ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER FOIP2026-34

October 29, 2026

PRIMARY AND PREVENTATIVE HEALTH SERVICES

Case File Number 025452

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Health (now Primary and Preventative Health Services) (the Public Body) for the following records:

> All records about Safe Consumption Site policies from July 1, 2019 to December 31, 2020. Please exclude all records created by third-party safe consumption site operators.
> May eliminate duplicate records and emails
> Date Range: July 1, 2019 to March 31, 2020

After being ordered to respond to the Applicant in Order F2021-47, the Public Body responded to the Applicant.

The Public Body refused access to information under section 22 of the FOIP Act (cabinet confidences), section 24(1) of the FOIP Act (advice from officials), and as nonresponsive.

The Applicant requested review by the Commissioner. The adjudicator delegated by the Commissioner to conduct the inquiry found that section 22 of the FOIP Act had not been demonstrated to apply. The adjudicator found that sections 24(1)(a) and (b) did apply to the information in the records, but that the Public Body had not established that it exercised its discretion reasonably when it decided to refuse access to information under these exceptions.

The adjudicator found that the Public Body had refused access to responsive information on the basis that it was not responsive and in so doing failed to respond openly, accurately, and completely under section 10 of the FOIP Act. She directed the Public Body to include the information she found to be responsive in a new response.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 6, 17, 22, 24, 25, 72

Authorities Cited: AB: Orders 96-017, F2004-026, F2011-016, F2021-47, FOIP2026-10, F2024-35

Cases Cited: *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23

I. BACKGROUND

[para 1] On April 2, 2020, the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Health (now Primary and Preventative Health Services) (the Public Body) for the following records:

> All records about Safe Consumption Site policies from July 1, 2019 to December 31, 2020. Please exclude all records created by third-party safe consumption site operators.
> May eliminate duplicate records and emails

[para 2] The Public Body did not respond to the access request and was ordered to respond in Order F2021-47.

[para 3] Between December 23, 2021 and January 10, 2022, the Public Body responded to the Applicant's access request. It refused access to some information citing section 17(1) (disclosure harmful to personal privacy), 22(1) (cabinet confidences), 24(1) (advice from officials), and 25(1) (disclosure harmful to economic and other interests of a public body) of the FOIP Act.

[para 4] The Applicant requested review by the Commissioner of the Public Body's severing decisions and the adequacy of its search for records.

[para 5] The Commissioner agreed to conduct an inquiry into the issues raised by the Applicant.

II. ISSUES:

Issue A: Is the Public Body required by section 22 of the FOIP Act (cabinet confidences) of the Act to refuse access to information in the records?

Issue B: Did the Public Body properly apply section 24(1)(a) of the FOIP Act to all of the responsive records?

Issue C: Did the Public Body properly apply section 24(1)(b) of the FOIP Act to all of the responsive records?

Issue D: Did the Public Body properly apply section 24(1)(g) of the FOIP Act to all of the responsive records?

Issue E: Did the Public Body meet the duty to assist as required by section 10 of the FOIP Act?

III. INFORMATION AT ISSUE

[para 6] Information severed by the Public Body from three packages of records is at issue.

IV. DISCUSSION OF ISSUES:

Issue A: Is the Public Body required to refuse access to information in the records under section 22 of the FOIP Act (cabinet confidences).

[para 7] Records 669 – 683 were redacted from package 1 under section 22(1) of the FOIP Act. Section 22 of the FOIP Act states:

> *22(1) The head of a public body must refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees or of the Treasury Board or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees or to the Treasury Board or any of its committees.*
>
> *(2) Subsection (1) does not apply to*
>
> *(a) information in a record that has been in existence for 15 years or more,*
>
> *(b) information in a record of a decision made by the Executive Council or any of its committees on an appeal under an Act, or*
>
> *(c) information in a record the purpose of which is to present background facts to the Executive Council or any of its committees or to the Treasury Board or any of its committees for consideration in making a decision if*
>
> *(i) the decision has been made public,*
>
> *(ii) the decision has been implemented, or*
>
> *(iii) 5 years or more have passed since the decision was made or considered.*

[para 8] Section 22 requires a public body to refuse access to records that would reveal the substance of deliberations of the Executive Council (cabinet) and any advice prepared for submission or advice submitted to the Executive Council. If information is intended to provide background facts to cabinet, and the decision has been made public or implemented, or 5 or more years has passed since the decision was made, a public body may not refuse access to information in the records. If information has been in existence for more than 15 years, it cannot be withheld under section 22(1).

