

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 99-013

September 2, 1999

ALBERTA ENVIRONMENTAL PROTECTION

Review Number 1503

I. BACKGROUND

[para 1.] On June 29, 1998, Alberta Environmental Protection (the "Public Body") received the Applicant's request for access to information under the *Freedom of Information and Protection of Privacy Act* (the "Act"). The Applicant asked for access to records about the loan and forest management agreement ("FMA") concerning Alberta-Pacific Forest Industries Inc. ("Al-Pac"), and the loan and forest management agreement ("FMA") concerning Millar Western Industries Ltd. and Millar Western Pulp (Whitecourt) Ltd. (collectively, "Millar Western").

[para 2.] The Applicant subsequently narrowed the request, as follows:

(i) Copy of all records held by the Public Body regarding negotiations to write off \$145 million of the Al-Pac loan, and negotiations regarding the reduction of size of the Al-Pac FMA, commencing after July 1996, and including any records concerning marketability of the paper mill. This should not include the FMA, previously amended or proposed amendments to the FMA (except internal memos or notes that deal specifically with amendments to the subject matter of the request), documents regarding feasibility of the paper mill, any draft documents, and records provided from or to legal services.

(ii) Copy of all records held by the Public Body regarding negotiations to establish the Millar Western FMA, and any records that document concerns of Treasury to write off the loan. This should not include the FMA, previously amended or proposed amendments to the FMA (except internal memos or notes that deal specifically with amendments to the subject matter of this request), any draft documents, and records provided from or to legal services.

[para 3.] On August 28, 1998, the Public Body gave the Applicant access to some records and information (the “First Release”), but refused to disclose other records or information. The Public Body said that certain records were excluded from the application of the Act by section 4(1)(l) (record created by or for a member of the Executive Council or a Member of the Legislative Assembly, and sent to a member of the Executive Council or a Member of the Legislative Assembly). The Public Body also severed information in many records, under the following provisions of the Act: section 21(1) (Cabinet confidences); section 23(1)(a) (“advice”); section 23(1)(b) (consultations or deliberations); section 23(1)(c) (positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations, or considerations relating to those negotiations); and section 26(1)(a) (solicitor-client privilege).

[para 4.] On September 15, 1998, the Public Body gave the Applicant access to additional records or information that the Public Body found on a further search (the “Second Release”). However, the Public Body refused to disclose some other records or information, also on the basis that sections 21(1), 23(1)(a)(b)(c) and 26(1)(a) (solicitor-client privilege) applied.

[para 5.] The Applicant and the Public Body did agree to remove third party records in the Second Release, which would have required the Public Body to serve notice under section 29 of the Act. The Applicant agreed to consider whether to make a separate access request for the third party records.

[para 6.] By letter received November 3, 1998, the Applicant asked me to review the Public Body’s decision to sever the records. Mediation was authorized but was not successful. The matter was set down for an oral inquiry on April 22, 1999. I received the Public Body’s advance written submission on April 7, 1999. The Applicant did not provide an advance written submission.

[para 7.] At the conclusion of the inquiry, I asked the Public Body to provide some further information. The Public Body provided that information on May 10, 1999.

[para 8.] This Order proceeds on the basis of the Act as it existed before the amendments to the Act came into force on May 19, 1999.

II. RECORDS AT ISSUE

[para 9.] The records at issue consist of the First Release and the Second Release. Each release is numbered separately. The Public Body severed information on approximately 43 pages of the First Release and on approximately 81 pages of the Second Release.

[para 10.] In addition, there are six records that the Public Body said were excluded from the application of the Act by section 4(1)(l). Those records were presented separately and unnumbered.

[para 11.] Prior to the date scheduled for the inquiry, the Public Body said that it incorrectly applied section 4(1)(l) to one of the unnumbered records. Instead, the Public Body said that section 21(1) applied to that record.

[para 12.] In this Order, I will refer to each record individually by page number of the release in which that record is contained, and I will refer to the records collectively as the “Records”. Where records are unnumbered, I will indicate this.

[para 13.] A hyphen between page numbers means that those pages are part of one record.

[para 14.] During the inquiry, I questioned the Public Body about some apparent errors on the Public Body’s list of the Records. I also asked the Public Body to clarify what parts of records were severed, and to identify what exceptions under the Act applied to certain severed information. This Order reflects the Public Body’s responses.

