

# ALBERTA

## INFORMATION AND PRIVACY COMMISSIONER

### ORDER 99-023

January 26, 2000

#### ALBERTA ECONOMIC DEVELOPMENT

Review Number 1606

##### I. BACKGROUND

[para 1.] On August 10, 1998, the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the "Act") to Alberta Economic Development (the "Public Body") for

*"Copies of all correspondence, memoranda, studies and reports prepared and received between January 1, 1994 and December 31, 1994, in the possession of the Ministry of Economic Development, pertaining to financial transactions involving West Edmonton Mall Property Inc., Toronto Dominion Bank, Nomura Canada, TD Trust Company, 606881 Alberta Ltd., 333856 Alberta Ltd., 218703 Alberta Ltd., 298936 Alberta Ltd., 342322 Alberta Ltd., Triple Five Corporation, the West Edmonton Mall, and the Alberta Treasury Branches."*

[para 2.] On August 27, 1998, the Public Body advised the Applicant that it was unable to locate any records responsive to the Applicant's access request.

[para 3.] On February 11, 1999, the Public Body received a set of records from another public body. These records consisted of documents that a former Public Body employee had sent to the Auditor General in

the course of the Auditor General's investigation into the refinancing of West Edmonton Mall.

[para 4.] On February 24, 1999, the Applicant wrote to the Public Body asking to "reactivate" the August 10, 1998 access request.

[para 5.] On March 3, 1999, the Public Body notified the Applicant that it would treat the February 24, 1999 letter as a new access request. The scope of the request was also revised to read as follows:

*"Records pertaining to financial transactions related to the refinancing of West Edmonton Mall in the date range of January 1, 1994 to December 31, 1994 as contained in a package of documents recently sent to Alberta Economic Development."*

[para 6.] In response to this access request, the Public Body partially or entirely withheld 117 of 159 pages of records.

[para 7.] On April 23, 1999, the Applicant requested a review of the Public Body's decision. Mediation was unsuccessful and the matter was set down for a written inquiry.

[para 8.] On May 21, 1999, this Office issued a Notice of Written Inquiry to the Public Body, the Applicant and to five Affected Parties. I received initial written submissions from the Public Body, the Applicant and two Affected Parties by the July 5, 1999 deadline for submissions. I received rebuttal submissions from the Public Body, the Applicant and these same two Affected Parties by the July 16, 1999 deadline.

[para 9.] In addition, one of the Affected Parties was given the opportunity to submit a revised submission because of an inadvertent error this party made in its original submission. This Affected Party submitted a revised submission by the July 29, 1999 deadline imposed by this Office. My Office provided all the parties with a copy of the revised submission, and gave the parties who submitted an initial written submission with the opportunity to submit a rebuttal. None of these parties submitted a rebuttal to this submission.

[para 10.] It should also be noted that on June 17, 1999, one Affected Party wrote to the Public Body requesting the following:

a) that the Public Body send this Affected Party a copy of any correspondence or documentation that directly or indirectly relates to the Affected Party and which was not disclosed in the section 29 notice;

b) that the Public Body provide the Affected Party with information regarding which persons or corporations received a section 29 notice; and

c) that I designate each of the West Edmonton Mall senior bondholders as affected parties pursuant to section 64 of the Act.

[para 11.] The Public Body forwarded this letter to this Office. On July 5, 1999, this Office wrote to the Public Body informing it that I had decided not to exercise my discretion under section 64 to give affected party status to the West Edmonton Mall senior bondholders and that the Public Body should consult its own legal counsel regarding the issues concerning the section 29 third party notice.

[para 12.] The Public Body cites sections 15(1), 16, 23(1)(a), (b), (c), and 21(1) as authority to withhold the records.

[para 13.] 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 14.] The records at issue consist of 117 of 159 pages of letters, memorandums, fax coversheets, and other documents pertaining to the refinancing of West Edmonton Mall. The Public Body numbered all the pages. In this Order, I will refer to each record by page number, where necessary, and will refer to all the pages collectively as the “records”.

## **III. ISSUES**

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

- A. Does the Act give me the jurisdiction to review the sufficiency of a section 29 notice or require me to provide an affected party with a copy or a description of the records that relate to that party?
- B. Did the Public Body correctly apply section 15(1) to the records?
- C. Does section 15(3)(c) apply to the records?

- D. Did the Public Body correctly apply section 16 to the records?
- E. Did the Public Body correctly apply sections 23(1)(a), (b), and (c) to the records and properly exercise its discretion under those sections?
- F. Did the Public Body correctly apply section 21 to the records?
- G. Does section 31(1)(b) require the Public Body to disclose the records?

