ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 97-011

September 11, 1997

ALBERTA JUSTICE

Review Number 1270

BACKGROUND

[1.] The Applicant's employment was terminated. The Applicant believed the termination was unjust, and filed a complaint with the Alberta Human Rights Commission (the "Commission").

[2.] The Commission told the Applicant that it was unable to assist. The Applicant asked for and was provided with a copy of the Commission's file concerning the Applicant's complaint. The Applicant subsequently complained to the R.C.M.P. that a document on the Applicant's file at the Commission was forged. An R.C.M.P. investigation did not find any evidence of forgery and informed the Applicant accordingly.

[3.] The Applicant believed that three named individuals and the provincial government were blocking the R.C.M.P. investigation. On December 16, 1996, the Applicant applied to the Minister of Justice and Attorney General (Alberta Justice, the "Public Body") for access to records under *the Freedom of Information and Protection of Privacy Act* (the "Act") concerning those named individuals.

[4.] When the Applicant applied for access, the Applicant did not include the $25 initial fee required under the Act. On January 27, 1997, the Public Body

informed the Applicant that the fee was necessary to process the Applicant's application. The Public Body received the $25 fee from the Applicant on February 6, 1997.

[5.] On March 10, 1997, the Public Body provided a copy of the records, but severed personal information under section 16 of the Act. The Applicant asked that my Office conduct a review. Mediation was authorized but was not successful. The matter was set down for inquiry on June 17, 1997.

RECORDS AT ISSUE

[6.] There are six records (the "Records") at issue, consisting of a total of eight pages. The Public Body provided an index of the Records. The Public Body severed personal information on four of the Records (Records 3 to 6). The Public Body also severed information on Record 2, but that severing was not listed in the Public Body's index, for reasons discussed below. The Public Body released Record 1 in its entirety.

[7.] As a result of questions that arose about the Records during the inquiry, the Public Body made further enquiries, and notified this Office after the inquiry that the Public Body could release certain handwritten notes, not previously released, that had been severed on Record 2 and Record 3.

[8.] The Public Body had originally severed the somewhat illegible handwritten note on Record 2 because it considered that the note was not responsive to the Applicant's request. The Public Body changed its mind when it later realized the note formed the body of Record 1.

[9.] The Public Body originally thought the notes on Record 3 were notes between individuals within the Public Body, but later discovered the notes were those of R.C.M.P. personnel. The Public Body said those notes could be released to the Applicant. However, the Public Body did not waive the severing of the third party personal information on Record 3.

[10.] This Office will be providing the Applicant with the Public Body's copy of Record 2 and Record 3, with the handwritten notes unsevered, upon release of this Order.

ISSUES

[11.] There are four issues in this inquiry:

A. Did the Public Body go over the 30-day time limit in responding to the Applicant's request?

B. Did the Applicant request the Applicant's own personal information, as provided by section 87(2) of the Act, and was the Applicant properly charged the $25 application fee?

C. Did the Public Body correctly apply section 16 of the Act (personal information)?

D. Did the Public Body conduct an adequate search for records responsive to the Applicant's request?

DISCUSSION OF ISSUES

Issue A: Did the Public Body go over the 30-day time limit in responding to the Applicant's request?

[12.] The Applicant says that the Public Body exceeded the 30-day time limit under section 10(1) of the Act for responding to the Applicant's request. The Applicant says that the Applicant's initial request letter to the Public Body was dated December 16, 1996, but the records requested were not received until March 10, 1997.

[13.] The Public Body says that the Applicant did not send the $25 initial fee with the Applicant's December 16, 1996 letter to the Public Body. On January 27, 1997, the Public Body informed the Applicant that the 30-day time limit for responding to the Applicant's request would not commence until the Public Body received the fee. The Public Body gave evidence that it received the $25 fee on February 6, 1997.

[14.] Section 10 of the Act provides:

> *s. 10(1) The head of a public body must make every reasonable effort to respond to a request not later than 30 days after receiving it unless*
>
> > *(a) that time limit is extended under section 13, or*
> >
> > *(b) the request has been transferred under section 14 to another public body.*

s. 10(2) The failure of the head to respond to a request within the 30-day period or any extended period is to be treated as a decision to refuse access to the record.

