I am unable to infer that releasing the topics in this text block would reveal anything about the Public Body's decision-making within the terms of section 24(1)(a) or plans within the terms of section 24(1)(d). I find that the information does not fall within the terms of section 24(1)(a) or (d) of the FOIP Act.

Fourth block of redacted text on page 25

[para 22] The fourth block of redacted text contains topics that will be discussed later in the report on the subject of a public interest investigation unit. The topics do not reveal anything substantive about such a unit, and I find the information in this paragraph is not subject to section 24(1)(a). Again, I have not been given sufficient information to enable me to infer that disclosing the topics could reveal anything about the Public Body's deliberations or plans.

First block of redacted text on page 26

[para 23] This block of text contains a paragraph. The paragraph provides a further breakdown of topics for discussion on the subject of education. The topics do in this case reveal analysis of the issues. I agree with the Public Body that section 24(1)(a) applies to this block.

Second block of text on page 26 – 27

[para 24] This text block continues to the end of page 27. This block of text contains advice and recommendations regarding the Public Body's website. I agree with the Public Body that this text block is advice within the terms of section 24(1)(a).

First text block on page 28

[para 25] This text block contains an analysis of the Public Body's education and e-learning materials. The text block also contains recommendations. I agree with the Public Body

that the information in this text block contains advice within the terms of section 24(1)(a) of the FOIP Act.

Second text block on page 28

[para 26] This text block contains advice regarding communication channels available to the Public Body. I agree with the Public Body that the information in this text block is subject to section 24(1)(a).

Third text block on page 28

[para 27] The third text block on page 28 contains recommendations for the Public Body in relation to media. I agree with the Public Body that this information is subject to section 24(1)(a).

First text block on page 29

[para 28] The first text block on page 29 contains analysis and a proposal regarding speaking engagements. I find that this information is advice within the terms of section 24(1)(a).

Second text block on page 29

[para 29] The second text block contains analysis and a recommendation regarding engagement materials. I find this information is subject to section 24(1)(a).

Third text block on page 29

[para 30] The third text block on page 29 contains analysis and a recommendation regarding education channels. I find that the information in this text block is subject to section 24(1)(a).

First text block on page 30

[para 31] This text block refers to a topic that is discussed later in the paper. I find that this information does not fall within the terms of section 24(1)(a) or (d) as it does not reveal substantive information. I must direct the Public Body to give the Applicant access to this information.

Second text block on page 30

[para 32] This text block contains analysis of the Public Body's early resolution processes. I find that the content of this text block is subject to section 24(1)(a).

First and second text blocks on page 31

[para 33] As the first and second text blocks on page 31 form one paragraph, I have decided to review them together.

[para 34] I find that the information in these two text blocks consists of analysis and recommendations in relation to updating the Public Body's complaint forms. I find that this information is subject to section 24(1)(a).

Third text block on page 31

[para 35] The third text block contains a broad statement about how things are done in other jurisdictions. I am unable to identify information that may be characterized as advice or plans that have not been implemented. If the Public Body had provided evidence regarding this text block as to how this information might have factored into the Public Body's strategies, I could make a positive finding. The discussion of other jurisdictions does not in and of itself indicate that Alberta could take a particular course of action or that the author was recommending that Alberta take a particular course of action. In the absence of evidence as to the purpose of this information, I find neither section 24(1)(a) nor 24(1)(d) applies.

Fourth text block on page 31 and first text block on page 32

[para 36] The information in these two text blocks is about how an Organization in another jurisdiction employs self-help mechanisms. The information does not reveal advice or plans. I find that this information is not subject to section 24(1)(a) or 24(1)(d) of the FOIP Act.

Second text block on page 32

[para 37] The second text block on page 32 provides additional information about the program described in the preceding text blocks. I find that this information does not reveal advice or plans. As discussed above, I have not been provided with sufficient context in relation to the report, such that I could infer that the Public Body was considering aligning its processes with those of other Commissions in Canada. Instead, I have been told that the report was not used in decision making and that many of the statements in the report could be misleading. As I cannot infer that the information is meant to advise, I find that this information is not subject to section 24(1)(a) or (d) of the FOIP Act.

First text block on page 33

[para 38] The first two paragraphs of this text block contain general information about the Legal Rights Support Centre in Ontario. I find that the information in these paragraphs is not subject to section 24(1)(a) or (d).

[para 39] The final paragraph in this text block contains a recommendation. I find the final paragraph of the first text block on page 33 is advice subject to section 24(1)(a) of the FOIP Act.

Second text block on page 33

[para 40] This text block contains recommendations regarding a "public interest assessment unit". I find that the information in this text block is subject to section 24(1)(a) of the FOIP Act.

Third text block on page 33

[para 41] The third text block on page 33 contains a recommended course of action. I find that this information is subject to section 24(1)(a) of the FOIP Act.

First text block on page 34

[para 42] The first text block on page 34 contains a recommended course of action. I find that this information is subject to section 24(1)(a) of the FOIP Act.

Second text block on page 34

[para 43] The second text block is entitled “Internal Cultural Observations”. The information in this text block consists of observations. The text block sets out the writer’s observations. The text block does not propose or recommend a course of action regarding the observations. I find that this information sets out the writer’s understanding of the facts and is not advice as to a course of action. I find that the second text block on page 34 is not subject to section 24(1)(a) or (d).

First text block on page 35

[para 44] The first text block contains a statement that recommendations will appear at another point on the page. The first text block does not contain advice within the terms of section 24(1)(a) of the FOIP Act or plans within the terms of section 24(1)(d) of the FOIP Act.