III. ISSUES

[para 15.] There are four issues in this inquiry:

- A. Are certain records excluded from the Act by section 4(1)(l) (record created by or for a member of the Executive Council or a Member of the Legislative Assembly and sent to a member of the Executive Council or a Member of the Legislative Assembly)?

B. Did the Public Body correctly apply section 21(1) (Cabinet confidences)?

C. Did the Public Body correctly apply section 23(1)(a) (“advice”), section 23(1)(b) (consultations or deliberations) or section 23(1)(c) (positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations, or considerations relating to those negotiations)?

D. Did the Public Body correctly apply section 26(1)(a) (solicitor-client privilege)?

[para 16.] The Applicant was also concerned that the FMAs did not properly record the parties to the FMAs, which he believed was misleading. He asked me to look into that matter. However, even if the Applicant had asked for access to the FMAs (the Applicant did not), I have no jurisdiction to deal with the Applicant’s concern. I can do no more than ask the Public Body to see whether it can answer the Applicant’s concern.

IV. DISCUSSION OF THE ISSUES

ISSUE A: Are certain records excluded from the Act by section 4(1)(l) (record created by or for a member of the Executive Council or a Member of the Legislative Assembly and sent to a member of the Executive Council or a Member of the Legislative Assembly)?

[para 17.] The Public Body says that section 4(1)(l) excludes five unnumbered records from the Act.

[para 18.] Section 4(1)(l) reads:

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

(l) a record created by or for

(i) a member of the Executive Council,

(ii) a Member of the Legislative Assembly, or

(iii) a chair of a Provincial agency as defined in the Financial Administration Act who is a Member of the Legislative Assembly

that has been sent or is to be sent to a member of the Executive Council, a Member of the Legislative Assembly or a chair of a Provincial agency as defined in the Financial Administration Act who is a Member of the Legislative Assembly.

[para 19.] I have reviewed the five unnumbered records. I am satisfied that those records were created by or for a member of the Executive Council and sent to a member of the Executive Council or a Member of the Legislative Assembly.

[para 20.] Consequently, those five unnumbered records are excluded from the Act by section 4(1)(l), and I have no jurisdiction over them. The Public Body is not required to give the Applicant access to those five unnumbered records.

ISSUE B: Did the Public Body correctly apply section 21(1) (Cabinet confidences)?

[para 21.] The Public Body says that section 21(1) applies to one unnumbered record (which the Public Body had formerly said was excluded under section 4(1)(l)) and to the following pages of the Records:

First Release
42, 47-48, 54-55, 103-104, 105-106

[para 22.] Section 21 reads:

21(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 23.] I agree that section 21(1) applies to the unnumbered record and to the pages of the Records set out above, as the information contained in those records would reveal the substance of deliberations of the Executive Council, also referred to as the “Cabinet”.

[para 24.] I have also reviewed the records set out above to see whether the exception contained in section 21(2)(c) applies to any of the information.

[para 25.] Section 21(2)(c) contains two requirements: (i) there must be information in a record the purpose of which is to present background facts to the Executive Council (among others) for consideration in making a decision; and (ii) the decision must have been made public, implemented, or five or more years must have passed since the decision was made or considered.

[para 26.] The second requirement has been met, in that the decisions regarding the Al-Pac and Millar Western loans and FMAs have been implemented, if not also made public.

[para 27.] However, other than for the record consisting of pages 105-106, the records set out above do not meet the first requirement because

the purpose of most of those records is not to present background facts for consideration in making a decision. Furthermore, where the Public Body found information the purpose of which was to present background facts, the Public Body disclosed the background facts in those records.

[para 28.] The record consisting of pages 105-106 must be considered separately. In my view, the purpose of the information contained in those two pages is to present background facts to the Executive Council for consideration in making a decision. However, I believe that the disclosure of the background facts contained in those two pages would reveal the substance of deliberations of the Executive Council. In such a situation, must the information be withheld or disclosed?

[para 29.] In *Aquasource Ltd. v. British Columbia (Information and Privacy Commissioner)* (August 18, 1998), Vancouver Registry No. CA022585 (B.C. C.A.), the British Columbia Court of Appeal discussed this very issue. The Court agreed that information equivalent to “background facts” must not be disclosed if that information would disclose the substance of Cabinet deliberations.

[para 30.] The Court agreed with the interpretation of the British Columbia Information and Privacy Commissioner that the equivalent of section 21(1) and section 21(2) cannot be read as watertight compartments. The exception contained in section 21(2) must relate to the purpose for which the information is given under section 21(2): if it is to provide background facts and is not interwoven with anything listed in section 21(1), the information can be disclosed, but not otherwise.

