

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 96-012 (Order Addendum)

November 19, 1996

TIRE RECYCLING MANAGEMENT BOARD

Review Number 1068

BACKGROUND

[1.] On November 22, 1995, the Applicant applied under the *Freedom of Information and Protection of Privacy Act* (the "Act") to Alberta Environmental Protection for access to minutes of all meetings of the Tire and Recycling Management Board (the "public body"), from its inception to the present.

[2.] On January 15, 1996, the requested record was provided, with certain information severed. The public body claimed that the severed information fell within the exceptions to disclosure contained in sections 15(1), 16(1), (2)(a), (d), (g), 23(1)(a), (b), (c), (f), (g), 24(1)(b), (c) and 26(1)(a) of the Act.

[3.] On March 4, 1996, the Applicant requested that this Office review the public body's decision to sever the record. Mediation was not successful and the matter was set down for inquiry on July 23, 1996.

[4.] At the beginning of the inquiry, the Applicant notified the Commissioner and the public body that the Applicant would not contest the exceptions to disclosure claimed by the public body under sections 16 (personal information) and 26 (privileged information: solicitor-client privilege) of the Act. During the inquiry, the public body asked that the Commissioner consider whether any of the remaining exceptions (sections 15(1), 23(1)(a), (b), (c), (f), (g) and 24(1)(b)

and (c) applied to the severed information, even if the particular exception was not noted on the record. The Commissioner agreed to comply with this request.

[5.] Subsequent to the inquiry, the Commissioner, on August 13, 1996, met with the public body to clarify the public body's reasons for severing the information contained in the record.

RECORD AT ISSUE

[6.] The record at issue is the public body's minutes of meetings, and attachments to those minutes, from July 29, 1992 to October 20, 1995. This record consists of approximately 292 pages. October 20, 1995 is the public body's last meeting prior to the Applicant's application under the Act.

ISSUE A: Did the public body correctly apply section 15(1) to the record?

[7.] Section 15(1) of the Act reads:

15(1) The head of a public body must refuse to disclose to an applicant information

(a) that would reveal

(i) trade secrets of a third party, or

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

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

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

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

(ii) result in similar information no longer being supplied to the public body when it is

in the public interest that similar information continue to be supplied,

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

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

[8.] The public body claims that section 15 or 15(1) applies to severed information on the following pages of the record: 24-2, 30-3, 39-2, 40-4, 40-7, 40-8, 41-3, 41-5, 43-2, 45-6, 45-8, 45-9, 45-27, 45-32, and 45-33. Where the public body indicated section 15 on the record, I have interpreted that to mean section 15(1). I have excluded page 45-32 from consideration under section 15(1), as the public body correctly applied section 23(1)(a) (advice, proposals, recommendations, analyses or policy options) to the information on that page.

[9.] Since the public body refused to release these pages under section 15(1), the public body has the burden of proof: see section 67(1). Accordingly, in order to apply the exception to disclosure under section 15(1), the public body must meet one of the tests under section 15(1)(a), the test under section 15(1)(b), and one of the tests under section 15(1)(c).

[10.] In applying the first criteria, section 15(1)(a)(ii), the public body included not only commercial and financial information of a third party, but also operational information about a third party and information that relates to the performance of a third party. If I give the word “commercial” its ordinary dictionary meaning, as I indicated in Order 96-013, I believe that the kind of operational and performance information severed in this case would fall under the definition of commercial information (although, in other cases, operational information may more properly be classified as “technical” information). Having reviewed all the information severed under section 15(1)(a)(ii), I find that the severed information on all the foregoing pages, except page 30-3, meets the test for commercial or financial information of a third party. The severed information on Page 30-3 is merely company names. I fail to see how company names, without anything more, would be commercial or financial information.

[11.] As to the second criteria, section 15(1)(b), most of the information severed is the same information that was found, in Order 96-013, to be supplied in confidence by the Applicant in that Order. Therefore, for the purposes of this Order, I hold that all of the same information, except as noted below, is

supplied in confidence. The information on pages 45-8 and 45-9 does not concern the Applicant in Order 96-013, and must be dealt with separately.