[para 9] The Applicant argues:

> The long delay raises an issue of whether redactions should be upheld on OIPC review if the exception to disclosure was correct at the time the request was initially processed, or if the exception to disclosure can still be sustained at the time the OIPC review process ends. Parties should be provided guidance on this issue, which is particularly important because of the long, multi-year timeline of OIPC reviews. The issue remains important despite the switch from FOIP to ATIA.
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> I submit that in a situation where an exception to disclosure was correct when initially processed but has become unsustainable due to the passage of time, the OIPC should find that the reasonableness of the public body's initial decision has become moot, but order disclosure of the now releasable records to maximize the value of the public's rights of access.
>
> In relation to section 22(1), cabinet and treasury board confidences, any deliberations now occurred more than five years ago and cannot be withheld [by operation of] s.22(2)(c)(iii) of FOIP

[para 10] The Public Body argues:

> Concern should be the substance and purpose of the record rather than its form. The protection extends not only to records that were actually placed before Cabinet, but also to records that would reveal matters under consideration by Cabinet or permit accurate inferences to be drawn about Cabinet deliberations. (OIPC Order F2004-026)
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> In Package 001, the following pages were withheld under section 22(1): 669-683. These pages consist of a PowerPoint presentation which was being developed for presentation to Cabinet for its deliberation regarding certain decisions concerning SCS. [my emphasis]
>
> Severing under Section 22, therefore, meets the mandatory requirement specifically because the presentation was created for Cabinet deliberation and forms part of the Cabinet decision-making process, and because disclosure of the record would reveal the substance of Cabinet deliberations or permit accurate inferences to be drawn regarding matters being considered by Cabinet. The Public Body submits that section 22(1) was properly applied to Package 001, pages 669-683

The Public Body argues that the presentation would show the substance of Cabinet deliberations; however, the Public Body is not clear that the presentation was ever finished or whether a finished presentation covering the same points was ever submitted to Cabinet. The Public Body's *in camera* submissions do not provide any further clarity as to whether the information severed from the records under section 22 of the FOIP Act was submitted to Cabinet in some form. While the Public Body argues that these records would reveal Cabinet

confidences, it has not provided evidence to support finding that any of the information in the records was submitted to Cabinet or considered by it.

[para 11] The Public Body did not provide evidence regarding the circumstances in which records 669 – 683 were created. The Public Body does state that the records to which it applied section 22(1) "were being developed" for presentation to Cabinet. It is unclear from this statement that the records were intended for Cabinet in the form they are in or were ever completed or put before Cabinet. The record has the name of the Minister on it; there is no indication on or in the records that they were created for consideration by Cabinet or presentation to it.

[para 12] The information in the records supports finding that the Public Body decided to take specific steps in response to a review undertaken by the Government of Alberta. The records do not indicate that there are any steps that Cabinet could or would take; rather, all the actions listed in the report are actions that the Public Body had decided to take.

[para 13] I note that the records themselves indicate that they are a work in progress with indications that information is being edited, and some portions indicate they are to be completed once more information is available. For example, on record 673, the term "XXXX" is used to indicate that a thought is not complete. There are also typos. The information contained in the records appears to be tentative; it is uncertain that the information would appear in a final draft. There is no evidence as to whether this document was approved to go to the Minister or Cabinet. It is unlikely that the records would be presented to the Minister or Cabinet in this form.