## **VI. DISCUSSION**

**Issue A: Does the Act give me the jurisdiction to review the sufficiency of a section 29 notice or require me to provide an affected party with a copy or a description of the records that relate to that party?**

[para 16.] Two of the Affected Parties questioned whether the Public Body gave them, as Third Parties, a complete copy of the records that directly or indirectly relate to them. They requested that I review the section 29 notice and provide them with any additional relevant records. They also requested that the inquiry be adjourned to allow them to make additional submissions in regard to these records.

[para 17.] Sections 29, 30, 57, 62 and 64 are relevant to this issue. These sections read as follows:

### Section 29

*29(1) When the head of a public body is considering giving access to a record that may contain information*

*(a) that affects the interests of a third party under section 15, or*

*(b) the disclosure of which may be an unreasonable invasion of a third party's personal privacy under section 16,*

*the head must, subject to section 28, where practicable and as soon as practicable, give written notice to the third party in accordance with subsection (3).*

*(2) If the head of a public body does not intend to give access to a record that contains information excepted from disclosure under section 15 or 16, the head may give written notice to the third party in accordance with subsection (3).*

*(3) A notice under this section must*

*(a) state that a request has been made for access to a record that may contain information the disclosure of which would affect the interests or invade the personal privacy of the third party,*

*(b) include a copy of the record or part of it containing the information in question or describe the contents of the record, and*

*(c) state that, within 20 days after the notice is given, the third party may, in writing, consent to the disclosure or make representations to the public body explaining why the information should not be disclosed.*

*(4) When notice is given under subsection (1), the head of the public body must also give the applicant notice stating that*

*(a) the record requested by the applicant may contain information the disclosure of which would affect the interests or invade the personal privacy of a third party,*

*(b) the third party is being given an opportunity to make representations concerning disclosure, and*

*(c) a decision will be made within 30 days after the day notice is given under subsection (1).*

### Section 30

*30(1) Within 30 days after notice is given pursuant to section 29(1) or (2), the head of the public body must decide whether or not to give access to the record or to part of the record, but no decision may be made before the earlier of*

*(a) 21 days after the day notice is given, and*

*(b) the day a response is received from the third party.*

*(2) On reaching a decision under subsection (1), the head of the public body must give written notice of the decision, including reasons for the decision, to the applicant and the third party.*

*(3) If the head of the public body decides to give access to the record or part of the record, the notice under subsection (2) must state that the applicant will be given access unless the third party asks for a review under Part 4 within 20 days after that notice is given.*

*(4) If the head of the public body decides not to give access to the record or part of the record, the notice under subsection (2) must state that the applicant may ask for a review under Part 4.*

## Section 57

*57(1) The Commissioner and anyone acting for or under the direction of the Commissioner must not disclose any information obtained in performing their duties, powers and functions under this Act, except as provided in subsections (2) to (5).*

*(2) The Commissioner may disclose, or may authorize anyone acting for or under the direction of the Commissioner to disclose, information that is necessary to*

*(a) conduct an investigation or inquiry under this Act, or*

*(b) establish the grounds for findings and recommendations contained in a report under this Act.*

*(3) In conducting an investigation or inquiry under this Act and in a report under this Act, the Commissioner and anyone acting for or under the direction of the Commissioner must take every reasonable precaution to avoid disclosing and must not disclose*

*(a) any information the head of a public body would be required or authorized to refuse to disclose if it were contained in a record requested under section 7(1), or*

*(b) whether information exists, if the head of a public body in refusing to provide access does not indicate whether the information exists.*

*(4) The Commissioner may disclose to the Minister of Justice and Attorney General information relating to the commission of an offence against an enactment of Alberta or Canada if the Commissioner considers there is evidence of an offence.*

*(5) The Commissioner may disclose, or may authorize anyone acting for or under the direction of the Commissioner to disclose, information in the course of a prosecution, application or appeal referred to in section 55.*

## Section 62

*62(1) A person who makes a request to the head of a public body for access to a record or for correction of personal information may ask the Commissioner to review any decision, act or failure to act of the head that relates to the request.*

*(2) A third party notified under section 30 of a decision by the head of a public body to give access may ask the Commissioner to review that decision.*

*(3) A person who believes that the person's own personal information has been collected, used or disclosed in violation of Part 2 may ask the Commissioner to review that matter.*

*(3.1) A relative of a deceased individual may ask the Commissioner to review a decision of a head of a public body under section 38(aa) not to disclose personal information.*

*(4) This section does not apply*

*(a) to a decision, act or failure to act of the Commissioner when acting as the head of the office of the Information and Privacy Commissioner,*

*(b) to a decision by the Speaker of the Legislative Assembly that a record is subject to parliamentary privilege, or*

*(c) if the person who is appointed as the Commissioner is, at the same time, appointed as any other officer of*

*the Legislature, to a decision, act or failure to act of that person when acting as the head of that office.*

#### Section 64

*64 On receiving a request for review, the Commissioner must as soon as practicable*

*(a) give a copy of the request*

*(i) to the head of the public body concerned, and*

*(ii) to any other person who in the opinion of the Commissioner is affected by the request,*

*and*

*(b) provide a summary of the review procedures and an anticipated date for a decision on the review*

*(i) to the person who asked for the review,*

*(ii) to the head of the public body concerned, and*

*(iii) to any other person who in the opinion of the Commissioner is affected by the request*

[para 18.] After reviewing these sections, I find that the Act does not permit me to review the sufficiency of a section 29 notice, or require me to provide affected parties with a copy or a description of additional records. My reasons are as follows.