[12.] In Order 96-013, I adopted a two-part test for determining whether information “is supplied in confidence”. I stated that information is supplied in confidence if (i) the third party has provided original or proprietary information that remains relatively unchanged in the contract, and (ii) disclosure of the information in the contract would permit an applicant to make an accurate inference of sensitive third-party business information that would not in itself be disclosed under the Act. This two-part test not only protects the information originally supplied, but also protects that information now, as long as it has remained relatively unchanged. Consequently, I do not think that it matters whether the information is now in a contract or in some other document, as here. Based on the nature of the information on pages 45-8 and 45-9, I have concluded that the information is implicitly supplied in confidence because it is original or proprietary information that remained relatively unchanged, and that the disclosure of the information would permit an applicant to make accurate inferences about sensitive third-party business information that would not in itself be disclosed under the Act. Therefore, the information on pages 45-8 and 45-9 meets the requirements of section 15(1)(b).

[13.] I turn now to page 45-27. I heard evidence that the public body, at present, unilaterally sets prices under its contracts, although I accept the public body’s evidence that it did not do so in the beginning. Therefore, I accept that the first two items severed in the column on that page are supplied in confidence under section 15(1)(b). However, I hold that the last two items are not supplied in confidence because those items relate to a time period when the public body would have set that price unilaterally. A price that has been mandated by the public body does not belong to the third party and cannot be said to have been supplied in confidence by the third party. Furthermore, the price has already been released in two other contexts: at the time the public body stated what it was paying, and on page 45-6 of the record released to the Applicant.

[14.] In applying section 15(1)(b), I remind the public body that pages 40-7 and 40-8 are the same pages as one of the records at issue in Order 96-013. Applying the same reasoning as in that Order, I would uphold the public body’s decision to sever the same information, in paragraphs 1 and 2(c) on page 40-7, that was severed under Order 96-013. Otherwise, I do not uphold the public body’s decision to sever the remainder of the information on that page, nor on page 40-8, as that information has previously been provided to the Applicant.

[15.] As to the third criteria, section 15(1)(c), the public body has met the evidentiary burden of proof to show that disclosure of the severed information on the following pages could reasonably be expected to harm significantly the

competitive position, or interfere significantly with the negotiating position of the third party: 24-2, 39-2, 40-4, 40-7 (only the information in paragraphs 1 and 2(c), as set out in Order 96-013), 41-3, 41-5, 43-2, 45-6, 45-8, 45-9, 45-27 (only the first 2 items in the column), and 45-33.

[16.] In conclusion, the public body correctly applied all three criteria of section 15(1) to the following pages of the record, and I uphold the public body's decision to sever the information under that section on these pages:

24-2, 39-2, 40-4, 40-7 (only that information in paragraphs 1 and 2(c), as set out in Order 96-013), 41-3, 41-5, 43-2, 45-6, 45-8, 45-9, 45-27 (only the first two items in the column), and 45-33

[17.] The public body incorrectly applied section 15(1) to the following pages, and I would not uphold the public body's decision to sever the information under that section on these pages:

30-3, 40-7 (that information previously released by the public body: see Order 96-013), 40-8, and 45-27 (only the last 2 items in the column)

ISSUE B: Did the public body correctly apply section 23(1)(a), (b), (c), (f) and (g) to the record?

[18.] The relevant parts of section 23(1) read:

s. 23(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,

(c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Alberta or a public body, or considerations that relate to those negotiations,

(f) the contents of agendas or minutes of meetings of an agency, board, commission, corporation, office or other body that is a public body, or

(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.

[19.] It should be noted that section 23(2) sets out a number of kinds of information which specifically must not be withheld, even though that information might otherwise fall within section 23(1).

Section 23(1)(a) (advice, proposals, recommendations, analyses or policy options):

[20.] The public body applied section 23(1)(a) to sever information on the following pages of the record: 25-2, 36-6, 36-7, 37-10, 37-11, 37-12, 37-14, 37-15, 37-18, 37-19, 38-2, 38-6 - 38-19, 38-20 - 38-34, 38-39, 38-42, 38-43, 41-5, 42-6 - 42-11, 42-12, 43-1, 43-4, 43-7 - 43-18, 43-19 - 43-30, 44-9, 44-10, 44-11, 44-12, 45-32, 46-15, 49-6, 49-8, 49-9, 50-8, and 50-9.