Text blocks two – six on page 35

[para 45] I find that these text blocks contain advice and recommendations developed for the Public Body. I find that the information in these text blocks is subject to section 24(1)(a) of the FOIP Act.

Exercise of Discretion

[para 46] I have found that some of the information in the records is subject to section 24(1)(a) of the FOIP Act. As section 24(1)(a) is a discretionary provision, I must consider whether the Public Body’s exercise of discretion was reasonable and served the purpose of section 24(1)(a).

[para 47] Section 24(1)(a) is a discretionary provision – that is, a public body may withhold information under its authority, but it need not. In *Ontario (Public Safety and Security) v. Criminal Lawyers’ Association*, 2010 SCC 23, the Supreme Court of Canada commented on the authority of Ontario’s Information and Privacy Commissioner to review a head’s exercise of discretion. The Court noted:

The Commissioner’s review, like the head’s exercise of discretion, involves two steps. First, the Commissioner determines whether the exemption was properly claimed. If so, the Commissioner determines whether the head’s exercise of discretion was reasonable. In IPC Order P-58/May 16, 1989, Information and Privacy Commissioner Linden explained the scope of his authority in reviewing this exercise of discretion:

In my view, the head's exercise of discretion must be made in full appreciation of the facts of the case, and upon proper application of the applicable principles of law. It is my responsibility as Commissioner to ensure that the head has exercised the discretion he/she has under the Act. While it may be that I do not have the authority to substitute my discretion for that of the head, I can and, in the appropriate circumstances, I will order a head to reconsider the exercise of his/her discretion if I feel it has not been done properly. I believe that it is our responsibility as the reviewing agency and mine as the administrative decision-maker to ensure that the concepts of fairness and natural justice are followed.

Decisions of the Assistant Commissioner regarding the interpretation and application of the FIPPA are generally subject to review on a standard of reasonableness (see *Ontario (Minister of Finance) v. Higgins* (1999), 1999 CanLII 1104 (ON CA), 118 O.A.C. 108, at para. 3, leave to appeal refused, [2000] 1 S.C.R. xvi; *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 1999 CanLII 19925 (ON CA), 46 O.R. (3d) 395 (C.A.), at paras. 15-18; *Ontario (Attorney General) v. Ontario (Freedom of Information and Protection of Privacy Act Adjudicator)* (2002), 2002 CanLII 30891 (ON CA), 22 C.P.R. (4th) 447 (Ont. C.A.), at para. 3).

The Commissioner may quash the decision not to disclose and return the matter for reconsideration where: the decision was made in bad faith or for an improper purpose; the decision took into account irrelevant considerations; or, the decision failed to take into account relevant considerations (see *IPC Order PO-2369-F/February 22, 2005*, at p. 17).

In the case before us, the Commissioner concluded that since s. 23 was inapplicable to ss. 14 and 19, he was bound to uphold the Minister's decision under those sections. Had he interpreted ss. 14 and 19 as set out earlier in these reasons, he would have recognized that the Minister had a residual discretion under ss. 14 and 19 to consider all relevant matters and that it was open to him, as Commissioner, to review the Minister's exercise of his discretion.

The Commissioner's interpretation of the statutory scheme led him not to review the Minister's exercise of discretion under s. 14, in accordance with the review principles discussed above. Without pronouncing on the propriety of the Minister's decision, we would remit the s. 14 claim under the law enforcement exemption to the Commissioner for reconsideration. The absence of reasons and the failure of the Minister to order disclosure of any part of the voluminous documents sought at the very least raise concerns that should have been investigated by the Commissioner. We are satisfied that had the Commissioner conducted an appropriate review of the Minister's decision, he might well have reached a different conclusion as to whether the Minister's discretion under s. 14 was properly exercised.

[para 48] In the foregoing case, the Supreme Court of Canada confirmed the authority of the Information and Privacy Commissioner of Ontario to quash a decision not to disclose information pursuant to a discretionary exception and to return the matter for reconsideration by the head of a public body.

[para 49] While this case was decided under Ontario's legislation, it has equal application to Alberta's legislation. Section 72(2)(b) of Alberta's FOIP Act establishes that the Commissioner may require the head to reconsider a decision to refuse access in situations when the head is authorized to refuse access. A head is authorized to withhold information if a discretionary exception applies to information.

[para 50] Section 72(2)(b) provides:

72(2) If the inquiry relates to a decision to give or to refuse to give access to all or part of a record, the Commissioner may, by order, do the following:

(b) either confirm the decision of the head or require the head to reconsider it, if the Commissioner determines that the head is authorized to refuse access [...]

[para 51] In Order 96-017, former Commissioner Clark reviewed the law regarding the Commissioner's authority to review the head of a public body's exercise of discretion and concluded that section 72(2)(b), (then section 68(2)(b)), was the source of that authority. He commented on appropriate applications of discretion and described the evidence necessary to establish that discretion has been applied appropriately:

A discretionary decision must be exercised for a reason rationally connected to the purpose for which it's granted. The court in *Rubin* stated that "Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act..."

The court rejected the notion that if a record falls squarely within an exception to access, the applicant's right to disclosure becomes solely subject to the public body's discretion to disclose it. The court stated that such a conclusion fails to have regard to the objects and purposes of the legislation: (i) that government information should be available to the public, and (ii) that exceptions to the right of access should be limited and specific.