[para 19.] First, section 62 outlines my jurisdiction to conduct a review. Under section 62(1), a person who makes an access or correction request to the head of a public body may ask for a review of any decision, act or failure to act of the head of a public body that relates to the request and, under section 62(2), a third party who was notified of a section 30 decision by a head of a public body may ask for a review of that decision. However, these sections do not give a third party the right to ask for a review of the sufficiency of a section 29 notice.

[para 20.] This conclusion accords with Order 98-006 where I held that I did not have the jurisdiction to review whether an implied or explicit consent occurred during the “consultation period” between the section 29 and section 30 notices. In that Order, I held that I would not review what occurred prior to the issuance of the section 30 notice because it is



the section 30 notice that officially discloses the Public Body's position, it is the section 30 decision that is "appealed" to me, and it is the section 30 notice that I review.

[para 21.] Second, even if I had the power to review the sufficiency of a section 29 notice, sections 29(1) and (2) clearly state that a public body must only provide a third party with a copy of a record or a description of the record if the public body is considering giving the applicant access to that record. If the head of the public body does not intend to give access to those records, as is the case in this inquiry, the public body has the discretion, but no duty, to provide a third party with a copy or description of those records.

[para 22.] Third, section 64 outlines my responsibility upon receiving a request for review. This section states that on receiving a request for review, I must give an affected party a copy of the request for review, a summary of the review procedures, and an anticipated date for a decision on review. However, section 64 does not require me to give affected parties a copy or a description of the records that relate to them.

[para 23.] Fourth, section 57 of the Act prevents me from revealing, in advance of an inquiry, any information that the Public Body is refusing to disclose. In particular, section 57(3)(a) states that in conducting an investigation or inquiry under this Act, I must take every reasonable precaution to avoid disclosing and must not disclose information that the head of a public body would be required or authorized to refuse to disclose if it were contained in a record requested under section 7(1).

**Issue B: Did the Public Body correctly apply section 15(1) to the records?**

[para 24.] The Public Body cited section 15(1) as the authority to withhold the severed information in the following records:

1, 2, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 80, 81, 86, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 106, 107, 115, 116, 117, 119, 121, 123, 124, 125, 127, 128, 129, 137, 138, 139, 141, 142, 143, 144, 145, 146, 149, 150, 151, 156, 157, 158, 159

[para 25.] In addition, one of the Affected Parties argues that records 93, 110, 118 also fulfill section 15(1).

[para 26.] Section 15(1) 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.*

[para 27.] Section 15(1) is a mandatory exception. This means that if a head of a public body determines the information falls within the exception, he/she must refuse access.

[para 28.] For information to fall under section 15(1), the Public Body must satisfy the following three-part test:

Part 1: The information must reveal trade secrets of a third party, or commercial, financial, labour relations, scientific or technical information of a third party (Section 15(1)(a));

Part 2: The information must be supplied, explicitly or implicitly, in confidence (Section 15(1)(b)); and

Part 3: The disclosure of the information could reasonably be expected to bring about one of the outcomes set out in section 15(1)(c).

[para 29.] After reviewing the records and the submissions of the parties, I find that the records do not fulfill the three-part test under section 15(1). Although some of the records contain commercial or financial information that was supplied in confidence to the Public Body, there is insufficient evidence that the disclosure of these records could reasonably be expected to bring about one of the outcomes set out in section 15(1)(c).

[para 30.] One Affected Party argues that the disclosure of records 93, 96-99, 110, 115, 117-119, 123-125 and 141-143 could reasonably be expected to significantly harm its competitive position as a Third Party under section 15(1)(c)(i). This Affected Party states that if these records are disclosed, its reputation for keeping the interests of its clients and partners confidential will be harmed. In addition, the Affected Party states that, pursuant to section 15(1)(c)(ii), if the Public Body disclosed these records, the Affected Party, as a Third Party, would seriously have to consider whether it would provide the Public Body with this type of information in the future.