[21.] I do not intend to deal with the information severed under section 23(1)(a) on page 41-5, as the public body correctly applied section 23(1)(b) to that information. Furthermore, section 26(1)(a) was applied, in addition to section 23(1)(a), to sever certain information on pages 49-6, 49-8 and 49-9. Since the Applicant has agreed to waive access to any information severed under section 26(1)(a), it will not be necessary to review that information even though it has also claimed to have been severed under section 23(1)(a).

[22.] Except for pages 37-10, 38-2 and 43-1, I accept the public body's considerable evidence that the information constitutes advice, proposals, recommendations, analyses or policy options developed by or for the public body. The information in question meets the requirements for that kind of information, as set out in Order 96-006: the information (i) is sought or expected, or is part of the responsibility of a person by virtue of that person's position, (ii) is directed toward taking an action, and (iii) is made to someone who can take or implement the action.

[23.] The information severed under section 23(1)(a) on page 37-10 is, in my opinion, a statement of policy that has been adopted by a public body for the purpose of administering a program or activity of the public body. According to section 23(2)(g), this kind of information should not be withheld. Consequently, section 23(1)(a) does not apply to that information.

[24.] Further, I do not believe that the information on page 38-2 was correctly severed under section 23(1)(a). I take that section to contemplate the protection of information generated during the decision-making process. The information here clearly indicates that decisions have already been made, specifically line 2 of the severed information, the heading, and lines 1 to 6 and 12 to 13 under the heading. Furthermore, line 1, and lines 11 and 14 under the heading are statements of policy which should not be withheld according to section 23(2)(g); at the very least, these lines are merely statements and thus fall outside the scope of section 23(1)(a). Lines 7 to 10 under the heading I will deal with under section 23(1)(b).

[25.] Lastly, the information severed under section 23(1)(a) on page 43-1 is merely an instruction or guideline issued to the officers or employees of the public body. According to section 23(2)(f), this information should not be withheld. As such, the public body did not correctly apply section 23(1)(a) to sever this information.

[26.] To conclude, the public body correctly applied section 23(1)(a) to the following pages, and I uphold the public body's decision to sever the information under that section on these pages:

25-2, 36-6, 36-7, 37-11, 37-12, 37-14, 37-15, 37-18, 37-19, 38-6 to 38-19, 38-20 to 38-34, 38-39, 38-42, 38-43, 42-6 to 42-11, 42-12, 43-1, 43-4, 43-7 to 43-18, 43-19 to 43-30, 44-9, 44-10, 44-11, 44-12, 45-32, 46-15, 50-8 and 50-9

[27.] The public body did not correctly apply section 23(1)(a) to the following pages, and I do not uphold the public body's decision to sever the information under that section on these pages:

37-10, 38-2 (lines 1 and 2 of the severed information, the heading, and lines 1 to 6 and 11 to 14 under the heading), and 43-1

Section 23(1)(b) (consultations or deliberations):

[28.] The public body applied section 23(1)(b) to sever information on the following pages of the record: 25-1, 26-1, 26-6, 27-3, 29-1, 29-2, 29-3, 30-2, 32-2, 35-4, 35-5, 36-2, 36-3, 37-2, 37-13, 37-16, 37-17, 38-2, 38-4, 39-2, 40-2, 40-3, 40-4, 41-2, 41-3, 41-4, 41-5, 42-2, 42-3, 42-4, 43-1, 43-2, 43-3, 44-2, 44-3, 44-4, 44-5, 44-6, 45-2, 45-3, 45-4, 46-2, 46-3, 46-15, 47-1, 47-2, 47-3, 48-2, 49-3, 49-4, 49-5, 50-2, and 50-3.

[29.] The public body also specifically applied section 23(1)(b)(i) to sever information on pages 28-1, 34-2, 34-3 and 35-2, and section 23(1)(b)(ii) to sever information on pages 28-1, 29-2, 30-1, 30-2, and 32-2.