[15.] Since section 10(3) of the Regulations to the Act provides that "Processing of a request will not commence until the initial fee has been paid", I find that the time limit for responding to the Applicant's request commenced on February 6, 1997 when the Applicant paid the $25 initial fee.

[16.] The time limit for responding to the Applicant's request expired on March 8, 1997, which was a Saturday. The Public Body responded on March 10, 1997, the Monday immediately following. The Public Body says that the delay occurred because the Public Body had a number of third parties to contact, and some responses came in on the last day. The Public Body acknowledged that the response to the Applicant's request should have gone out on the Saturday instead of the Monday. However, the Public Body was of the view that since it could have extended the time limit for responding to the Applicant's request, and since the delay was only over a weekend, the Public Body did not think the delay was unreasonable or prejudicial. The Applicant says that there was a delay without any reason or explanation being given, and that the Public Body should have given notice.

[17.] The Act does not say anything about "unreasonable" or "prejudicial" delay. What the Act does say is that a public body must make "every reasonable effort", and that a failure to respond within the time limit is to be treated as a decision to refuse access.

[18.] However, in this case, section 22(2) of the *Interpretation Act*, R.S.A. 1980, c. I-7, is relevant. Section 22(2) reads:

s. 22(2) If in an enactment the time limited for registration or filing of an instrument, or for ***the doing of anything****,* [my emphasis] *expires or falls on a day on which the office or place in which the instrument or thing is required to be registered, filed or done is not open during its regular hours of business, the instrument or thing may be registered, filed or* ***done on the day next following on which the office or place is open*** [my emphasis].

[19.] Does section 22(2) of the *Interpretation Act* apply to section 10(1) of the *Freedom of Information and Protection of Privacy Act*?

[20.] Section 3(1) of the *Interpretation Act* provides:

s. 3(1) This Act applies to the interpretation of every enactment except to the extent that a contrary intention appears in this Act or the enactment.

[21.] Section 25(1)(e) of the *Interpretation Act* defines "enactment" to mean "an Act or a regulation or any portion of an Act or regulation". "Enactment" therefore includes the *Freedom of Information and Protection of Privacy Act*. Neither the *Interpretation Act* nor the *Freedom of Information and Protection of Privacy* say that the *Interpretation Act* doesn't apply to the *Freedom of Information and Protection of Privacy Act*. Consequently, the *Interpretation Act* applies to the *Freedom of Information and Protection of Privacy Act*; in particular, section 22(2) applies.

[22.] The 30-day time limit for responding to the Applicant's request expired on a Saturday. The Public Body's offices are not open on Saturday. The Public Body responded on the following Monday, the day on which its offices were next open. Therefore, the Public Body meets the requirements set out in section 22(2) of the *Interpretation Act*. Because of the operation of section 22(2) of the *Interpretation Act* and section 10(1) of the *Freedom of Information and Protection of Privacy Act*, I find that the Public Body did not go over the 30-day time limit in responding to the Applicant's request.

Issue B: Did the Applicant request the Applicant's own personal information, as provided by section 87(2) of the Act, and was the Applicant properly charged the $25 application fee?

[23.] Section 87(1) and section 87(2) of the Act are relevant. Those sections read:

s. 87(1) The head of a public body may require an applicant to pay to the public body fees for services as provided for in the regulations.

s. 87(2) Subsection (1) does not apply to a request for the applicant's own personal information, except for the cost of producing the copy.

[24.] Section 10 and section 11 of the Regulations to the Act are also relevant. The relevant parts of those sections read:

s. 10(1) This section applies to a request for access to a record that is not a record of the personal information of the applicant.

s. 10(2) An applicant is required to pay

> *(a) an initial fee of $25 when a non-continuing request is made.*

s. 11(1) This section applies to a request for access to a record that is a record of the personal information of the applicant.

s. 11(2) Only fees for copying in accordance with item 6 of Schedule 2 may be charged if the amount of the fees as estimated by the public body to which the request has been made exceeds $10.