[para 31.] I agree that background facts must not be disclosed if the background facts would disclose the substance of Cabinet deliberations. This is consistent with Order 97-010 (decided before the British Columbia Court of Appeal decision), in which I said that section 21(2)(c) permits the disclosure of records that do not divulge Cabinet deliberations.

[para 32.] In this case, the purpose of the information contained in pages 105-106 is to provide background facts, but the information is interwoven with section 21(1) because disclosure of the background facts would reveal the substance of the deliberations of the Executive Council. Consequently, the information contained in pages 105-106 must not be disclosed.

[para 33.] Therefore, I find that the Public Body correctly applied section 21(1) to one unnumbered record (which the Public Body had formerly said was excluded under section 4(1)(l)) and to the following pages of the Records:

First Release
42, 47-48, 54-55, 103-104, 105-106

[para 34.] Section 21(1) is a mandatory (“must”) provision. Having correctly applied section 21(1), the Public Body must refuse the Applicant access to the one unnumbered record and to the foregoing pages of the Records.

ISSUE C: Did the Public Body correctly apply section 23(1)(a) (“advice”), section 23(1)(b) (consultations or deliberations) or section 23(1)(c) (positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations, or considerations relating to those negotiations)?

[para 35.] In this Order, I intend to deal with the application of section 23(1)(c) first, followed by section 23(1)(b) and then section 23(1)(a).

1. Application of section 23(1)(c) (positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations, or considerations relating to those negotiations)

[para 36.] The Public Body says that section 23(1)(c) applies to the information severed from the following pages of the Records:

First Release
20, 24, 29, 30-31, 34-35, 37, 38-39, 43-45, 51-52, 80-83, 85-86, 88 (second and third severed items), 89, 90, 91, 95, 97 (second severed item), 99-100, 107, 111-112

Second Release
1-3, 6, 7, 10 (severed items numbered 4 and 5), 11, 12, 14 (first severed item), 15, 17, 20-22, 23-24, 25-26, 27, 30-32, 33 (first severed item), 34, 38-41, 42, 44, 46, 48-49, 51-52, 53, 54 (everything severed except the second sentence beside point 1(2)), 55-61, 62-63, 67 (second and fourth severed items), 68 (second, third and fifth severed items), 69 (second and third severed items), 70-75, 76-81, 84-89, 95, 96, 100-101, 102, 103 (second severed item), 104 (first, second, fourth and sixth severed items), 110-111, 112

[para 37.] There are two preliminary matters. First, having decided that certain information was not responsive to the Applicant’s request, the Public Body removed the first item on page 88 of the First Release, most of the information on page 9 of the Second Release, and the

information under the items numbered 2 and 3 on page 10 of the Second Release. I have reviewed the information that was removed and agree with the Public Body that that information is not responsive to the Applicant's request. Therefore, that information may be removed without any severing notation, as the Public Body has correctly done.

[para 38.] Second, during the inquiry, the Public Body reviewed page 91 of the Second Release and subsequently decided that that page could be disclosed, unsevered, to the Applicant. Therefore, I do not find it necessary to consider page 91 of the Second Release in this Order, and I have not included page 91 in the list of records above. The Public Body has asked me for input as to the process to release page 91. The Public Body may simply send that page to the Applicant when it receives this Order.

[para 39.] Section 23(1)(c) reads:

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

(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.

[para 40.] The Public Body explained that the negotiations by the Government of Alberta and the Public Body relate to the Al-Pac FMA and the Millar Western FMA. The Public Body argues that all the criteria for section 23(1)(c) have been met with respect to those negotiations.

[para 41.] For section 23(1)(c) to apply, the disclosure of the information must be reasonably expected to reveal (i) positions, plans, procedures, criteria or instructions ("positions"), which have been developed for the purpose of Government of Alberta's or the Public Body's negotiations; or (ii) considerations that relate to those negotiations. In Order 96-012, I said that the intent of section 23(1)(c) is to protect information generated during the decision-making process.

[para 42.] There is no doubt that the information severed from the foregoing pages of the Records is about the Government of Alberta's and the Public Body's negotiations relating to the Al-Pac and Millar Western

FMA. Would the information reveal positions developed for those negotiations?