[30.] Even though the public body applied section 23(1)(b) to page 46-15, I do not intend to deal with that page because the public body correctly applied section 23(1)(a) to it.

[31.] Having carefully reviewed all these pages, I am left with the impression that the public body may have misapprehended what section 23(1)(b) is intended to accomplish. The purpose of section 23(1)(b) is to protect consultations or deliberations occurring during the decision-making process. As such, a decision made or a summary statement of a decision made after the conclusion of a consultation or deliberation would not be exempt from disclosure under this section. In addition, a summary statement of the topic of a consultation or deliberation, as opposed to a summary of the consultation or deliberation itself, is also not exempt. To put it another way, the decision itself is not exempted, but the consultations or deliberations leading to the decision are exempted.

[32.] For the most part, the public body has applied section 23(1)(b) to exempt a decision made or a summary of the decision made after the conclusion of a consultation or deliberation, or a summary statement of the topic of a consultation or deliberation.

[33.] Consequently, I find that the public body correctly applied section 23(1)(b) to only the following pages, and I uphold the public body's decision to sever information under that section on these pages:

35-4 (up to, but not including, the last heading severed on the page), 36-3, 37-2, 38-2 (only lines 7 to 10 under the heading), 40-2, 40-3, 41-2 (up to, but not including, the last round bullet on the page), 41-5, and 44-5

[34.] I find that the public body incorrectly applied section 23(1)(b) to the following pages, and I do not uphold the public body's decision to sever information under that section on these pages:

25-1, 26-1, 26-6, 27-3, 28-1, 29-1, 29-2, 29-3, 30-1, 30-2, 32-2, 34-3, 35-2, 35-4 (the last heading severed on the page, and the last two lines under the last heading), 35-5, 36-2, 37-13, 37-16, 37-17, 38-2 (except lines 7 to 10 under the heading), 38-4, 39-2, 40-4, 41-2 (from the last round bullet to the end of the page), 41-3, 41-4, 42-2, 42-3, 42-4, 43-1, 43-2, 43-3, 44-2, 44-3, 44-4, 44-6, 45-2, 45-3, 45-4, 46-2, 46-3, 46-15, 47-1, 47-2, 47-3, 48-2, 49-3, 49-4, 49-5, 50-2, and 50-3

Section 23(1)(c) (positions, plans, procedures, criteria or instructions developed for contractual or other negotiations):

[35.] The public body applied section 23(1)(c) to sever information on the following pages of the record: 25-1, 25-2, 26-5, 36-6, 36-7, 36-8, 36-9, 36-10, 36-11, 36-12, 36-13, 37-10, 37-11, 37-12, 37-14, 37-15, 37-18, 37-19, 38-39, 38-42, 38-43, 41-5, 43-3, 43-4, 43-7 - 43-18, 43-19 - 43-30, 44-9, 44-10, 44-11, and 44-12.

[36.] I do not intend to deal with information severed under section 23(1)(c) on the following pages, as the public body correctly applied section 23(1)(a) to that information: 25-2, 36-6, 36-7, 37-11, 37-12, 37-14, 37-15, 37-18, 37-19, 38-39, 38-42, 38-43, 43-4, 43-7 - 43-18, 43-19 - 43-30, 44-9, 44-10, 44-11, and 44-12. Similarly, I will not deal with the information severed under section 23(1)(c) on page 41-5, as the public body correctly applied section 23(1)(b) to that information.

[37.] This is the first time that I have considered section 23(1)(c) in an Order. I interpret the intent of section 23(1)(c) to be similar to (a) and (b), that is, to protect information generated during the process of making a decision, but not to protect the decision itself. Furthermore, the information must relate to negotiations.

[38.] Applying this reasoning, I do not see how section 23(1)(c) applies to the information severed on pages 25-1 and 37-10. The information severed on page 25-1 does not indicate any position, plan, procedure, criteria or instruction developed for the purpose of negotiations, as required by the section. I previously indicated that the information severed on page 37-10 appears to be a statement of policy that has been adopted by a public body for the purpose of administering a program or activity of the public body, which

cannot be withheld under section 23(2)(g). Consequently, section 23(1)(c) also does not apply to that information.