[25.] In Order 97-003, I said that if information can be characterized as a request for the applicant's own personal information, a public body may not charge a service fee for any document that "contains" an applicant's personal information. It follows from section 10 and section 11 of the Regulations that the public body also may not charge the $25 application fee if the request is for the applicant's own personal information. Under section 11(1) and section 11(2) of the Regulations, the public body may charge only photocopying fees, and only if those fees are more than $10.

[26.] In Order 97-003, I said that to decide whether there has been a request for the applicant's own personal information, I will use the following approach:

(i) Consider the wording of the request.

(ii) Characterize the request as to the categories of records the applicant is requesting.

(iii) Decide whether the records fall within those categories.

[27.] I also said in Order 97-003 that if any part of an applicant's request can be characterized as a request for the applicant's own personal information, I will then decide whether each record (not page) found to be within that category "contains" the applicant's personal information.

[28.] Can the Applicant's request be characterized as a request for the Applicant's own personal information?

[29.] As much as I can without identifying any individual, I reproduce the Applicant's request:

> *Under the Freedom of Information Act, I formally request a copy of all correspondences* [sic] *and related documents regarding my complaints against* [three named individuals]
>
> > *1. between your department and Alberta Human Rights Office*
> > *2. between your department and Alberta Law Society*
> > *3. between your department and RCMP*
> > *4. between your department and the Ombudsman's Office*
> > *5. between your department and federal government*

[30.] The Applicant says that the words "my complaints" indicate a request for the Applicant's own personal information. The Applicant relies on Ontario Order P-1186, in which a complaint filed by the appellant against the Ministry in question was found to contain the personal information of the appellant. However, the particular issue to which the Applicant makes reference in Ontario Order P-1186 was decided under the equivalent of section 6(1) of the Act, not under the equivalent of section 87(2). Furthermore, in Order 97-003, I indicated that I have adopted a test under section 87(2) that differs from that in Ontario Order P-1186. Therefore, I decline to follow Ontario Order P-1186 as far as section 87(2) is concerned.

[31.] I also understand the Applicant to be saying that the Applicant's complaints against the named individuals constitute the Applicant's own personal views or opinions, as provided by section 1(1)(n)(ix) of the definition of "personal information" in the Act. The Applicant concludes that a request for the Applicant's own opinions is a request for the Applicant's own personal information.

[32.] Under section 1(1)(n)(ix) of the Act, "personal information" includes "the individual's personal views or opinions, *except if they are about someone else*" [my emphasis]. Simply put, the Applicant's personal information does not include the Applicant's views or opinions about someone else. Those opinions are the personal information of the individual about whom the opinion is expressed, as provided by section 1(1)(n)(viii) of the Act. Because the Applicant has requested the Applicant's views or opinions about someone else, the Applicant's request is not a request for the Applicant's own personal information.

[33.] The Applicant says that the Applicant nevertheless asked for the Applicant's own personal information. The Public Body says that the

information the Applicant asked for was about complaints against the named individuals. Under section 1(1)(n) of the Act, "personal information" is information "about an identifiable individual". The request is therefore certainly for information about identifiable individuals, but about individuals other than the Applicant. Therefore, according to the Public Body, the Applicant did not ask for the Applicant's own personal information.

[34.] I agree with the Public Body that I should interpret the words "my complaints" in the context of who the complaints are against. The Applicant has asked for anything related to the Applicant's complaints against three named individuals. So they may be the Applicant's complaints, but they are about other people. Either because the complaints relate to opinions that are the personal information of the named individuals, and not the Applicant, or because the Applicant has asked for personal information about identifiable individuals other than the Applicant, I find that this is not a request for the Applicant's own personal information under section 87(2) of the Act.

[35.] Since no part of the Applicant's request can be characterized as a request for the Applicant's own personal information, I need go no further. Consequently, the Public Body correctly charged the Applicant the $25 initial fee under the Act.

Issue C: Did the Public Body correctly apply section 16 of the Act (personal information)?

1. Do the Records contain "personal information"?

[36.] The Public Body says that the Records contain "personal information". "Personal information" is defined in section 1(1)(n) of the Act to mean recorded information about an identifiable individual, including that information listed in section 1(1)(n)(i) to (ix).