[para 31.] Another Affected Party argues that if it consents, as a Third Party, to the disclosure of records 36, 37, 38, 80, 81, 95, 98, 99, 101, or 102, it would suffer a financial loss pursuant to section 15(1)(c)(iii). This Affected Party states that if it consents to the disclosure, it would be breaching a duty of confidentiality which, in turn, would harm its negotiating position and could make it financially liable to its clients. This Affected Party also states that if the information in these records were disclosed, it could be used by its competitors.

[para 32.] In Order 96-013, I stated that the words “could reasonably be expected to” determine the standard of proof under section 15(1)(c). I stated that the proof of harm must be on a balance of probabilities. This means that the evidence must be more than speculation, and more than a mere possibility of harm. Moreover, I emphasized that under section 15(1)(c)(i) the harm or interference must be “significant” and under section 15(1)(c)(iii), the resulting financial loss or gain must be “undue”.

[para 33.] After carefully reviewing the records and the arguments of the parties, I find that the standard of proof under section 15(1)(c) has not been met for any of the records. The Public Body and the Affected Parties made limited arguments and provided me with no affidavit evidence regarding the harm they believe would result from the

disclosure of the records. In particular, I find that there is insufficient evidence that the disclosure of records 93, 96-99, 110, 115, 117-119, 123-125, 141-143 will harm a third party's reputation and thereby harm its competitive position under section 15(1)(c)(i). I also find that there is insufficient evidence before me that a disclosure of these records would 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 under section 15(1)(c)(ii).

[para 34.] Furthermore, I find the arguments in regard to records 36, 37, 38, 80, 81, 95, 98, 99, 101, 102 equally unconvincing as there is insufficient evidence that the disclosure of these records will result in significant harm under section 15(1)(c)(i) or undue financial loss or gain under section 15(1)(c)(iii). One of the Affected Parties argued that it would breach its duty of confidentiality if it consents, as a third party, to the disclosure of these records. I do not agree with this argument. Section 15(1)(c) of the Act is not concerned with whether a third party would be harmed if a third party consented to the disclosure of the records. The issue under this section is whether a third party would be harmed if a public body disclosed the records.

[para 35.] This being the case, and since there are no mandatory exceptions that apply and since the Public Body did not claim any discretionary exceptions in regard to the following records, the Public Body must disclose the severed information in the following records to the Applicant:

1, 2, 12 (except names and signature) 13, 14, 15 (except name and signature), 16, 17 (except names), 18 (except names), 19 (except names and signature), 20 (except name), 21, 22, 23 (except names and signature), 24 (except name), 25 (except names), 26, 27, 28 (except name), 29, 30, 31 (except name and signature), 32 (except name and signature) 33 (except name and signature), 34 (except names, signature and phone number), 35 (except name and signature), 36 (except name), 37, 38 (except name and signature), 40 (except name), 41 (except name), 42 (except names, signature and job title), 43, 44, 45, 46 (except name and signature), 47, 48, 49 (except name and signature), 50 (except name and signature), 80 (except names), 81 (except names and signature), 86 (except names), 95 (except names and signature), 96 (except name and signature), 97 (except name), 98 (except names), 99 (except names and signature), 100 (except names), 101 (except names), 102 (except names), 104 (except name), 105 (except name and signature), 106, 107 (except name and signature), 115 (except names and signature), 116 (except names and signature), 117 (except names), 119 (except names, job titles), 121 (except names,

job titles), 123 (except names, job titles, fax numbers and phone numbers), 124 (except names, job titles, fax numbers and phone numbers), 125 (except names, job titles, fax numbers and phone numbers), 137, 138, 139 (except name and signature), 141, 142, 143 (except names and signature), 144, 145, 146 (except names and signature), 149 (except names and signature), 150, 151, 156 (except names), 157(except names, phone numbers and signature), 158 (except names and signature), 159 (except name and signature)

[para 36.] However, the Public Body applied section 16 to some of the names, signatures, fax numbers, phone numbers and job titles on the following records and, therefore, I will subsequently consider those portions of the records under that section:

12, 15, 17, 18, 19, 20, 23, 24, 25, 28, 31, 32, 33, 34, 35, 36, 38, 40, 41, 42, 46, 49, 50, 80, 81, 86, 93, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 107, 110, 115, 116, 117, 118, 119, 121, 123, 124, 125, 127, 128, 129, 139, 143, 146, 149, 156, 157, 158, 159

**Issue C: Does section 15(3)(c) apply to the records?**

[para 37.] Section 15(3)(c) reads:

*15(3) Subsections (1) and (2) do not apply if...*

*(c) the information relates to a non-arm's length transaction between the Government of Alberta and another party*

[para 38.] However, as the Public Body did not correctly apply section 15(1) to the information contained in the records, I do not find it necessary to decide whether section 15(3)(c) applies to the records.