[39.] I find that the public body correctly applied section 23(1)(c) to the following pages, and I uphold the public body's decision to sever the information under that section on these pages:

26-5, 36-8, 36-9, 36-10, 36-11, 36-12, 36-13, and 43-3

[40.] The public body did not correctly apply section 23(1)(c) to the following pages, and I do not uphold the public body's decision to sever the information under that section on these pages:

25-1 and 37-10

Section 23(1)(f) (contents of agendas or minutes of meetings):

[41.] As the public body asked that I apply section 23(1)(f) to all information severed in the record, I intend to leave a discussion of section 23(1)(f) until after I have dealt with all other sections of the Act under which the public body has severed information.

Section 23(1)(g) (pending policy or budgetary decisions):

[42.] On page 48-5 of the record, the public body indicated that it was applying section 24(1)(g). As the Act does not contain a section 24(1)(g) and the public body's submission speaks of section 23(1)(g), I am presuming that the public body meant section 23(1)(g). After reviewing the information on that page, it is clear that disclosure of the information could reasonably be expected to result in disclosure of a pending policy or budgetary decision, as provided by section 23(1)(g). Consequently, I hold that the public body correctly applied section 23(1)(g) to sever the information on that page.

ISSUE C: Did the public body correctly apply section 24(1)(b) and (c) to the record?

[43.] The relevant parts of section 24(1) read:

s. 24(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the economic interest of a public body or the Government of Alberta or the ability of the Government to manage the economy, including the following information:

(b) financial, commercial, scientific, technical or other information in which a public body or the Government of Alberta has a proprietary interest or a right of use and that has, or is reasonably likely to have, monetary value;

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

(i) result in financial loss to,

(ii) prejudice the competitive position of, or

(iii) interfere with contractual or other negotiations of,

the Government of Alberta or a public body.

Section 24(1)(b) (proprietary information of a public body):

[44.] The public body applied section 24(1)(b) to sever information on pages 36-2, 38-40, 44-4 and 45-6 of the record. I do not intend to deal with the information severed under section 24(1)(b) on page 38-40, as the public body correctly applied section 24(1)(c) to sever that same information.

[45.] This is also the first time I have encountered section 24(1)(b) in an inquiry. I notice that this section uses many of the same words to describe information as are used in section 15(1)(a)(ii), namely “financial”, “commercial”, “scientific” and “technical”. I see no reason why I shouldn’t give those same words their ordinary dictionary meanings, as with section 15(1)(a)(ii).

[46.] It is also necessary to examine the application of section 24(1) generally, and section 24(1)(b) specifically. In Order 96-013, I stated that section 24(1) is to be considered the general rule and that the information must at least fall within that general rule to be severed. In other words, to apply this section, the public body must at least show that the information “could reasonably be expected to harm the economic interest...or the ability of the Government to manage the economy”.

[47.] I have interpreted section 24(1) in this way because the section reads *information,...including the following information* (my emphasis). I believe that the word “including” is meant to provide specific examples of the category of “information”, in order to remove any ambiguity about the kind of information to be included in the category. (Arguably, there could be categories of

information other than those specifically set out in (a)-(d) under section 24(1), but such additional categories would have to contain information that meets the general rule of section 24(1).) The fact that some of these categories contain their own restrictions or tests does not change the general rule under section 24(1). Therefore, in applying section 24(1), the public body must present evidence to show that the information falls within the general rule (section 24(1)), although the public body may also present evidence to show that the information is included in and meets the requirements of one of the categories (section 24(1)(b), for example).

[48.] The public body has met the burden of proof to show that the financial information severed on pages 44-4 and 45-6 will harm its economic interest. Consequently, I uphold the public body's decision to sever this information under section 24(1)(b).

[49.] However, the public body has not met the burden of proof with respect to the severed financial information on page 36-2, and I do not uphold the public body's decision to sever this information under section 24(1)(b).