[37.] I have reviewed the Records and find that they contain personal information consisting of the names of identifiable individuals (section 1(1)(n)(i) of the Act) and the employment history of identifiable individuals (section 1(1)(n)(vii)).

2. Is there personal information of a "third party"?

[38.] The Public Body says that it severed the personal information of three named individuals under section 16(1) of the Act. Section 16(1) reads:

> *s. 16(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.

[39.] The Applicant says that the information is about three named individuals whom the Applicant has accused of committing offences. The Applicant reasons that those individuals are "second parties" or defenders relative to the Applicant, so there is no privacy involved at all. I understand the Applicant's argument to be that those individuals therefore cannot be "third parties" for the purposes of the section 16(1) of the Act.

[40.] "Third party" is defined in section 1(1)(r) of the Act to mean "a person, a group of persons or an organization other than an applicant or a public body".

[41.] "Person" is not defined in the Act, but is defined in broad terms in section 25(1)(p) of the *Interpretation Act*, R.S.A. 1980, c. I-7. In Order 96-019, I discussed section 25(1)(p) and said that "person" includes an individual.

[42.] Because the Act defines third parties for the sole purpose of the Act, the relationship of the Applicant to those third parties in other circumstances is not a relevant consideration when deciding who are third parties under the Act.

[43.] We are concerned with three named individuals here. Therefore, the three named individuals are "third parties" for the purposes of section 16(1) of the Act.

3. What presumptions did the Public Body apply under section 16(2)?

[44.] The Public Body said that the presumptions contained in section 16(2)(b) and section 16(2)(g) of the Act apply to the personal information. Those sections read:

s. 16(2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation

(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.*

[45.] The Applicant says that the Public Body did not correctly apply section 16(2)(g) of the Act. The Applicant says that other than names, there is no other personal information about the third parties. Furthermore, the name would not reveal other personal information of the third parties.

[46.] I have carefully reviewed the Records and disagree with the Applicant's assessment. Record 3 and Record 6 contain the name and employment history of an identifiable individual. Employment history is included in the definition of "personal information" under section 1(1)(n)(vii) of the Act. Record 4 and Record 5 also contain the names and employment histories of identifiable individuals. Furthermore, in Record 4 and Record 5, release of the names would reveal the employment histories of identifiable individuals. Therefore, I find that the Public Body correctly applied section 16(1) and section 16(2)(g) to the personal information severed in Records 3 to 6.

[47.] Having made this finding, I do not find it necessary to consider whether the Public Body correctly applied section 16(2)(b) of the Act to the same personal information of the third parties severed in Records 3 to 6.

4. What relevant circumstances did the Public Body consider under section 16(3) of the Act?

[48.] Under section 16(3) of the Act, the Public Body is required to consider all the relevant circumstances when determining under section 16(1) or section 16(2) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy. Section 16(3) then sets out a non-exhaustive list of relevant circumstances.

[49.] The Public Body said that it did not release the third parties' personal information to the Applicant because the third parties refused to consent to the release of their personal information.

[50.] I find that a public body's consideration of a third party's refusal to consent to release of that third party's personal information is a relevant circumstance under section 16(3). As I said in Order 96-010, my role as Commissioner under section 16 is to see that the Public Body used the right process in making its decision that release of personal information would be an

unreasonable invasion of a third party's personal privacy. I find that the Public Body used the right process in considering the third parties' refusal to consent.

5. Did the Applicant meet the burden of proof under section 67(2)?

a. General

[51.] Section 67(2) of the Act provides that if a record or part of the record that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

[52.] To meet the burden of proof, the Applicant has raised five issues:

(i) The third parties had no right to be contacted about their personal information because the Applicant has accused them; therefore, the third parties' names must be part of the record.

(ii) The third parties have no right to ask for severing because their names appear in the R.C.M.P. releases.

(iii) The Applicant already knows the names of the third parties.

(iv) By contacting the third parties, the Public Body has revealed the Applicant's identity and breached the Applicant's privacy.

(v) The Commissioner should ask the Public Body to produce the third parties' refusals to consent because the Applicant thinks the Public Body's affidavit evidence that it contacted the third parties does not contain the truth.