[para 14] I infer from the unfinished and unedited nature of these records that they were not provided to Cabinet. As noted above, the Public Body does not state that the records were completed. There is no evidence before me to support finding that specific content in the records was considered by Cabinet in its deliberations. I have not been told what was actually presented to Cabinet at the meeting the Public Body suggests may have taken place. I have also not been told the date of that meeting.

[para 15] At one point, the Public Body describes the records as "having been prepared for Cabinet". While that is possible, the Public Body has not provided the source of its knowledge for the inquiry and the records themselves do not support finding this to have been the case, given that the records indicate they were being prepared for the Minister. While it is possible that the records were prepared for the Minister to present to cabinet, there is no indication in the records that this was the case. The Public Body has provided no evidence to allow me to find independently that the records at issue were prepared for Cabinet.

[para 16] The Public Body has not provided evidence that speaks directly to the content of the records or its putative use by Cabinet. As noted above, the Public Body does not provide the date of the sitting in which the records might have been reviewed or discussed by Cabinet. It does not establish a connection between the rough draft of a power point presentation apparently created for the Minister and a sitting of Cabinet. It is not enough that records contain subject matter coincidentally also discussed by Cabinet or that merely relates to subject matter discussed by Cabinet. Rather, the records must be prepared for Cabinet, or they must reveal

Cabinet deliberations. The Public Body has not established either scenario is likely with respect to the records at issue. The records themselves argue against finding either.

[para 17] The Applicant points to section 22(3)(c) as applicable. As I find that the Public Body has not established that section 22(1) applies, it is unnecessary for me to address whether section 22(3)(c) applies.

Issue B: Did the Public Body properly apply section 24(1)(a) of the FOIP Act to all of the responsive records?

[para 18] The Public Body refused access to the following records under section 24(1)(a):

- *Package 001: pages 1-559; 575-604; 606-621; 630- 653; 668-713.*
- *Package 002: pages 60; 61-84; 87-118.*
- *Package 003: pages 5-7; 9-27; 63-85; 94-102; 119-120; 121-143; 145-151; 153; 154-156; 189-192; 196; 201-219; 222-224; 233-253.*

[para 19] The Applicant argues in relation to the Public Body's application of section 24(1)(a):

> In relation to section [24](1)(a) and (b) I submit only that the public body did not distinguish between advice and background information. For instance, the descriptions provided of the records a draft literature review (package 1, pages 606-621).

[para 20] I have reviewed the Public Body's severing decisions under section 24(1)(a). I find that the information to which the Public Body applied section 24(1)(a) falls within the terms of this provision.

[para 21] I acknowledge the Applicant's concern that the Public Body has not distinguished between advice and background information; however, I find that the factual information that was described as "background information" is "analysis" within the terms of section 24(1)(a); that is, factual information presented in such as way as to support policy proposals presented elsewhere in the records.

Exercise of Discretion

[para 22] 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 23] 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 24] 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 25] 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 where the head is authorized to refuse access. A head is authorized to withhold information if a discretionary exception applies to information.

[para 26] 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 27] 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 28] 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 29] 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 30] 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 is to weigh any applicable public and private interests, including the purpose of the provision, in withholding or disclosing the information. The Commissioner will then review the public body's reasons for refusing access to each piece of information it withheld.

[para 31] 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 refusing access, the Commissioner will direct the public body to reconsider its exercise of discretion. In this case, there is no evidence as to why the Public Body exercised its discretion in the way it did.

[para 32] 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.

I agree with the adjudicator in Order F2024-35 that sections 24(1)(a) and (b) are intended to enable a public body to conduct frank discussions about policy.

[para 33] 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 undue interference.

[para 34] The Public Body cited the purpose of section 24(1)(a), but provided no information for the inquiry as to how it exercised its discretion. The records themselves, which were created six years ago or more, do not, on their own, support finding that the Public Body's policy development processes could suffer interference or its discussions be less frank if the information the records contain is disclosed. As noted in Order F2004-026, a public body must do more than state the purpose of the exception – it must explain how its decision to refuse access serves this purpose with respect to every piece of information to which it has refused access. This is so because not all information meeting the terms of section 24(1)(a) of the FOIP Act will result in the harm contemplated by this provision if disclosed.