**Issue D: Did the Public Body correctly apply section 16 to the records?**

[para 39.] The Public Body cites section 16 as the authority to withhold some of the names, signatures, fax numbers, phone numbers, job titles, and addresses of individuals on the following records:

12, 15, 17, 18, 19, 20, 23, 24, 25, 28, 31, 32, 33, 34, 35, 36, 38, 40, 41, 42, 46, 49, 50, 51, 52, 80, 81, 82, 83, 84, 85, 86,

87, 88, 89, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 121, 122, 123, 124, 125, 127, 128, 129, 130, 131, 132, 133, 134, 135, 139, 143, 146, 147, 148, 149, 153, 154, 156, 157, 158, 159

[para 40.] Section 16 is a mandatory (“must”) section of the Act. This means that if a head of a public body determines that the information falls within the exception, he/she must refuse access.

[para 41.] In order for section 16 to apply to the records, two criteria must be fulfilled:

- (a) the severed information must be “personal information”; and
- (b) the disclosure of the personal information must be an unreasonable invasion of a third party’s personal privacy.

## **1. Is the severed information “personal information”?**

[para 42.] Personal information is defined in section 1(1)(n) of the Act. The relevant portions of 1(1)(n) read as follows:

*1(1)(n) “personal information” means recorded information about an identifiable individual, including...*

*(i) the individual’s name, home or business address or home or business telephone number,*

*...*

*(vii) information about the individual’s educational, financial, employment or criminal history, including criminal records where a pardon has been given,*

[para 43.] There are several things to note regarding the definition of “personal information”. First, the definition describes personal information as “recorded information about an identifiable individual”. Thus only individuals or, in other words, human beings, can have personal information. Corporations are not individuals for the purposes of the Act. Second, in Orders 96-010, 96-019, 96-020 and 96-021, I stated that the list of personal information in section 1(1)(n)(i)-(ix) is not exhaustive and that there may be other information such as handwriting and business fax numbers that may also be personal information. Third,

in Order 98-001, I held that a person's job title meets the criteria for "employment history" and therefore falls within the scope of section 1(1)(n)(vii).

[para 44.] After reviewing the severed information on the records, I find that the Public Body correctly identified that names, signatures, addresses, phone numbers, fax numbers, and job titles on these records as personal information.

**2. Would the disclosure of the personal information be an unreasonable invasion of a third party's personal privacy as provided by section 16(1) or section 16(2)?**

**A. General**

[para 45.] Section 16(1) of the Act states that the head of a public body must refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy. Section 16(2) of the Act lists a number of circumstances where a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy.

[para 46.] Section 16(1) and the relevant parts of section 16(2) read:

*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.*

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

*(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*

[para 47.] Furthermore, in determining whether there is an unreasonable invasion under section 16(1) or 16(2), the Public Body must consider the relevant circumstances under section 16(3). The relevant portions of section 16(3) reads as follows:

*(3) In determining under subsection (1) or (2) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all of the relevant circumstances, including whether*

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

*(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.*

**B. Did the Public Body correctly apply section 16 to the records?**

[para 48.] After a review of the records at issue, I find that the Public Body correctly applied section 16(2)(g) to the records as all of the severed personal information consists of either a third party's name along with other personal information about the third party, or the disclosure of the name itself would reveal personal information about the third party.

[para 49.] However, even though the criteria under section 16(2)(g) have been fulfilled, after taking into account the relevant circumstances in section 16(3), I find that the disclosure of the majority of this personal information would not be an unreasonable invasion of a third party's personal privacy for the following reasons.

**(1) Public Scrutiny under section 16(3)(a)**

[para 50.] The Applicant states that the disclosure of the personal information is desirable for subjecting the activities of the Government of Alberta or the Public Body to public scrutiny under section 16(3)(a).

[para 51.] In Order 97-002, I discussed the interpretation of section 16(3)(a). I said that evidence had to be provided to demonstrate that the activities of the Government of Alberta or a public body had been called into question, which necessitated the disclosure of personal information in order to subject the activities of the Government of Alberta or a public body to public scrutiny. I also said that:

(i) It was not sufficient for one person to have decided that public scrutiny was necessary;



(ii) The applicant's concerns had to be about the actions of more than one person within the public body; and

(iii) Where the public body had previously disclosed a substantial amount of information, the release of personal information was not likely to be desirable for the purpose of subjecting the activities of the public body to public scrutiny. This is particularly so if the public body had also investigated the matter.

[para 52.] In this case, I find the following:

(i) The Executive Council decided that public scrutiny into the refinancing of West Edmonton Mall was necessary. This resulted in the Auditor General's investigation and report;

(ii) The Applicant's concerns are about the actions of the Government as a whole; and

(iii) Although the Public Body has disclosed some information regarding the refinancing of West Edmonton Mall, and the Auditor General did investigate the matter, the Auditor General's report was inconclusive as to the extent of the Government's involvement in the refinancing. The matter is now before the courts.