In the court's view, the discretion given by the legislation to a public body is not unfettered, but must be exercised in a manner that conforms with the principles mentioned above. The court concluded that a public body exercises its discretion properly when its decision promotes the policy and objects of the legislation.

The Information and Privacy Commissioners in both British Columbia and Ontario have also considered the issue of a public body's proper exercise of discretion, both in the context of the solicitor-client exception and otherwise. In British Columbia, the Commissioner has stated that the fundamental goal of the information and privacy legislation, which is to promote the accountability of public bodies to the public by creating a more open society, should be supported whenever possible, especially if the head is applying a discretionary exception (see Order No. 5-1994, [1994] B.C.I.P.C.D. No. 5).

[...]

In Ontario Order 58, [1989] O.I.P.C. No. 22, the Commissioner stated that a head's exercise of discretion must be made in full appreciation of the facts of the case and upon proper application of the applicable principles of law. In Ontario Order P-344, [1992] O.I.P.C. No. 109, the Assistant Commissioner has further stated that a "blanket" approach to the application of an exception in all cases involving a particular type of record would represent an improper exercise of discretion.

I have considered all the foregoing cases which discuss the limits on how a public body may exercise its discretion. In this case, I accept that a public body must consider the objects and purposes of the Act when exercising its discretion to refuse disclosure of information. It follows that a public body must provide evidence about what it considered.

[para 52] In the foregoing case, the Commissioner found that the Public Body had not made any representations or provided any evidence in relation to its exercise of discretion. Further, he determined that the head must consider the purpose of the exception in the context of the public interest in disclosing information when exercising discretion. As the head of the public body had not provided any explanation for withholding information, the Commissioner ordered the head to reconsider its exercise of discretion to withhold information under a discretionary exception.

[para 53] In Order F2004-026, former Commissioner Work said:

In my view a Public Body exercising its discretion relative to a particular provision of the Act should do more than consider the Act's very broad and general purposes; it should consider the purpose of the particular provisions on which it is relying, and whether withholding the records would meet those purposes in the circumstances of the particular case. I find support for this position in orders of the British Columbia Information and Privacy Commissioner. Orders 325-1999 and 02-38 include a list of factors relevant to the exercise of discretion by a public body. In addition to "the general purposes of the legislation (of making information available to the public) the list includes "the wording of the discretionary exception and the interests which the section attempts to balance". It strikes me as a sound approach that the public body must have regard to why the exception was included, and whether withholding the information in a given case would meet that goal.

[para 54] Section 12(1) of the FOIP Act requires the Public Body to communicate its reasons for withholding information from the Applicant. This provision states:

12(1) In a response under section 11, the applicant must be told

- (a) whether access to the record or part of it is granted or refused,*
- (b) if access to the record or part of it is granted, where, when and how access will be given, and*
- (c) if access to the record or to part of it is refused,*
 - (i) the reasons for the refusal and the provision of this Act on which the refusal is based,*
 - (ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and*
 - (iii) that the applicant may ask for a review of that decision by the Commissioner or an adjudicator, as the case may be.*

[para 57] Once it is determined that a discretionary exception to disclosure applies, a public body must determine whether it will withhold the information or release it to the applicant. In making this decision, the public body will weigh any applicable public and private interests, including the purpose of the provision, in withholding or disclosing the information.

[para 58] The Commissioner will review the public body's reasons for exercising discretion to withhold information from an applicant. If the Commissioner determines that the public body failed to consider a relevant factor or took into consideration irrelevant factors, or did not provide adequate reasons for withholding information, the Commissioner will direct the public body to reconsider its exercise of discretion.

[para 55] The Public Body argues:

In deciding whether the Commission should use its discretion to release pages 25-35, the Chief Commissioner considered the very early stage that the report was written, the fact that the investigator was a contractor and ended his work early, and that there was really no direct line between the investigator's recommendations, and the ultimate plans the Commission implemented. In fact, many of the recommendations, or pathways, were clearly not implemented, or in a very early draft format. The release of this information to the public would indeed result in misinformation because of the very early stage of the research and how the project was not completed by the investigator, as intended. The Commission continues to rely on section 24 of the FOIP Act which permits to refuse disclosure of pages 25-35.

[para 56] The Public Body argues that because it never adopted any of the recommendations in the report and that there was no "direct line" between the actions the Public Body eventually took and the report, releasing the information severed from the report would "result in misinformation". It was for this reason, in part, that it elected to refuse access to the Applicant.

[para 57] As discussed in the cases cited above, consideration must be given to the purpose of the exception under which access is being refused. Section 24(1) protects the confidentiality of certain types of intragovernmental communications. The purpose of this protection is to ensure that government may take advice and debate policies without interference.

[para 58] In Order F2024-35, the Adjudicator said the following regarding the purpose of section 24(1)(a) of the FOIP Act:

The Public Body has correctly identified the purpose of section 24(1)(a) and (b). The Public Body states that harm would result from disclosing deliberations, consultations and advice relevant to the cross-government access requests. It states that it

...used section 24(1) to protect the integrity of the deliberative process, allowing employees to have frank discussions about the subject matter.

Section 24(1)(a) is intended to enable a public body to conduct frank discussions about policy, not to protect the public from information a public body considers to be "misleading".

[para 59] In *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, the Supreme Court of Canada rejected the potential for misinterpretation of information as a legitimate reason for refusing access. Cromwell J., speaking for the majority, stated:

Moreover, M's submission that the release of some of the information could give an inaccurate perception of the product's safety cannot be accepted. Courts have often — and rightly — been

skeptical about claims that the public misunderstanding of disclosed information will inflict harm. Refusing to disclose information for fear of public misunderstanding undermines the fundamental purpose of access to information legislation; the public should have access to information so that they can evaluate it for themselves.