[para 35] When exercising discretion under section 24 of the FOIP Act, a public body must consider whether the information requires the protection of section 24, or whether the harms contemplated by that provision are unlikely to result if access is granted. Factors that are

relevant may include the age of the information and the extent to which there is public interest in the information under review and whether the decision under consideration has already been implemented. The Public Body may be aware of factors that weigh in favor of refusing access; when it makes the new decision it must be in a position to speak to those factors regarding all the information to which it refuses access.

[para 36] As the Public Body has not explained why it exercised discretion to refuse access to information under section 24(1)(a), I must direct it to reconsider its decision. The new decision, if it continues to refuse access, must contain reasons for the decision to refuse access to discrete pieces of information in the records.

Issue C: Did the Public Body properly apply section 24(1)(b) of the Act to all of the responsive records?

[para 37] As discussed in my analysis of section 24(1)(a), above, section 24(1)(b) applies to consultation and deliberations The Public Body refused access to the following information under section 24(1)(b):

- *Package 002, page 60.*
- *Package 003, pages 5-7; 119-120; 121-143; 145-151.*

The information to which the Public Body applied section 24(1)(b) is also information to which it applied section 24(1)(a).

[para 38] The Public Body argues:

> Section 24(1)(b) permits a public body to refuse to disclose information that would reveal consultations or deliberations involving public body employees, Ministers, members of Executive Council, or other persons engaged in the policy-development and decision-making process.
>
> The purpose of section 24(1)(b) is to preserve the ability of public servants, government officials, and decision makers to engage in full, frank, and candid consultations and deliberations in support of public policy development and government decision-making. (OIPC Order 2004-026)
>
> The Commissioner has found that section 24(1)(b) protects not only records that directly record consultations or deliberations, but also information the disclosure of which would reveal the substance, content, direction, or outcome of those consultations or deliberations. (OIPC Order 2004-026)
>
> The relevant question is whether disclosure would reveal the consultative or deliberative process itself, rather than merely factual information that can be severed from that process. Order F2004-026 confirms that section 24 is intended to protect the substance of advice, consultations, and deliberations undertaken in support of governmental decision-making.

[para 39] I agree with the Public Body that section 24(1)(b) applies to the information as it reveals the Public Body's deliberations.

[para 40] As discussed above, section 24(1)(b), like section 24(1)(a), is a discretionary exception. As a result, the Public Body must demonstrate that it exercised its discretion reasonably when it elected to refuse access to the information in the records.

[para 41] As the Public Body has given no explanation of its exercise of discretion, I must direct it to reconsider. If the Public Body decided to refuse access, it must be able to explain, with respect to each piece of information, why refusing access is supported now that the information is old and not clearly relevant to any pending policy decisions.

Issue D: Did the Public Body properly apply section 24(1)(g) of the Act to all of the responsive records?

[para 42] The Public Body refused access to the following information under section 24(1)(g):

- *Package 001: pages 1-559; 575-604; 606-621; 630- 653; 684-713*.
- *Package 002: pages 61-84; 87-118*
- *Package 003: pages 63-85; 94-102; 121-143; 145-151; 153; 201-219; 222-224; 233-253*.

[para 43] The Applicant argues:

> In relation to section 24(1)(g), which requires the records to contain information about a pending policy decision, several rounds of new policy decisions on SCS have occurred since this request was initially processed. No decisions which were pending in December 2020 are still pending in September 2026, so section 24(1)(g) no longer applies to any of these records.

[para 44] The Public Body argues in relation to its application of section 24(1)(g) to records 1-559, 575-604, 630-653, 684-713:

> In determining whether section 24(1)(g) applies, the focus is on the substance and purpose of the information and whether disclosure would reveal protected policy-development activities, policy considerations, policy options, or deliberative processes undertaken by or for government decision makers.