[para 43.] I have carefully reviewed all the foregoing records. Some of the information severed from those records would reveal positions developed for those negotiations. Would the remainder of the severed information reveal considerations relating to those negotiations?

[para 44.] “Consideration” is defined by the Concise Oxford Dictionary, Ninth Edition, to mean “a fact or thing taken into account in deciding or judging something”. Applying that definition, I am satisfied that the remainder of the information severed from the foregoing records would reveal considerations relating to the Al-Pac FMA and Millar Western FMA negotiations.

[para 45.] Therefore, I find that the information severed from the foregoing pages of the Records meets the criteria of section 23(1)(c) of the Act. The Public Body correctly applied section 23(1)(c) to that information.

2. Application of section 23(1)(b) (consultations or deliberations)

[para 46.] The Public Body says that section 23(1)(b) applies to the information severed from the pages of the Records to which the Public Body also said that section 23(1)(c) applied, as well as to page 33 and page 97 (first severed item) of the First Release. Since I have already found that the Public Body correctly applied section 23(1)(c) to that information, I do not find it necessary to consider whether the Public Body also correctly applied section 23(1)(b) to that same information. I will consider only page 33 and page 97 (first severed item) of the First Release under section 23(1)(b).

[para 47.] Section 23(1)(b) reads:

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

(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.

[para 48.] In Order 96-006, I said that a “consultation” occurs when the views of one or more officers or employees are sought as to the appropriateness of particular proposals or suggested actions. “Deliberation” is a discussion or consideration, by persons described in the section, of the reasons for and against an action. I also said that the consultation or deliberation must meet the same criteria as for section 23(1)(a) (“advice”), in that the consultation or deliberation must be (i) sought or expected, or be part of the responsibility of a person by virtue of that person’s position, (ii) directed toward taking an action, and (iii) made to someone who can take or implement the action.

[para 49.] Having reviewed the information severed on page 33 and page 97 (first severed item) of the First Release, I am satisfied that the information meets the criteria of section 23(1)(b) of the Act. That information could reasonably be expected to reveal consultations or deliberations involving a number of the individuals listed in section 23(1)(b)(i) to (iii). Therefore, I find that the Public Body correctly applied section 23(1)(b) to the information severed from page 33 and page 97 (first severed item) of the First Release.

3. Application of section 23(1)(a) (“advice”)

[para 50.] The Public Body says that section 23(1)(a) applies to information severed from the pages of the Records to which the Public Body applied either section 23(1)(c) or section 23(1)(b). As I have already found that the Public Body correctly applied section 23(1)(c) and section 23(1)(b) to that information, I do not find it necessary to decide whether section 23(1)(a) also applies to that same information.

4. Exercise of discretion under section 23(1)(b) and (c)

[para 51.] Section 23(1)(b) and (c) are discretionary (“may”) provisions in that, even if the section applies, a public body has a choice as to whether to disclose or withhold the information. To exercise its discretion properly, the Public Body must show that it considered the objects and purposes of the Act (one of which is to allow access to information) and did not exercise its discretion for an improper or irrelevant purpose.

[para 52.] The Public Body says that it reviewed the information line by line, and decided to disclose a lot of the information. On some documents, only one or two lines have been severed. The Public Body further said it applied its discretion following external and internal

consultations. The Applicant was also given records outside the FOIP process.

[para 53.] Given the Public Body's evidence and my review of the Records, I find that the Public Body exercised its discretion properly under section 23(1)(b) and (c).

5. Conclusion under section 23(1)(b) and (c)

[para 54.] The Public Body correctly applied section 23(1)(b) to, and properly exercised its discretion in withholding, the information severed from the following pages of the Records:

First Release
33, 97 (first severed item)

[para 55.] Therefore, I uphold the Public Body's decision to refuse the Applicant access to that information.

[para 56.] The Public Body correctly applied section 23(1)(c) to, and properly exercised its discretion in withholding, the information severed from the following pages of the Records:

First Release
20, 24, 29, 30-31, 34-35, 37, 38-39, 43-45, 51-52, 80-83, 85-86, 88 (second and third severed items), 89, 90, 91, 95, 97 (second severed item), 99-100, 107, 111-112

Second Release
1-3, 6, 7, 10 (severed items numbered 4 and 5), 11, 12, 14 (first severed item), 15, 17, 20-22, 23-24, 25-26, 27, 30-32, 33 (first severed item), 34, 38-41, 42, 44, 46, 48-49, 51-52, 53, 54 (everything severed except the second sentence beside point 1(2)), 55-61, 62-63, 67 (second and fourth severed items), 68 (second, third and fifth severed items), 69 (second and third severed items), 70-75, 76-81, 84-89, 95, 96, 100-101, 102, 103 (second severed item), 104 (first, second, fourth and sixth severed items), 110-111, 112

[para 57.] Therefore, I uphold the Public Body's decision to refuse the Applicant access to that information.