[para 53.] Therefore, on balance, I find that section 16(3)(a) is a relevant circumstance weighing in favour of disclosing the personal information in the following records:

12, 15, 17, 18, 19, 20, 23, 24, 25, 28, 31, 32, 33, 34, 35, 36, 38, 40, 41, 42, 46, 49, 50, the name severed in the last line of page 51, 52, 80, 81, 82 ( except for the name, phone number, hotel name, city and room number in the 2<sup>nd</sup> severed line), 83 ( except for the severed information in paragraph 6), 84 ( except phone numbers) 85, 86, 87, 88, 89, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 121, 122, 123, 124, 125, 127, 128, 129, 130, 131, 132, 133, 134, 135, 139, 143, 146, 147, 148, 149, 153, 154, 156, 157, 158, 159

[para 54.] However, I find that section 16(3)(a) is not a relevant circumstance and does not weigh in favour of disclosing personal information that I consider to be of a private nature as the disclosure of this information would not assist in subjecting the activities of the public body to public scrutiny. This personal information includes the following:

51 (name, phone number and city of an individual at the top of the record), 82 (the name, phone number, hotel name, city and room number in the 2<sup>nd</sup> severed line), 83 (the severed information in paragraph 6), 84 (phone numbers).

### **(2) Unfair damage to reputation under section 16(3)(h)**

[para 55.] One Affected Party argues that section 16(3)(h) is a relevant circumstance in this inquiry. This Affected Party argues that the disclosure of the personal information in records 36, 38, 80, 81, 95, 98, 99, 101 and 102 may cause unfair damage to the reputation of the individuals named in these records by tainting them with the suggestion of unethical activity. The Affected Party states that if I decide that the Applicant is entitled to view these records, the names of the Affected Party's employees and the names of its client's employees should be severed from the records.

[para 56.] I do not agree with the Affected Party. There is no evidence before me that the disclosure of the personal information in these records would unfairly damage the employees' reputations. The severed personal information in these records consist of names, job titles, business addresses, business phone numbers, business fax numbers and signatures of the author. I fail to see how the disclosure of this information would unfairly damage any of these individual's reputations, given that the records were all composed in a professional or business capacity. Therefore, I find that section 16(3)(h) is not a relevant circumstance and does not weigh in favour of withholding personal information.

### **(3) Other relevant circumstances under section 16(3)**

[para 57.] The list of relevant circumstances under section 16(3) is not exhaustive. Therefore, there may be other relevant circumstances that a public body must consider. The Applicant's evidence shows that records 15, 36 and 38 have already been disclosed in the court process by the Third Party named in the records. In my view, this is a relevant circumstance under section 16(3) that weighs in favour of disclosure.

### **C. Did the Applicant meet the burden of proof under section 67(2)?**

[para 58.] Section 67(2) of the Act states that if the record or part of the record to which the applicant is refused access 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.

[para 59.] I have already found that the Public Body did not correctly apply section 16(1) or 16(2) to a number of records. Therefore, the Applicant does not have a burden of proof in regard to those records.

[para 60.] However, I have found that the Public Body correctly applied section 16(1) and section 16(2) to the following records and the Applicant, therefore, has the burden of proving that the disclosure of the information in these records would not be an unreasonable invasion of a third party's personal privacy:

51 (name, phone number and city of a individual at the top of the record), 82 (name, phone number, hotel name, city and room number in the 2<sup>nd</sup> severed line), 83 (severed information in paragraph 6), 84 (phone numbers)

[para 61.] I find that the Applicant has not met this burden of proof. The Applicant argues that the disclosure of certain personal information would not be an unreasonable invasion of privacy as much of this information has already been made public. However, after a review of the records, I find that although some information has been made public through the courts or through the Auditor General's Report, the specific personal information at issue under section 67(2) has not been disclosed in either of these two forums.

#### **D. Conclusion under section 16(1) and section 16(2)**

[para 62.] I find that the Public Body correctly applied section 16(1) and 16(2) to the following records:

51 (name, phone number and city of an individual at the top of the record), 82 (name, phone number, hotel name, city and room number in the 2<sup>nd</sup> severed line), 83 (severed information in paragraph 6), 84 (phone numbers).

[para 63.] I also find that the Applicant has not met the burden of proving that the disclosure would not be an unreasonable invasion of a third party's personal privacy. Therefore, I uphold the Public Body's decision to withhold this personal information.