[para 60] In the foregoing case, the Supreme Court of Canada rejected the argument that the accuracy of information was relevant to a decision to refuse access. In my view, the accuracy of the information a public body is considering releasing is irrelevant to the decision to a decision to refuse access under section 24(1)(a). That is especially so where, as here, there is no evidence as to the accuracy of the information the Public Body argues is “misinformation”.

[para 61] The Public Body did not reference the integrity of its decision-making process as a reason for refusing access. I infer from this that the integrity of its decision-making process was not a concern in making the decision to refuse access. Instead, the Public Body considered an irrelevant factor – the accuracy of the information – in making the decision to refuse access.

[para 62] The Public Body does state:

The report provided the senior leader in an administrative body with frank advice and recommendations. It was meant to be a confidential report and was not released to the rest of the Commission (or to the public) at the time, or subsequently. It was one tool used by the Chief Commissioner and assisted with internal decision-making. In order to balance transparency with effective administration and decision-making of senior leaders, the Chiefs have held town hall meetings with staff to ask for their input and provide information about new policies and procedures at the Commission. The Chiefs have consulted with the public on proposed plans. In the interest of ensuring the Chief Commissioner receives confidential, strategic advice on policy options pages 25 to 35 were withheld under section 24 of the FOIP Act.

The Public Body indicates that it refused access to the information in order to keep it confidential. As noted above, the purpose of the exception is to guard against interference in the decision-making process; the content of the report itself does not support an argument that the ability of the Chief Commissioner to take advice would be affected in any way by disclosure of the content of the report. Confidentiality may assist in protecting a public body’s decision-making process from interference; however, confidentiality itself is not the purpose of section 24(1)(a). Moreover, elsewhere in its submissions, the Public Body suggested that the report was not used to make decisions. As a result, it is unclear that maintaining the confidentiality of the report would serve the Public Body’s decision-making processes. I find that confidentiality is an irrelevant factor.

[para 63] A further factor that the Public Body did not consider is the age and relevance of the information. It is unclear that public reaction to the information could be reasonably expected to interfere with the public body’s decision-making processes if the information were released.

[para 64] Considerations in favor of disclosure appear to outweigh factors against disclosure, once irrelevant considerations are rejected.

[para 65] As the Public Body considered irrelevant factors when it made the decision to refuse access, I must direct it to reconsider its decision to refuse access with regard to the

information I have found to be subject to section 24(1)(a) of the FOIP Act. If the Public Body decides to refuse access to the information again, it must demonstrate that it did so by considering relevant factors. If it decides that the purpose of section 24(1)(a) supports refusing access to information in the report, it must explain why this factor is now relevant to its decision in relation to each piece of information despite the age of the information.

Issue B: Is the head of the Public Body authorized to refuse access to information in the records under section 19 of the Act?

[para 66] The Public Body refused access to records 37 and 38 under section 19(1) of the FOIP Act. Although the records at issue the Public Body provided for the inquiry indicate that it severed information under section 17(1), its submissions for inquiry and the index of records refer to section 19(1) of the FOIP Act.

[para 67] Section 19(1) of the FOIP Act states, in part:

19(1) The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material compiled for the purpose of determining the applicant's suitability, eligibility or qualifications for employment or for the awarding of contracts or other benefits by a public body when the information is provided, explicitly or implicitly, in confidence.

[...]

Section 19(1) of the FOIP Act authorizes a public body to refuse access to information if that information is evaluative information intended to assist in the assessment of *the applicant's* performance, qualifications, or suitability.

[para 68] In its submissions regarding section 19, the Public Body stated:

In the interest of resolving the dispute at an earlier date, the Commission agreed to release pages 36 and 39 redacting the employment performance information of other employees. The document was redacted under s.17(1) of the FOIP Act, so that only the results for [the Applicant] were included and it was released to the Applicant during earlier consultations regarding this claim.

The Commission did not release the employment performance indicators of the other employees on pages 36 and 39, as per section 19 of the FOIP Act. The reason that the Applicant was requesting these numbers was to compare her performance to her colleagues' performance completing files. Pages 36 and 39 assisted in determining the stage of process that each complaint was in but also provided tracking of the success and timeliness of Human Rights Officers as they resolve and close complaints. The initials would clearly indicate the names of each employee.

[para 69] The Public Body's reasons for applying section 19(1) of the FOIP Act do not take into consideration the terms of section 19(1). Section 19(1) may be applied only to information intended to assess or evaluate an applicant. The Public Body instead elected to provide what it considered to be the Applicant's personal information to the Applicant, and refused access to

information about its other employees. Section 19(1) does not authorize a public body to sever information that is about anyone other than an applicant.

[para 70] The Public Body describes the information on pages 36 – 39 as “employment indicators” and as documenting performance and timeliness. The Public Body did not provide any evidence as to how the chart was used within the Public Body; from my review of the chart, I am unable to say that the chart would enable anyone to draw accurate inferences about the timeliness or performance of employees. The chart does not indicate when files were received or say anything about the complexity of the files or the suitability of outcomes. The chart appears intended to document how many files were at the Public Body, and how they were distributed. The chart provides a snapshot of file numbers and the areas with the most files. The information severed from the records is not evaluative of the applicant’s qualifications or suitability for employment, as required by section 19(1).