(i) Third parties' right to be contacted

[53.] Section 29(1) of the Act requires that the public body give written notice to a third party if the public body is considering giving access to a record that may contain the third party's personal information. This is a mandatory ("must") provision; the public body does not have any discretion to decide not to give notice. The fact that the Applicant has accused the third parties is not a relevant consideration in deciding to give notice under section 29(1).

(ii) Third parties' names appearing in the R.C.M.P. releases

[54.] The Applicant says that in 1994, the Applicant received an unsevered version of Record 5 from the R.C.M.P., and the Applicant does not understand

why the Public Body has now severed its copy of Record 5 that it provided to the Applicant.

[55.] The Applicant also says that the Applicant received an unsevered copy of Record 3, which is a Record written in 1994 and sent to the R.C.M.P. by the Public Body. The Applicant says that the Applicant received that copy from the R.C.M.P., in 1996, with the Public Body's approval. Approval was given in an October 1996 letter written by the Public Body. That is a year after the *Freedom of Information and Protection of Privacy Act* came into force. The Applicant wants to know why the Public Body didn't ask the R.C.M.P. to sever the letter.

[56.] The Public Body said that section 16(3) of the federal Access to Information Act does not allow disclosure of a record that contains information obtained or prepared by the R.C.M.P. while performing policing services under an agreement with a province. Consequently, the Public Body asked the R.C.M.P. for consent under the *Freedom of Information and Protection of Privacy Act*. Under the Alberta legislation, the R.C.M.P.'s condition for release was that names be removed.

[57.] The Public Body's evidence is that the Public Body contacted the R.C.M.P. regarding the disclosure of the six documents responsive to the Applicant (Public Body's affidavit, paragraph 11). The R.C.M.P. consented to the release of the records provided to them for their review, provided that all personal information be severed out prior to release to the Applicant (Public Body's affidavit, paragraph 13).

[58.] The Public Body did not have any response as to why it did not ask the R.C.M.P. to sever Record 3 when, in 1996, it gave permission to the R.C.M.P. to release that record to the Applicant. However, the Public Body did say that if it wrongfully released that personal information in 1996, two wrongs did not make a right, and the Public Body would not release the personal information now on the Applicant's request for access. Furthermore, the third parties refused to consent to the release. I agree with the Public Body that if it made a mistake in releasing personal information in 1996, that mistake does not require that it now release the personal information. The Public Body must comply with the Act.

(iii) Third parties' names known to the Applicant

[59.] The Applicant says that the Applicant already knows the personal information that was severed. The Applicant concludes that severing is therefore improper and, furthermore, there cannot be an unreasonable invasion of third parties' personal privacy when the Applicant already knows the names of the individuals whose names were severed.

[60.] In Order 96-008, I said that there is a difference between knowing a third party's personal information (such as a third party's name) and having a right of access to that personal information under the Act. Consequently, I do not accept the Applicant's argument that there is no unreasonable invasion of third parties' personal privacy because the Applicant already knows the third parties' names.

(iv) Breach of the Applicant's personal privacy

[61.] The Applicant alleged that by contacting the third parties, the Public Body has revealed the Applicant's identify and breached the Applicant's privacy. The Public Body said that the Public Body did not reveal the Applicant's name to the third parties. I accept the Public Body's statement because section 29(3)(b) of the Act allows the public body to simply describe the contents of the record to the third party, as an alternative to providing a copy of the record or part of it containing the information in question.

(v) The Public Body's affidavit evidence

[62.] The Applicant takes issue with the fact that the Public Body's affidavit did not include the third parties' refusals to consent, which the Applicant says should have been attached to the affidavit. The Applicant questions my acceptance of the Public Body's affidavit that third parties were contacted and refused to consent to release of their personal information. The Applicant says I should require the Public Body to produce the evidence that the third parties refused to consent.

[63.] The Public Body's affidavit evidence is that it contacted the individual third parties to ascertain their views regarding the disclosure of the six documents responsive to the Applicant (Public Body's affidavit, paragraph 11). The Public Body indicated that the third parties did not consent to the release of their personal information to the Applicant (Public Body's affidavit, paragraph 12).