ISSUE D: Did the Public Body correctly apply section 26(1)(a) (solicitor-client privilege)?

1. Application of section 26(1)(a) (solicitor-client privilege)

[para 58.] The Public Body says that section 26(1)(a) (solicitor-client privilege) applies to the information severed from the following pages of the Records:

First Release
41

Second Release
14 (second severed item), 33 (second severed item), 54 (second sentence severed beside point 1(2)), 65-66, 67 (first and third severed items), 68 (first, fourth and sixth severed items), 69 (first severed item), 103 (first severed item), 104 (third and fifth severed items)

[para 59.] The Public Body said that section 26(1)(a) (solicitor-client privilege) also applies to page 12 (third severed item) of the Second Release. However, I have already found that the Public Body correctly applied section 23(1)(c) to that information. Therefore, I do not find it necessary to decide whether section 26(1)(a) (solicitor-client privilege) also applies to that same information.

[para 60.] Section 26(1)(a) reads:

26(1) The head of a public body may refuse to disclose to an applicant

(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege.

[para 61.] For solicitor-client privilege to apply, a document must meet the following three criteria:

- (i) it must be a communication between a solicitor and client,
- (ii) which entails the giving or seeking of legal advice, and
- (iii) which the parties intend to be confidential.

[para 62.] However, the foregoing records are not documents that are communications between the Public Body and its solicitor. It appears

that the Public Body and its solicitor communicated orally, and the records are (i) written communications between officials or employees of the Public Body, quoting the legal advice given by the Public Body's solicitor; or (ii) employees' notes documenting the legal advice given by the Public Body's solicitor, often accompanied by the date of the particular meeting at which the solicitor gave the legal advice.

[para 63.] Solicitor-client privilege can apply to oral as well as written communications. In either case, the three criteria set out above must be met.

[para 64.] I have no doubt that the oral communications between the Public Body and its solicitor meet all the criteria for solicitor-client privilege. The solicitor was giving the Public Body legal advice about negotiations regarding the FMAs, which was intended to be confidential.

[para 65.] In Order 96-020, I followed *Mutual Life Assurance Co. of Can. V. Canada (Deputy A.G.)* (1988), 28 C.P.C. (2d) 101 (Ont. H.C.), in which the court held that a document between employees of a company that transmits or comments on a privileged communication with the company's solicitor was privileged. That case also applies here. Therefore, I find that solicitor-client privilege applies to the solicitor's advice communicated between officials or employees of the Public Body.

[para 66.] Furthermore, I find that solicitor-client privilege applies to the employees' notes setting out the solicitor's legal advice about negotiations regarding the FMAs. My reasoning is simple. I have already found that the oral communications between the solicitor and the Public Body are privileged. Section 26(1)(a) speaks of information that is subject to privilege. Section 26(1)(a) does not use the words "record" or "document". Therefore, I conclude that section 26(1)(a) was meant to encompass privileged information in any form, as here, not just privileged records or documents.

2. Exercise of discretion under section 26(1)(a) (solicitor-client privilege)

[para 67.] Section 26(1)(a) is a discretionary ("may") provision in that, even if the section applies, a public body has a choice as to whether to disclose or withhold the information. To exercise its discretion properly, the Public Body must show that it considered the objects and purposes of the Act (one of which is to allow access to information) and did not exercise its discretion for an improper or irrelevant purpose.

[para 68.] The Public Body says that it followed the same process for exercising its discretion under section 26(1)(a) (solicitor-client privilege)

as it did under section 23. The Public Body reviewed the information with the solicitor who gave it the legal advice, and severed only that information that was legal advice. The Public Body again points to the amount of information it otherwise disclosed to the Applicant.

[para 69.] Given the Public Body's evidence and my review of the Records, I find that the Public Body exercised its discretion properly under section 26(1)(a) (solicitor-client privilege).