[para 71] I find that section 19(1) of the FOIP Act does not authorize the Public Body to refuse access to information in records 36 -39. As I find that section 19(1) does not apply, I will consider below whether section 17(1) applies to the information severed from the records.

Issue C: Did the head of the Public Body meet the duty under section 10 of the Act (responding completely, openly and accurately)? In this case, the Commissioner will consider whether the head met the included duty to conduct a reasonable search for responsive records and also whether the head provided responsive records subject to the application of exceptions?

[para 72] Section 10 of the FOIP Act imposes a duty on public bodies to respond openly, accurately, and completely. It states, in part:

10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[para 73] Past orders of this office have interpreted section 10 as requiring a public body to conduct a reasonable search for records.

[para 74] In Order F2007-029, the Commissioner made the following statements about a public body’s duty to assist under section 10(1):

The Public Body has the onus to establish that it has made every reasonable effort to assist the Applicant, as it is in the best position to explain the steps it has taken to assist the applicant within the meaning of section 10(1).

[...]

Previous orders of my office have established that the duty to assist includes the duty to conduct an adequate search for records. In Order 2001-016, I said:

In Order 97-003, the Commissioner said that a public body must provide sufficient evidence that it has made a reasonable effort to identify and locate records responsive to the request to discharge its obligation under section 9(1) (now 10(1)) of the Act. In Order 97-006, the

Commissioner said that the public body has the burden of proving that it has fulfilled its duty under section 9(1) (now 10(1)).

Previous orders . . . say that the public body must show that it conducted an adequate search to fulfill its obligation under section 9(1) [now 10(1)] of the Act. An adequate search has two components: (1) every reasonable effort must be made to search for the actual record requested and (2) the applicant must be informed in a timely fashion what has been done.

[...]

In general, evidence as to the adequacy of search should cover the following points:

- The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request
- The scope of the search conducted – for example: physical sites, program areas, specific databases, off-site storage areas, etc.
- The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
- Who did the search
- Why the Public Body believes no more responsive records exist than what has been found or produced

[para 75] Section 10 includes a duty to conduct a reasonable search for responsive records. In an inquiry regarding the adequacy of the public body's search, the public body is required to provide sufficient details of its search to enable the Commissioner and the applicant to evaluate it. Order F2007-029 sets out the details a public body should provide in order to establish the quality of its search.

[para 76] A public body has the burden in the inquiry of establishing that it conducted a reasonable search for records; however, once it has provided detailed evidence to support finding that it conducted a reasonable search, the Applicant has the evidential burden of adducing, or pointing to evidence that suggests records, or categories of records, have not been searched for, or produced. The Applicant may do this by pointing to deficiencies in the Public Body's search, or providing evidence to support finding that additional records that have not been located or produced are likely to exist.

[para 77] In Order P2015-06 the Adjudicator explained how the evidential burden operates in inquiries where the adequacy of search is in issue:

As part of fulfilling its duties to the Applicant, the Organization must conduct an adequate search for records that respond to the Applicant's access requests. This means that the Organization must have made every reasonable effort to search for the records requested. The initial, or evidentiary, burden of proof lies with the Applicant to provide some evidence that the Organization failed to provide records in its custody or control. If the Applicant meets this initial burden, the onus then shifts to the Organization to prove, on a balance of probabilities, that it made every reasonable effort to conduct an adequate search for responsive records (Order P2006-012 at para 12).

The foregoing case holds that an applicant must provide some evidence to establish that records likely exist that the respondent failed to produce. Once the applicant does so, the respondent must establish that it conducted a reasonable search for responsive records.

[para 78] In *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2010 ABQB 89 (CanLII), the Alberta Court of Queen's Bench confirmed that the duty to assist has an informational component. Manderscheid J. stated:

The University's submissions set out the information it provided, and argues that it is not necessary in every case to give extensive and detailed information, citing, *Lethbridge Regional Police Commission*, F2009-001 at para. 26. This is not an entirely accurate interpretation as to what the case holds. While the Adjudicator indicated that it was not necessary in every case to give such detailed information to meet the informational component of the duty to assist, it concluded that it was necessary in this case. In particular, the Adjudicator said (at para. 25):

In the circumstances of this case, I also find that this means specifically advising the Applicant of who conducted the search, the scope of the search, the steps taken to identify and locate all records and possible repositories of them, and *why the Public Body believes that no more responsive records exist than what has been found or produced.* [Emphasis added in original]

Similarly here the Adjudicator reasonably concluded that the informational component of the duty to assist included providing the University's rationale, if any, for not including all members of the Department in the search, for not using additional and reasonable keywords, and, if it determined that searching the records of other Department members or expanding the keywords would not lead to responsive records, *its reasons for concluding that no more responsive records existed.* [My emphasis]

[para 79] From the foregoing cases, I conclude that the duty to assist requires a public body to search for responsive records. In addition, the duty to assist has an informational component, which requires the public body both to explain the search it conducted and to provide its reasons for believing that no additional responsive records are likely to exist.

[para 80] The burden described in Order P2015-06 also applies to inquiries in relation to searches conducted under the FOIP Act. Once the public body has completed a search for records and explained the search it conducted by addressing the points set out in Order F2007-029, the applicant then has the burden of pointing to some evidence to support the position that there may be records that exist that the public body has not searched for or produced. As examples of situations where the applicant's evidential burden is met, a public body's account of its search may reveal that likely repositories of responsive records were not searched, or the records the public body has located may refer to other responsive records that were not produced, or an applicant may have personal knowledge that a responsive record exists beyond what a public body has located because the applicant created it or was shown it at one time. When the evidential burden is met in relation to particular records, the public body must then provide additional evidence to establish that it conducted a reasonable search for such records, despite not having located them. If the public body does not satisfy the Commissioner that it conducted a reasonable search for records, the Commissioner may direct the public body to conduct a new search for responsive records.