[64.] In this case, I do not intend to tell the Public Body how to present its evidence. The Public Body has provided an affidavit, and ultimately I must decide the issue of credibility of the evidence. I am prepared to accept the Public Body's affidavit evidence in place of the third parties' documents refusing disclosure, because of the serious consequences that would ensue if the Public Body provided a false affidavit. Furthermore, section 16 is a mandatory ("must") section, and I would consider whether to sever the personal information myself, even if there were no evidence that the third parties refused consent, and even if the Public Body did not sever that personal information:

see Order 96-008 in which I set out my jurisdiction regarding mandatory exceptions.

b. Conclusion under section 67(2)

[65.] I find that the Applicant has not proved that disclosure of the personal information would not be an unreasonable invasion of the third parties' personal privacy.

6. Conclusion under section 16

[66.] The Public Body correctly applied section 16(1) and section 16(2)(g) to the personal information severed in Records 3 to 6. As the Applicant has not met the burden of proof under section 67(2), I uphold the Public Body's decision to sever and withhold that personal information.

Issue D: Did the Public Body conduct an adequate search for records responsive to the Applicant's request?

[67.] The Applicant believes that the Public Body is withholding information. The Applicant phrased this issue as "improper withholding of documents, especially the documents to block RCMP's investigation into my complaints".

[68.] By letter dated May 16, 1997, my Office informed the Applicant that this issue had to be dealt with in terms of the Public Body's thoroughness to search for records to satisfy the Applicant's request, to ensure that I had the jurisdiction to deal with the issue. The Applicant was also informed at the inquiry that this was a request for review, that the only remedies available were under section 68 of the Act, and that I would not be conducting an investigation into the Applicant's original complaints.

[69.] As to the issue of the Public Body's search for responsive records, section 9(1) of the Act is relevant, and reads:

> *s. 9(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.*

[70.] In Order 96-022, I adopted criteria, based on British Columbia Order 30-1994, for determining whether or not a public body has carried out a proper search. I said that a public body must make every reasonable effort to search for the actual records that have been requested. The Public Body says it followed British Columbia Order 30-1994 as to what constitutes "every reasonable effort" as to conducting a search for records.

[71.] In Order 96-022, I also said that although section 67 of the Act is silent on the issue of burden of proof, the burden of proof is on the public body because it is in a better position to address the adequacy of a search. Nevertheless, section 7(2) requires that the applicant provide sufficient clarification of its request to enable the public body to locate the appropriate records. As the Applicant here provided a very specific request related to three named individuals, I do not find there is an issue concerning the clarity of the Applicant's request in this case.

[72.] The public body must provide me with sufficient evidence to show that it has made every reasonable effort to identify and locate records responsive to the request.

[73.] In this case, the Public Body provided an affidavit of the person who held the positions of both Director of Administrative Services for the Public Body and *Freedom of Information and Protection of Privacy Act* (FOIP) Co-ordinator for the Public Body. The Public Body says that person had actual knowledge of and knew the Public Body's filing system. The affidavit evidence is that this person instructed one of the Public Body's officials as to what to look for when searching the Public Body's records (Public Body's affidavit, paragraph 4).

[74.] The Applicant raised an initial objection to the Public Body's affidavit. The Applicant says that the affidavit should have been made by the person who conducted the search. The Applicant says that person is the Public Body's lawyer who not only requested the search, but also reviewed the Records to determine whether the Records were responsive to the Applicant's request. According to the Applicant, if the lawyer doesn't make the affidavit, the affidavit is unacceptable because it is indirect information and indirect knowledge about the search. The Applicant says that the affidavit contains indirect information because the person who swore the affidavit says "I am informed…." The Applicant also asks to know who informed the person who made the affidavit.

[75.] The Public Body says that the Public Body's lawyer did not conduct the search, but requested the search. The Public Body says that the test for an affidavit is contained in British Columbia Order 30-1994. The test has been met in that the person making that part of the affidavit related to the search is doing so according to that person's personal knowledge of the search conducted and the Central Records System (Public Body's affidavit, paragraph 10). That person is of the belief that there are no other records responsive to the request in the custody or under the control of the Public Body, other than the records already reviewed.