[para 64.] I find that the Public Body did not correctly apply section 16(1) or section 16(2) to the personal information on the following records:

12, 15, 17, 18, 19, 20, 23, 24, 25, 28, 31, 32, 33, 34, 35, 36, 38, 40, 41, 42, 46, 49, 50, the name severed in the last line of record 51, 52, 80, 81, 82 ( except for the name, phone number, hotel name, city and room number in the 2<sup>nd</sup> severed line), 83 ( except for the severed information in paragraph 6), 84 ( except phone numbers) 85, 86, 87, 88, 89, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 121, 122, 123, 124, 125, 127, 128, 129, 130, 131, 132, 133, 134, 135, 139, 143, 146, 147, 148, 149, 153, 154, 156, 157, 158, 159

[para 65.] Furthermore, as there are no other mandatory exceptions that apply and the Public Body did not claim any discretionary exceptions to the following records, the Public Body must disclose the personal information contained in these records to the Applicant:

12, 15, 17, 18, 19, 20, 23, 24, 25, 28, 31, 32, 33, 34, 35, 36, 38, 40, 41, 42, 46, 49, 50, the name severed in the last line of record 51, 52, 80, 81, 82 (severed name in the “re” heading), 84 (except phone numbers), 85 (severed information in the heading, paragraph 1 and paragraph 4), 86, 87 (severed information in the heading, paragraph 1 and paragraph 4), 88 ( severed names in paragraph 1 and the 1<sup>st</sup> sentence of paragraph 2), 90 ( severed names in paragraph 1 and the 1<sup>st</sup> sentence of paragraph 2), 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 121, 122, 123, 124, 125, 127, 128, 129, 130, 131, 132, 133, 134, 139, 143, 146, 147, 148, 149, 153, 154, 156, 157, 158, 159

[para 66.] However, the Public Body applied sections 23(1)(a), 23(1)(b) and 23(1)(c) to records 82 (severed information below the 2<sup>nd</sup> severed line), 83 (severed information in paragraphs 1 and 2), 85 (severed information in paragraph 3), 87 (severed information in paragraph 3), 88 (severed information beginning in the 2<sup>nd</sup> sentence of paragraph 2), 89, 90 (severed information beginning in the 2<sup>nd</sup> sentence of paragraph 2), 91 and sections 23(1)(b) and 23(1)(c) to record 135. Therefore, I have considered that information under section 23(1).

**Issue E: Did the Public Body correctly apply sections 23(1)(a), (b), and (c) to the records and properly exercise its discretion under those sections?**

[para 67.] The relevant parts of section 23(1) read:

*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*

[para 68.] In order for a public body to withhold records under section 23(1) (a), (b) and (c), the public body must ensure the records fulfill the criteria applicable to each of these sections. In addition, the public body must ensure that the disclosure of information could reasonably be expected to “reveal” the information described under each of these sections. That is, the public body must not previously have disclosed the information into the public domain.

[para 69.] In this Order I will address section 23(1)(c) first and then address sections 23(1)(a) and 23(1)(b).

(i) Section 23(1)(c) (positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations)

[para 70.] The Public Body applied section 23(1)(c) to the following records:

4, 39, 82 (severed information below “re” heading), 83 (severed information in paragraphs 1 and 2), 85 (severed information in paragraph 3), 87 (severed information in paragraph 3), 88 (severed information beginning in the 2<sup>nd</sup> sentence of paragraph 2), 89, 90 (severed information beginning in the 2<sup>nd</sup> sentence of paragraph 2), 91 135, 136

[para 71.] As I have determined that the Public Body correctly applied section 16 to the name, phone number, hotel name, city and room number in the 2<sup>nd</sup> severed line on record 82, I will not address this information under section 23(1)(c).

[para 72.] In Order 96-012, I stated that the intent of section 23(1)(c) is similar to (a) and (b), in that it is to protect information generated during the decision-making process, but not to protect the decision itself. Furthermore, in order to fulfill section 23(1)(c), the information must relate to negotiations.

[para 73.] After carefully reviewing the records, I find that the Public Body correctly applied section 23(1)(c) to the severed information on the following records:

4, 39, 82 (beginning at the first underlined heading), 83 (paragraphs 1 and 2), 85 (paragraph 3), 87(paragraph 3), 88 (beginning in the 2<sup>nd</sup> sentence of paragraph 2), 89 (information before the heading entitled “HFT”), 90 (beginning in the 2<sup>nd</sup> sentence of paragraph 2), 91(information before the heading entitled “HFT”), 135, 136

[para 74.] All of these records consist of information generated during the decision-making process and the information relates to negotiations. Furthermore, there is no evidence before me that this information has been revealed in the public domain.

[para 75.] Section 23(1)(c) is a discretionary (“may”) exception. Consequently, even if these sections apply to the information in the records, a public body may nevertheless decide to disclose the information. To properly exercise its discretion in this regard, a public body must consider the purposes of the Act, one of which is to allow access to the information.