[para 81] The Public Body argues:

Regarding the search conducted for the tracking report, at the time of the information request the exact wording of the request regarding the tracking document was a request for: "Case Inventory Resolution Project [CIRP] tracking document – used to track work while I was on the project." Upon a search Legal Counsel received a four-page document (pages 36 to 39) from the Director's office with the headings: Conciliation stream complaint counts, Quick count by HRO, and By location (Called Quick Count for ease of reference). The Public Body was asked to do a secondary search, but there were no further documents found. The Quick Count document does not have a title and so this was the Public Body best guess of what the Applicant was searching for. It is a tracking document of all the complaints that were open at the time of the information request, and it provides information of the stages of human rights complaints, broken down by each Human Rights Officer. The Public Body had initially redacted the entire document but later provided the statistics associated with the Applicant, [...]

In terms of the Public Body search practices, whenever it conducts a FOIP (now ATI) request, and in this instance an email is immediately sent requesting the documents to each of the three Units at the Commission: the Tribunal, the Director's office, and the Communication, Education and Engagement Unit. A search is also conducted for online files, paper records, emails, case management files, handwritten notes, and any other documents sources. A person is assigned to answer FOIP/ATI requests, and in this case the Director's office has a person who has specialized expertise in this area. Once responses from each unit are received, the relevant documents are saved. Then the legal counsel provides a review of the documents and the request and communicates with the FOIP/ATI Office to inform them of any concerns that the Commission has. The Public Body will do a second search where requested, and in this case the Public Body conducted a secondary search.

The Applicant requested the Case Inventory Resolution Project tracking document used to track cases while she was on the project, and the Public Body at first only provided a fully redacted copy of that document. However, later the Public Body provided a partially redacted version of the document showing the Applicant's information only. The Public Body found no other documents that met the Applicant's request for a tracking document of cases tracked while she was at the Commission. The Quick Count provides tracking of the exact number of cases the Applicant was assessing, the stages these cases were at, as well as a tracker for the City and the conciliation stream.

Regarding the Occupational Health and Safety (OHS) Complaints portion of the request, in its original response the Public Body informed the applicant to submit a request directly to Alberta Labour and Immigration.

The Public Body submits that it has met its duty to assist the applicant by conducting an adequate search and by responding completely, openly and accurately.

[para 82] The Applicant argues:

If the SharePoint repository was searched, the Public Body has not explained why an excel spreadsheet that was stored there was not located. If the SharePoint repository was not searched, the Public Body has not explained why an obvious and known repository of responsive records was omitted from the search.

The same deficiency exists with respect to email records.

[The Applicant's] evidence is a version of the CIRP Tracking Document was circulated by email. Yet the Public Body's submission does not identify whose email accounts were searched, whether both inboxes and sent mail boxes were searched, whether attachments were searched, what search terms were used, or whether any search was conducted specifically for versions of the CIRP Tracking Document circulated by email.

In particular, the Public Body does not indicate whether searches were conducted of the email accounts of individuals who would reasonably be expected to possess copies of the document, including:

- CIRP administrative staff;
- Human Rights Officers who worked on the CIRP;
- [an employee of the Public Body];
- [another employee of the Public Body];
- [the Chief of the Public Body]; and
- the administrative assistants supporting [the Director and the Chief] during the relevant period.

If those email accounts were searched, the Public Body has provided no particulars of those searches. If those email accounts were not searched, the Public Body has provided no explanation as to why obvious custodians of responsive records were excluded.

The absence of this evidence is particularly significant because the Public Body acknowledged during the review process that it originally advised the Applicant that no CIRP tracking records existed, only later identifying the Quick Count document as a responsive record after further review. The fact that additional responsive records were identified only after the matter was under review reasonably raises the question as to whether all obvious repositories of records were searched in the first instance, or at all.

Accordingly, [the Applicant] submits that the Public Body has not discharged its burden of demonstrating that a reasonable search was conducted. The appropriate remedy is an order directing a further search, including:

1. a search of the SharePoint repository used for the CIRP, or affidavit evidence explaining what became of that repository and why responsive records can no longer be located there; and
2. a search of the email accounts, including attachments, of all the individuals identified above and any other custodians reasonably likely to possess copies of the CIRP tracking document.

Absent evidence addressing those specific repositories, the Public Body has not demonstrated that it made reasonable efforts to identify and locate responsive records as required by section 10 of the Act.

[para 83] The Applicant provided affidavit evidence for the inquiry. This affidavit relates to a particular document sought by the Applicant and establishes that the Applicant has personal knowledge that the "CIRP" record was located in Sharepoint. The Applicant provided affidavit evidence to support the Applicant's belief that the record exists, is responsive, and was not produced by the Public Body. The affidavit provides the names of employees likely to have copies of the requested record.

[para 84] I find that the Public Body's account of its search for records is deficient. The Public Body has not provided any evidence as to the search it conducted for the specific records requested by the Applicant, other than that a search of some kind was conducted in the Director's office. In particular, the Public Body has not provided evidence as to the search conducted for the CIRP record sought by the Applicant, and its reasons for believing that this record cannot be produced. The Public Body has not provided evidence as to who did the search, the specific locations searched, or the results of any search. The Public Body provided statements regarding general search practices, but no evidence as to how the search was conducted in relation to the specific records requested by the Applicant. The Public Body has also not explained how it organized its search or determined which repositories of records were to be searched. The Public Body has not confirmed whether it searched in the locations suggested by the Applicant.