3. Conclusion under section 26(1)(a) (solicitor-client privilege)

[para 70.] The Public Body correctly applied section 26(1)(a) (solicitor-client privilege) to, and properly exercised its discretion in withholding, the information severed from the following pages of the Records:

First Release

41

Second Release

14 (second severed item), 33 (second severed item), 54 (second sentence severed beside point 1(2)), 65-66, 67 (first and third severed items), 68 (first, fourth and sixth severed items), 69 (first severed item), 103 (first severed item), 104 (third and fifth severed items)

[para 71.] Therefore, I uphold the Public Body's decision to refuse the Applicant access to that information.

V. ORDER

[para 72.] I make the following Order under section 68 of the Act.

ISSUE A: Exclusion of certain records from the Act by section 4(1)(l) (record created by or for a member of the Executive Council or a Member of the Legislative Assembly and sent to a member of the Executive Council or a Member of the Legislative Assembly)

[para 73.] Five of the unnumbered records are excluded from the Act by section 4(1)(l), and I have no jurisdiction over them. The Public Body is not required to give the Applicant access to those five unnumbered records.

ISSUE B: Application of section 21(1) (Cabinet confidences)

[para 74.] The Public Body correctly applied section 21(1) to one unnumbered record (which the Public Body had formerly said was excluded under section 4(1)(l)) and to the information severed from the following pages of the Records:

First Release
42, 47-48, 54-55, 103-104, 105-106

[para 75.] Therefore, I uphold the Public Body's decision to refuse the Applicant access to the one unnumbered record and to the information severed from the foregoing pages of the Records.

ISSUE C: Application of section 23(1)(a) ("advice"), section 23(1)(b) (consultations or deliberations) or section 23(1)(c) (positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations, or considerations relating to those negotiations)

[para 76.] The Public Body correctly applied section 23(1)(b) to, and properly exercised its discretion in withholding, the information severed from the following pages of the Records:

First Release
33, 97 (first severed item)

[para 77.] Therefore, I uphold the Public Body's decision to refuse the Applicant access to that information.

[para 78.] The Public Body correctly applied section 23(1)(c) to, and properly exercised its discretion in withholding, the information severed from the following pages of the Records:

First Release
20, 24, 29, 30-31, 34-35, 37, 38-39, 43-45, 51-52, 80-83, 85-86, 88 (second and third severed items), 89, 90, 91, 95, 97 (second severed item), 99-100, 107, 111-112

Second Release
1-3, 6, 7, 10 (severed items numbered 4 and 5), 11, 12, 14 (first severed item), 15, 17, 20-22, 23-24, 25-26, 27, 30-32, 33 (first severed item), 34, 38-41, 42, 44, 46, 48-49, 51-52, 53, 54 (everything severed except the second sentence beside point 1(2)), 55-61, 62-63, 67 (second and fourth severed items), 68 (second,

third and fifth severed items), 69 (second and third severed items), 70-75, 76-81, 84-89, 95, 96, 100-101, 102, 103 (second severed item), 104 (first, second, fourth and sixth severed items), 110-111, 112

[para 79.] Therefore, I uphold the Public Body's decision to refuse the Applicant access to that information.

[para 80.] As I have already found that the Public Body correctly applied section 23(1)(c) and section 23(1)(b) to the information to which the Public Body applied section 23(1)(a), I do not find it necessary to decide whether section 23(1)(a) also applies to that same information.

[para 81.] The Public Body has decided that page 91 of the Second Release can be disclosed, in its entirety, to the Applicant. If the Public Body has not already sent that page to the Applicant, it should do so when it receives a copy of this Order.

ISSUE D: Application of section 26(1)(a) (solicitor-client privilege)

[para 82.] The Public Body correctly applied section 26(1)(a) (solicitor-client privilege) to, and properly exercised its discretion in withholding, the information severed from the following pages of the Records:

First Release
41

Second Release
14 (second severed item), 33 (second severed item), 54 (second sentence severed beside point 1(2)), 65-66, 67 (first and third severed items), 68 (first, fourth and sixth severed items), 69 (first severed item), 103 (first severed item), 104 (third and fifth severed items)

[para 83.] Therefore, I uphold the Public Body's decision to refuse the Applicant access to that information.

[para 84.] The result is that the Applicant does not get access to any of the information the Public Body severed from the Records.

[para 85.] I ask that the Public Body see whether it can answer the Applicant's concern that the FMAs did not properly record the parties to the FMAs. However, because I have no jurisdiction over this matter, I want to make it clear that the Public Body is not obliged under the Act to answer the Applicant's concern.

Robert C. Clark
Information and Privacy Commissioner