[para 45] The Public Body's discussion of section 24(1)(g) does not give effect to the words of the provision. Rather, its interpretation of section 24(1)(g) renders the provision redundant, as section 24(1)(a) and (b) already address information revealing "policy development activities".

[para 46] Section 24(1)(g) states:

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

(g) information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision […]

[para 47] The foregoing provision does not apply to proposed policies, or policy development projects that are unfinished or incomplete unless disclosure of such information would result in disclosure of a *pending policy or budgetary decision*.

[para 48] There is no evidence before me that the information to which the Public Body applied section 24(1)(g) could result in disclosure of a pending policy or budgetary decision.

[para 49] Public Bodies are afforded the opportunity to make *in camera* submissions in order to speak to the records or provide information and evidence about such things as pending policy or budgetary decisions without disclosing the information they argue should be withheld. The Public Body has provided no evidence as to the existence of a pending policy or budgetary decision that disclosing the information in the records would reveal, despite providing *in camera* submissions as well as exchangeable submissions.

[para 50] For the reasons above, I find that the Public Body has not established that section 24(1)(g) applies to the information in the records.

Issue E: Did the Public Body meet the duty to assist as required by section 10 of the FOIP Act?

[para 51] Section 10 of the FOIP Act creates a duty in public bodies to assist an applicant. This provision 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 52] In F2004-026, former Commissioner Work noted that public bodies may have to clarify access requests in some circumstances in order to meet the duty to assist. He said:

> Finally, in its oral submission, the Applicant argued that the Public Body failed in its duty to assist by failing to clarify with the Applicant what it meant by "implementation" in the context of its original request. The Public Body suggested it did not do this because it assumed that it already understood the request. It explained that it thought it would not be reasonable for the Applicant to ask for the numbers of records that would be involved on the other understanding (that the request included all records in 2003 created by the Public Body relative to Bill 27 after the Bill's passage - which the Public Body described as "11 cubic feet of records"). While I have some sympathy with the Public Body's point, I have also been advised by the parties that the Applicant has since clarified this aspect of the request, which suggests that clarification was possible, and that there is indeed some further information relative to this aspect that is being sought. Thus I agree that the Public Body should have asked for clarification as to the part of the request that was ambiguous in its wording, rather than relying on its assumption, and that its failure to take this step was a failure to assist the Applicant.

[para 53] In Order F2011-016, the Adjudicator considered previous orders of this office commenting on the duties of public bodies to interpret access requests reasonably. He said:

> The Applicant submits that the Public Body was too restrictive in its interpretation of the information that he requested and therefore overlooked responsive records. Previous Orders of this Office have said that a record is responsive if it is reasonably related to an applicant's access request and that, in determining responsiveness, a public body is determining what records are relevant to the request (Order 97-020 at para. 33; Order F2010-001 at para. 26). The Applicant argues that applicants should be given some latitude under the Act when framing their access requests, as they often have no way of knowing what information is actually available. I note Orders of this Office saying that a broad rather than narrow view should be taken by a public body when determining what is responsive to an access request (Order F2004-024 at para. 12, citing Order F2002-011 at para. 18).

[para 54] In that Order, the adjudicator found that Alberta Health Services had taken too restrictive an approach in its interpretation of the kinds of information requested by the applicant. As a result, the public body in the case had failed to meet its duty to assist the applicant, because it had not searched for the records the applicant had requested.

[para 55] As clarifying access requests and determining whether records are responsive is part of the duty to assist an applicant, I am addressing the question of the responsiveness of the records under the broader heading of whether the Public Body met the duty to assist the Applicant.

[para 56] From my review of the records and the submissions of the parties, and the Applicant's request for review, I find that the Public Body took an overly restrictive view of the information the Applicant was seeking. I make this finding in view of both the wording of the initial access request and subsequent clarifications provided by him. I find that the Public Body did not adequately identify nonresponsive records. That is, the Public Body refused access to responsive records on the basis that the records were not what was requested.