[para 85] The Applicant has met the evidential burden with regard to the specific records the Applicant asserts should have been provided. The Public Body has not established that it conducted a reasonable search for records or that it would be unable to produce the CIRP record if it did conduct a reasonable search. As the Public Body has not established that it conducted a reasonable search for records, I must direct it to conduct a new search. Moreover, as there is an informational component to the duty to assist, I must direct the Public Body to document the search it conducted and to explain why it is unable to produce any more records than it has located if it is unable to locate the requested CIRP record.

Issue D: Does section 17(1) of the Act (disclosure harmful to personal privacy) require the head of the Public Body to refuse access to information in the records?

[para 86] Section 17(1) of the FOIP act requires a public body to refuse access to information if disclosure of the information would be an unreasonable invasion of a third party's personal privacy. Section 17(1) is a mandatory provision. If the Commissioner determines that information is subject to section 17(1), the Commissioner must require the Public Body to refuse access to the information.

[para 87] The Public Body refused access to information about third parties on the basis that the information was non-responsive. In Order FOIP2026-24, the adjudicator explained the distinction between not providing records on the basis of non-responsiveness and refusing access to information on the basis of exceptions. She said at paragraphs 8 – 9 of that Order:

The Public Body is not required to provide access to records that have not been requested by the Applicant. However, 'non-responsiveness' is not an exception to the right of access created by section 6 of the Act (see Order F2009-025). Where a record is comprised of separate and distinct portions, it may be appropriate to withhold those portions that are not responsive to the applicant's request.

Past Orders address how public bodies should properly characterize information in a record as non-responsive. Order F2018-75 states (at paras. 55-58):

Separate items of information in a record cannot be viewed out of context of the record as a whole when determining if they are separate and distinct from the remaining record...

Information must be considered in the context of the record as a whole, in determining whether it is separate and distinct from the remainder of the record. In the case of a personal information request like the Applicant's, in order to withhold portions of a record as non-responsive, the Public Body must consider whether that portion contains the Applicant's personal information or whether that portion provides context to the remainder of the record that is the Applicant's personal information.

An example of 'separate and distinct' might be distinct emails in an email chain. Another example relates to police officers' notebooks, which often contain notes on unrelated incidents on a single page. In response to an access request for police records relating to one incident, the part of the notebook page that relates to a different incident might be non-responsive. Another example is where a personal note is added to a work email, such as a note referencing a medical absence, holiday or so on. Where that personal note does not have any relation to the remainder of the email or to the access request, it might be non-responsive.

[para 88] The Applicant specified in the access request that records containing third party personal information were not requested; however, the Applicant expressly requested the investigation report and the CIRP tracking document. As a result, there is tension between the access request made by the Applicant and the parameters proposed by the Applicant. It is unclear that the Applicant intended to exclude the content of the reports expressly named in the access request. Moreover, as personal information may be disclosable by a public body where the interests in disclosing it to an applicant outweigh the interests of third parties in having it withheld (see section 17(5) of the Act, which sets out relevant considerations in determining the appropriate balance), it is unclear that the Applicant intended to authorize the Public Body to remove information from the records the Applicant expressly requested even though the Act might permit disclosure.

[para 89] While it is possible for public bodies and applicants to negotiate access requests to reduce the time required for a public body to respond, such agreements must be clear and unambiguous. In this case, there does not appear to be agreement between the Public Body and the Applicant as to the kinds of information that would be responsive. There is ambiguity in the Applicant's access request as the records the Applicant expressly requested contain information about third parties. It was necessary for the Public Body, as part of the duty to assist, to clarify with the Applicant as to whether the statements made regarding personal information were intended to encompass all the records and whether the Applicant meant to exclude all information about third parties, or only that which the FOIP Act requires the Public Body to withhold.

[para 90] A public body may refuse access to information only if the information is subject to an exception to disclosure (section 6 of the FOIP Act). When an applicant has not requested information, the public body is under no duty to provide it. Such information is "non-responsive". A public body does not refuse access to information on the basis that it is non-responsive, as section 6 of the FOIP Act requires it to refuse access only when the information is subject to an exception. When a record is the subject of an access request, the public body must consider whether exceptions apply to the information it contains before providing it to the Applicant. As discussed in the cases above, it is only when a record contains unrelated information, as in the case of a police officer's notes, that a public body need consider whether information in a requested record is responsive.

[para 91] In this case, the Applicant requested the records specifically, and the Public Body has decided to refuse access to information on the basis that the information is personal information. When a public body decides to refuse access, it must point to an exception. In this case, the exception on which the Public Body relies is section 17(1) of the FOIP Act, which is a mandatory exception. I turn now to the question of whether this provision requires the Public Body to refuse access to information in the requested records.

[para 92] Section 1(n) of the FOIP Act defines “personal information”. It states:

1 In this Act,

(n) “personal information” means recorded information about an identifiable individual, including

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

[para 93] Information is personal information within the terms of the FOIP Act if it is recorded and is about an identifiable individual.

[para 94] Section 17 sets out the circumstances in which a public body may or must not disclose the personal information of a third party in response to an access request. It states, in part:

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[...]

[...]