Section 24(1)(c) (disclosure of information resulting in financial loss, prejudice to competitive position, or interference with negotiations of a public body):

[50.] The public body applied section 24(1)(c) to sever information on the following pages of the record: 36-11, 36-12, 36-13, 38-2, 38-40, 39-2, 40-4, 42-4, 44-4, 45-3, 45-4, 46-15, 47-2, 47-3, 48-2, 48-4, 49-4, and 50-4.

[51.] The public body also specifically applied section 24(1)(c)(ii) to sever information on page 43-5, and section 24(1)(c)(iii) to sever information on pages 26-7, 27-1, 27-2, 27-3, 28-2, and 36-2.

[52.] I do not intend to deal with the information severed under section 24(1)(c) on pages 36-11, 36-12 and 36-13, as the public body correctly applied section 23(1)(c) to sever that information. Similarly, I will not deal with information severed under section 24(1)(c) on page 46-15, as the public body correctly applied section 23(1)(a) to sever that information.

[53.] In Order 96-013, I stated that evidence may be presented to show that the information falls within section 24(1)(c), but the public body must still present evidence to show that the information falls within the general rule under section 24(1). Accordingly, the public body must show that the information "could reasonably be expected to harm the economic interest...or the ability of the Government to manage the economy".

[54.] The public body stressed the uniqueness of the industry in which it is involved, and the consequences of releasing information in such a competitive field. According to the public body, the harm centres on the public body's ability to attract new business if sensitive information is released. The public body claimed it is trying to develop a neutral stance to all competitors, and needs to establish a climate in the earlier years to help the industry. Right now, other competitors want to be able to get paid for processing the same tires. The public body doesn't want anyone to know the price it pays to each recycler because it believes that competing recyclers will start a bidding war for existing tire stocks. Using section 24(1)(c), the public body has severed its pricing information and information relating to recyclers, on the ground that this information could reasonably be expected to harm the public body's economic interest by prejudicing the competitive position or interfering with contractual negotiations of the public body.

[55.] The Applicant, however, states that the public body is a monopoly, and releasing this information cannot harm the public body's negotiations because there are none. The Applicant claims that the public body now dictates the terms of contracts under the current open system which uses published prices, that is, pre-set rates for processing products. According to the Applicant, this open system of pre-set rates eliminates the public body's argument of interference with negotiations. Since the contract process and negotiations are not in place here, the Applicant reasons that it is unlikely the public body would get less favourable contractual terms if the severed information is made public to a competitor.

[56.] In its counterargument, the public body claims that because it is experimenting with different ideas and ways of dealing with problems in a new industry, it will be harmed if other parties were to "position themselves" to the public body's detriment.

[57.] In arriving at my decision, I carefully reviewed the record and the public body's evidence, both in camera and otherwise. I find the public body has provided sufficient evidence to show that release of some of the information could reasonably be expected to harm its economic interest. I find that the public body correctly applied section 24(1)(c) to the following pages, and I uphold the public body's decision to sever information under that section on these pages:

26-7, 27-1, 27-2, 28-2, 36-2, 38-2, 38-40, 42-4, 43-5,
44-4, 45-3, 45-4, 47-3, 48-4, and 49-4

[58.] I find that the public body did not meet the burden of proof and that it incorrectly applied section 24(1)(c) to the following pages, and I do not uphold

the public body's decision to sever information under that section on these pages:

27-3, 39-2 (except for the information severed under section 15(1)), 40-4 (except for the information severed under section 15(1)), 45-3, 47-2, 48-2, and 50-4

ISSUE D: Do any other sections of the Act apply to the information severed in the record, even though the particular section has not been noted on the record?

Application of section 23(1)(f) (contents of agendas or minutes of meetings):

[59.] Section 23(1)(f) is unique to Alberta. On the surface, section 23(1)(f) appears to protect two categories of documents, namely, contents of agendas and minutes of meetings of certain public bodies. However, when I look at all the other parts of section 23(1), the intent is clearly to protect the decision-making process, and those other parts of the section merely mention the kinds of documents that will likely be a record of the decision-making process, or the situations in which the decision-making process is likely to occur. Do I interpret section 23(1)(f) to be consistent with these other parts of section 23(1), that is, to protect only the decision-making process; alternatively, do I give the words in section 23(1)(f) their ordinary meaning, that is, to protect the contents of agendas or minutes of meetings?