[para 57] When a public body refuses access to responsive records on the basis that they are not what the applicant is seeking, I must direct the public body to include those records in a new response as the public body has not yet met the duty to respond fully, accurately, and completely under section 10(1) of the FOIP Act if I find they are responsive to the access request.

[para 58] In this case, the Applicant requested:

> All records about Safe Consumption Site policies from July 1, 2019 to December 31, 2020. Please exclude all records created by third-party safe consumption site operators.
>
> May eliminate duplicate records and emails

[para 59] The Public Body refused access to records 1 – 3 from package 3 on the basis that they are nonresponsive. I find that these records are about safe consumption site policies and were created within the timeframe set out in the Applicant's access request.

[para 60] I have reviewed all the records where their responsiveness is at issue. I find that they all fall within the terms of the access request. While the Applicant informed the Public Body that he was especially interested in obtaining particular records, it does not follow from this that he was excluding other records about Safe Consumption Site policies meeting the terms of the access request of which he may have been unaware.

[para 61] The Public Body argues:

> The OIPC has recognized that a public body must interpret an access request reasonably and in accordance with its wording, read in context. The duty to assist does not require a public body to adopt an interpretation that extends beyond the scope of the request or to treat all records touching on a subject matter as responsive. Rather, responsiveness is determined by the connection between the records and the actual request made by the applicant. (OIPC Order F2004-026)
>
> The Applicant requested records concerning SCS policies. The Public Body interpreted this request as seeking records relating to the development, analysis, recommendation, consideration, implementation, and communication of SCS policies.
>
> In assessing responsiveness, the Public Body reviewed the records located and considered whether the records related to SCS policy matters, including policy development, policy analysis, policy recommendations, policy options, and policy decision-making activities.
>
> The Public Body submits that not every record mentioning supervised consumption sites is necessarily a record about SCS policies. Records may refer to supervised consumption sites while addressing operational matters, administrative matters, stakeholder communications, or unrelated subject areas.
>
> The Public Body therefore assessed responsiveness by reference to the wording of the request rather than by the mere presence of references to supervised consumption sites.
>
> The Public Body submits that this interpretation was reasonable and consistent with the wording of the request.

[para 62] The Public Body's interpretation of the access request is reasonable. The difficulty in this case is that the application of the interpretation is not reasonable.

[para 63] The Public Body describes records 1 – 3 of package 3 as "emails" but in those emails is a direction to follow a particular policy direction regarding the subject matter of the access request. These records are responsive and are "related to SCS policy matters, including policy development, policy analysis, policy recommendations, policy options, and policy decision-making activities" within the terms of the Public Body's interpretation of the access request. Records 1 – 3 reflect a policy decision-making activity and direct the course of future policy development.

[para 64] I find that where responsiveness is at issue in this inquiry, the records are responsive. As the Public Body failed to include responsive records in its response, I find it has not yet met the duty to respond openly, accurately and completely as required by section 10(1).

[para 65] As the records are responsive, I will direct the Public Body to include those records in its response. While the Public Body is not precluded from refusing access to the records if an exception applies, I take note that section 24(2)(f) and (g) may be relevant to the application of section 24(1) to some of the records, such as records 1 – 3, of package 3.

V. ORDER

[para 66] I make this order under section 72 of the FOIP Act.

[para 67] I order the Public Body to respond to the Applicant fully, accurately, and completely by including the records I have found to be responsive in its response. The Public Body is not precluded from applying new exceptions should any apply.

[para 68] I order the Public Body to reconsider each application of sections 24(1)(a) and (b) of the FOIP act to the records. In making the new decisions, the Public Body must consider the age of the records and whether the purposes of sections 24(1)(a) and (b) are served by refusing access in relation to each exercise of discretion. The Public Body must make the new decisions with respect to each piece of information withheld and must consider the nature of each piece of information in making the new decision. It must then consider whether the purpose of the provision is served by refusing access, or whether information could be disclosed without any interference to its policy development processes.

[para 69] 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 it.

_____
Teresa Cunningham
Adjudicator