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

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

(b) the disclosure is likely to promote public health and safety or the protection of the environment,

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

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,

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

- (f) the personal information has been supplied in confidence,*
- (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 95] Section 17 does not say that a public body is never allowed to disclose third party personal information. It is only when the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy that a public body must refuse to disclose the information to an applicant under section 17(1). Section 17(2) (not reproduced) establishes that disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.

[para 96] When the specific types of personal information set out in section 17(4) are involved, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. To determine whether disclosure of personal information would be an unreasonable invasion of the personal privacy of a third party, a public body must consider and weigh all relevant circumstances under section 17(5) (unless section 17(3), which is restricted in its application, applies). Section 17(5) is not an exhaustive list, and any other relevant circumstances must be considered.

[para 97] Past orders have distinguished between information about persons acting in a "representative" or "professional" capacity and personal information. In Order F2023-42, the Adjudicator said at paragraphs 43 – 45:

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

Where section 17(1) was applied to business contact information (such as work phone numbers of public body employees or business employees), it is not information to which section 17(1) can apply unless there is a personal dimension.

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

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

[para 98] Similarly, in Ontario Order MO-2911, the Adjudicator said:

[...] previous IPC orders have found that to qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual. Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.

[para 99] Information about a representative of a public body acting solely in a professional or representative capacity will not be personal information subject to section 17(1) of the FOIP Act. In contrast, information that reveals something of a personal nature about the representative as an individual will be personal information to which section 17(1) can apply.

[para 100] I turn first to the question of whether the information to which the Public Body refused access is personal information within the terms of section 17(1).

The Investigation Report

[para 101] The Investigation Report reports on an investigation regarding misconduct by employees of the Public Body other than the Applicant. Information about employees who are the subject of employment investigations is about those employees acting in a personal capacity. I find that the Investigation Report in its entirety consists of personal information within the terms of sections 1 and 17 of the FOIP Act, as it is either about employees, or enables inferences to be drawn about the nature of the investigation to which an employee was subject. The only exception is the information provided by the Applicant to the investigator, which appears on pages 6 – 8 of the report. The Public Body severed some information provided by the Applicant as personal information. I will consider that information when I address section 17(1).

Record 24 – information about the author of the Report

[para 102] The Public Body severed the email address of the author of the report requested by the Applicant. The author of the report appears to have acted in a representative capacity when writing the report, whether as an employee of the Public Body or as a consultant. The email address was provided by the author of the report as an email address at which to contact the author. It is unclear that the email address has a personal dimension. As I am unable to say the email address has a personal dimension, I must require the Public Body to disclose this information.

Records 36 – 38 – statistics in the Report

Records 36 – 38 contains statistics as to the location and status of files within the Public Body. While the initials of employees are listed, I am unable to say that there is a personal dimension to the information in these records. Although the Public Body argues that these statistics were used to assess performance, it has not grounded this argument with evidence from someone with direct knowledge of how this information was used at the Public Body. It is unclear to me that this chart could possibly be used to assess performance as it appears to lack crucial information such as the dates on which files were received or the outcomes of the files. Absent

evidence or explanation as to how records 36 – 38 could be used to assess employee performance, thereby giving rise to the possibility that the information has a personal dimension, I am unable to find that the information about employees in these records has a personal dimension. As the information about employees in this record lacks a personal dimension, I find that section 17(1) of the FOIP Act cannot apply to it.

Information in the Report about the complaint and investigation

[para 103] The investigation report contains information about a complaint of misconduct and an investigator's conclusions regarding those allegations. I have already found that this information in the record is personal information.

[para 104] Other than the information provided by the Applicant, the information in the report falls within the terms of section 17(4)(d), as it is information about an employee's work history. As a provision of section 17(4) applies to the information, the presumption arises that it would be an unreasonable invasion of a third party's personal privacy to disclose the information to the Applicant. I find that there is no evidence rebutting this presumption, and that this information must be withheld.

[para 105] The statement made by the Applicant that was severed by the Public Body refers to a third party, but not to a third party who was the subject of a complaint and investigation. I note that the fact that the Applicant supplied the personal information to the Public Body is a factor weighing in favor of disclosure under section 17(5)(i). It is unclear whether the Public Body considered this factor, or what its reasons for refusing access are.

[para 106] With regard to the statement made by the Applicant that appears in the investigation report, I will direct the Public Body to make a new decision as to whether section 17(1) applies to this information. When it makes the new decision, it must take into consideration that the Applicant supplied the information, but it is not precluded from considering other relevant factors if it determines that any such apply.

V. ORDER

[para 107] I make this Order under section 72 of the FOIP Act.

[para 108] I require the Public Body to refuse access to information about third parties in the investigation report, except for the information provided by the Applicant that appears in this report. With regard to the information provided by the Applicant that the Public Body severed, I require the Public Body to make a new decision as to whether section 17(1) requires it to refuse access, taking into consideration that the information was provided by the Applicant.

[para 109] I require the Public Body to reconsider its decision to refuse access to the information I have found to be subject to section 24. The new decision must take into consideration the age of the information. The Public Body must also consider the purpose of section 24 and determine whether this purpose is served by refusing access to this information or whether disclosure would be unlikely to interfere with its decision-making processes.

[para 110] I order the Public Body to give the Applicant access to all other information in the records.

[para 111] I order the Public Body to conduct a new search for the CIRP document that involves searching Sharepoint and consulting employees whose responsibility it was/is to update this document as to its location. If the Public Body is unable to locate this document, it must provide an account of its search to me and to the Applicant that explains the steps taken to locate the document and explains why the Public Body believes this record cannot be produced.

[para 112] I further order the Public Body to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Teresa Cunningham
Adjudicator