[60.] While I would very much like to narrow the application of section 23(1)(f) to make it consistent with the intent of section 23, I believe that I must give the words in section 23(1)(f) their ordinary meaning since those words don't bear any other interpretation. The wording of section 23(1)(f), including the introductory part of section 23(1), clearly states that the public body may refuse to disclose information that could reasonably be expected to reveal the contents of agendas or minutes of meetings, which I take to mean both information revealing those contents, as well as the contents themselves. As the record is indisputably minutes of meetings, I believe that the only issue remaining to be considered under section 23(1)(f) is whether the public body properly exercised its discretion in applying the section. Section 23(1)(f) is a discretionary ("may") exception.

[61.] The public body states that the minutes are a record of its decision-making process as a new industry. The public body provided compelling evidence that it erred on the side of disclosure, except if the information was sensitive because of the newness of the industry. Based on the evidence provided about the severing process undertaken, I am satisfied that the public

body properly exercised its discretion by applying section 23(1)(f) sparingly to the record. Therefore, even though I have not upheld the public body's decision to sever certain information under other sections of the Act, I uphold the public body's decision to sever, under section 23(1)(f), the information on the following pages:

25-1 (only the first piece of information severed on the page), 26-6, 27-3, 28-1, 29-1, 29-2, 30-1, 30-2, 30-3, 32-2, 34-3, 35-2, 35-4, 35-5, 36-2, 38-2, 38-4, 39-2, 40-4, 41-2, 41-3, 41-4, 42-2, 42-3, 42-4, 43-1, 43-2, 43-3, 44-2, 44-3, 44-4, 44-6, 45-2, 45-3, 45-4, 46-2, 46-3, 47-1, 47-2, 47-3, 48-2, 49-3, 49-4, 49-5, 50-2, 50-3, and 50-4

[62.] I am unable to uphold severing of information under section 23(1)(f) for information severed on pages 25-1 (the last severing on the page), 26-1, 37-10, and 43-1, because I have held that section 23(2) applies to that information. If section 23(2) applies, then section 23(1) cannot apply.

[63.] Furthermore, I have not applied section 23(1)(f) to pages 37-10, 37-13, 37-16, 37-17, 40-7, 40-8, and 45-27, as those pages are attachments to the minutes, rather than minutes themselves. I do not think that the definition of "minutes" should be extended to include attachments. If attachments are to be severed, it should be because an exemption applies to the information contained in those attachments, as in the case of the first two items in the column on page 45-27.

Application of other sections of the Act:

[64.] The public body requested, and I agreed, to consider whether sections 15, 23 and 24 apply to any information severed in the record, even if those particular sections are not noted on the record. The only remaining pages on which I have not yet upheld the public body's decision to sever the information are pages 25-1 (the last piece of information severed on the page), 26-1, 29-3, 37-10, 37-13, 37-16, 37-17, 40-7, 40-8, and 45-27 (the last two items in the column).

[65.] Upon reviewing these remaining pages and the evidence, I hold that the public body correctly applied section 23(1)(a) (analyses) to pages 37-13, 37-16 and 37-17, and I uphold the public body's decision to sever the information under that section on these pages.

[66.] I do not consider that any other section of the Act is applicable to pages 25-1 (the last piece of information severed on the page), 26-1, 29-3, 37-10, 40-7 (except for the information severed under section 15(1)), 40-8, and 45-27 (the last two items in the column). Therefore, I do not uphold the public body's decision to sever the specified information on these pages.

ORDER

[67.] For the reasons previously stated, I uphold the public body's decision to sever the information and to refuse to disclose that information to the Applicant, except for the following pages: 25-1 (the last piece of information severed on the page), 26-1, 29-3, 37-10, 40-7 (except for the information severed under section 15(1)), 40-8, and 45-27 (the last two items in the column). I therefore order that the severed information on these pages be disclosed to the Applicant.