[76.] The Public Body also says that a lawyer who acts as legal counsel in reviewing the documents and providing advice to the Public Body is not the

person to make the affidavit. I agree with the Public Body in this regard. First, I do not find it unusual that the Public Body's lawyer would review the documents. The lawyer would do so in order to give advice on whether the records found would be responsive. Second, unless the lawyer is the only person who can give the evidence, in most cases the lawyer for a public body probably should not be the person making the affidavit on behalf of the public body. To do so puts the lawyer in the position of witness, instead of legal advisor. Third, I do not think that there is anything inherently wrong with an affidavit based on information and belief. In this case, where the affidavit related to the lawyer's review of the Records, the person making the affidavit properly stated that the person was so informed by that lawyer (Public Body's affidavit, paragraphs 6 to 8).

[77.] An affidavit is simply a piece of evidence. As the person who must make findings of fact, I have to decide what evidence I can rely on and how much I can rely on that evidence. In making that decision, I can consider whether the appropriate person has made the affidavit. I can examine the logic and consistency of what is stated in the affidavit. Then it is up to me to weigh the evidence and decide issues of credibility. In this case, I find that the appropriate person made the affidavit and that the person's evidence is credible.

[78.] Did the Public Body make every reasonable effort to identify and locate records responsive to the request?

[79.] The Public Body said that the original request was clear, and the Public Body's affidavit gives evidence about how the search was conducted. The Public Body says that the specific nature of the request resulted in a minimal need to exercise judgment to determine records responsive to the Applicant's request. The individuals and the context were already identified by the Applicant.

[80.] The Public Body conducted two searches: one through the Central Records System of the Public Body, and another one through the Special Prosecutions Branch of the Public Body. The Central Records System is subject to the Public Body's Administrative Services Policy Directive 113.4 as to records management. The Public Body provided me with a copy of the Policy Directive. The Public Body's affidavit says that the Policy Directive is followed by the Public Body's personnel within the Public Body's head office, and was followed in this case. The Public Body did not find any records in the Central Records System.

[81.] Special Prosecutions Branch conducted the second round of the search. All six records were found there. Although Special Prosecutions Branch is not

part of the Public Body's head office, the Public Body says that Special Prosecutions Branch used the same search procedure as the Public Body did.

[82.] As to the search terms used, the Public Body confirmed that it conducted not only a computer search, but also an actual physical search, including an archival search. The Public Body said it uses a cardex system. The general subject matter is searched first, and then searched on the basis of search phrases. The Public Body reviews the files using the cross-indexed information.

[83.] The Applicant nevertheless believes that other records should exist, specifically, records asking the R.C.M.P. and another specified official not to investigate the Applicant's complaint. The Applicant also believes that the Public Body is blocking that investigation. The Applicant asked that the Public Body search again for those documents.

[84.] I find that the Applicant's request was very specific, so that the Public Body did not have any difficulty figuring out what to search. The Public Body said it had to go through many documents to get the six records it found. I find that it is unlikely the Public Body would have missed any responsive records because the clear request minimized the amount of judgment that was needed to find responsive records. Furthermore, when the Public Body did not find any records on the first round of the search, Special Prosecutions Branch conducted a second round, where the six records were found.

[85.] Consequently, I find that the Public Body made every reasonable effort to respond to the Applicant under section 9(1) of the Act, and conducted an adequate search for records responsive to the Applicant's request. It follows that I do not find it necessary to ask the Public Body to search again for records.

ORDER

[86.] Under section 68 of the Act, I make the following order:

[87.] **1.** The Public Body did not go over the 30-day time limit in responding to the Applicant's request.

[88.] **2.** The Applicant did not request the Applicant's own personal information, as provided by section 87(2) of the Act. Consequently, the Public Body properly charged the $25 initial fee, and I uphold the Public Body's decision in this regard.

[89.] **3.** The Public Body correctly applied section 16 of the Act (personal information). Therefore, I uphold the head's decision to refuse access to the personal information severed in the Records.

[90.] **4.** The Public Body made every reasonable effort to respond to the Applicant under section 9(1) of the Act, and conducted an adequate search for records responsive to the Applicant's request.

Robert C. Clark
Information and Privacy Commissioner