[68.] I ask that the public body notify me in writing, not later than 30 days after being given a copy of this Order, that this Order has been complied with.

[69.] Attached to this Order in Schedule A is a table that summarizes the severed information and my conclusions.

Robert C. Clark
Information and Privacy Commissioner

SCHEDULE A

Section of the Act	Uphold public body's decision (page numbers)	Do not uphold public body's decision (page numbers)
Section 15(1)	24-2, 39-2, 40-4, 40-7(only that information in paragraphs 1 and 2(c), as set out in Order 96-013), 41-3, 41-5, 43-2, 45-6, 45-8, 45-9, 45-27 (only the first two items in the column), 45-33	30-3, 40-7 (that information previously released by the public body: see Order 96-013), 40-8, 45-27 (only the last two items in the column)
Section 23(1)(a)	25-2, 36-6, 36-7, 37-11, 37-12, 37-13, 37-14, 37-15, 37-16, 37-17, 37-18, 37-19, 38-6 to 38-19, 38-20 to 38-34, 38-39, 38-42, 38-43, 42-6 to 42-11, 42-12, 43-1, 43-4, 43-7 to 43-18, 43-19 to 43-30, 44-9, 44-10, 44-11, 44-12, 45-32, 46-15, 50-8, 50-9	37-10, 38-2 (lines 1 and 2 of the severed information, the heading, and lines 1 to 6 and 11 to 14 under the heading), 43-1
Section 23(1)(b)	35-4 (up to, but not including, the last heading severed on the page), 36-3, 37-2, 38-2 (only lines 7 to 10 under the heading), 40-2, 40-3, 41-2 (up to, but not including, the last round bullet on the page), 41-5, 44-5	25-1, 26-1, 26-6, 27-3, 28-1, 29-1, 29-2, 29-3, 30-1, 30-2, 32-2, 34-3, 35-2 35-4 (the last heading severed on the page, and the last 2 lines under the last heading), 35-5, 36-2, 37-13, 37-16, 37-17, 38-2 (except lines 7 to 10 under the heading), 38-4, 39-2, 40-4, 41-2 (from the last round bullet to the end of the page), 41-3, 41-4, 42-2, 42-3, 42-4, 43-1, 43-2, 43-3, 44-2, 44-3, 44-4, 44-6, 45-2, 45-3, 45-4, 46-2, 46-3, 46-15, 47-1, 47-2, 47-3, 48-2, 49-3, 49-4, 49-5, 50-2, 50-3
Section 23(1)(c)	26-5, 36-8, 36-9, 36-10, 36-11, 36-12, 36-13, 43-3	25-1, 37-10
Section 23(1)(f)	25-1 (only the first piece of information severed on the page), 26-6, 27-3, 28-1, 29-1, 29-2, 30-1, 30-2, 30-3, 32-2, 34-3, 35-2, 35-4, 35-5, 36-2, 38-2, 38-4, 39-2, 40-4, 41-2, 41-3, 41-4, 42-2, 42-3, 42-4, 43-1, 43-2, 43-3, 44-2, 44-3, 44-4, 44-6, 45-2, 45-3, 45-4, 46-2, 46-3, 47-1, 47-2, 47-3, 48-2, 49-3, 49-4, 49-5, 50-2, 50-3, 50-4	

Section of the Act	Uphold public body's decision (page numbers)	Do not uphold public body's decision (page numbers)
Section 23(1)(g)	48-5	
Section 24(1)(b)	44-4, 45-6	36-2
Section 24(1)(c)	26-7, 27-1, 27-2, 28-2, 36-2, 38-2, 38-40, 42-4, 43-5, 44-4, 45-3, 45-4, 47-3, 48-4, 49-4	27-3, 39-2 (except for the information severed under section 15(1)), 40-4 (except for the information severed under section 15(1)), 45-3, 47-2, 48-2, 50-4
Summary	Information on all pages, except those pages listed in the column to the right	25-1 (the last piece of information severed on the page), 26-1, 29-3, 37-10, 40-7 (except for the information severed under section 15(1)), 40-8, 45-27 (the last two items in the column)