[para 76.] After reviewing the submissions and the records, I find that the Public Body properly exercised its discretion under section 23(1)(c) in deciding to withhold this severed information.

[para 77.] The Public Body did not correctly apply section 23(1)(c) to the heading entitled “HFT” and the information after that heading on records 89 and 91. However, the Public Body applied sections 23(1)(a) and 23(1)(b) to this information and I have, therefore, considered this information under those sections.

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

[para 78.] The Public Body applied section 23(1)(a) to sever the information on the following records:

4, 39, 82 (severed information below “re” heading), 83 (severed information in paragraphs 1 and 2), 85 (severed information in paragraph 3), 87 (severed information in paragraph 3), 88 (severed information beginning in the 2<sup>nd</sup> sentence of paragraph 2), 89, 90 (severed information beginning in the 2<sup>nd</sup> sentence of paragraph 2), 91

[para 79.] I have already determined that the name, phone number, hotel name, city and room number in the 2<sup>nd</sup> severed line on record 82 fulfilled the section 16 criteria. In addition, I have already determined that severed information in the following records fulfilled the section 23(1)(c) criteria:

4, 39, 82 (beginning at the first underlined heading), 83 (paragraphs 1 and 2), 85 (paragraph 3), 87(paragraph 3), 88 (beginning in the 2<sup>nd</sup> sentence of paragraph 2), 89 (information before the heading entitled “HFT”), 90 (beginning in the 2<sup>nd</sup> sentence of paragraph 2), 91(information before the heading entitled “HFT”)

[para 80.] As such, the only remaining piece of information that I need to address under section 23(1)(a) is the heading entitled “HFT” and the information after that heading on records 89 and 91.

[para 81.] In Order 96-006, I set out the criteria for “advice” (which includes advice, proposals, recommendations, analyses or policy options) under section 23(1)(a). The advice should:

- (a) be sought or expected, or be part of the responsibility of a person by virtue of that person’s position;
- (b) be directed toward taking an action; and
- (c) be made to someone who can take or implement the action.

[para 82.] In order to fulfill this section, the information must relate to a suggested course of action that will ultimately be accepted or rejected by its recipient during the deliberative process. The record must contain more than a bare recitation of facts or summaries of information, although, as I stated in Order 99-001, factual information sufficiently interwoven with other advice, proposals, recommendations or policy options may also be withheld.

[para 83.] After carefully reviewing the records, I find that the severed heading “HFT” and the information after that heading on records 89 and 91 do not fulfill the section 23(1)(a) criteria as this information does not constitute a suggested course of action that will ultimately be accepted or rejected by its recipient during the deliberative process. However, the Public Body applied section 23(1)(b) to records 89 and 91 and I will therefore consider this information under that section.

(iii) Section 23(1)(b) (consultations and deliberations)

[para 84.] The Public Body applied section 23(1)(b) to the following records:

4, 39, 82 (severed information below “re” heading), 83 (severed information in paragraphs 1 and 2), 85 (severed information in paragraph 3), 87 (severed information in paragraph 3), 88 (severed information beginning in the 2<sup>nd</sup> sentence of paragraph 2), 89, 90 (severed information beginning in the 2<sup>nd</sup> sentence of paragraph 2), 91 135, 136

[para 85.] I have already determined that the name, phone number, hotel name, city and room number in the 2<sup>nd</sup> severed line of record 82 fulfilled the section 16 criteria. In addition, I determined that the severed information in following records fulfilled the section 23(1)(c) criteria:

4, 39, 82 (beginning at the first underlined heading), 83 (paragraphs 1 and 2), 85 (paragraph 3), 87(paragraph 3), 88 (beginning in the 2<sup>nd</sup> sentence of paragraph 2), 89 (information before the heading entitled “HFT”), 90 (beginning in the 2<sup>nd</sup> sentence of paragraph 2), 91(information before the heading entitled “HFT”), 135, 136

[para 86.] As such, the only remaining piece of information that needs to be addressed under section 23(1)(b) is the heading entitled “HFT” and the information after the heading on records 89 and 91.



[para 87.] The purpose of section 23(1)(b) is to shield consultations or deliberations that occurred during the decision-making process. In Order 96-006, I stated that a “consultation” occurs when the views of one or more officers are sought as to the appropriateness of a particular proposal or suggested action. I defined a “deliberation” as a discussion or consideration by the persons described in the section of the reasons for or against an action. I also stated that the criteria for advice under section 23(1)(a) should be applied to this section.

[para 88.] After reviewing the heading entitled “HFT” and the information after the heading on records 89 and 91, I find that the information was not properly withheld under section 23(1)(b) as the information is neither a consultation nor a deliberation.

[para 89.] Furthermore, as there are no mandatory exceptions that apply and the Public Body did not claim any further discretionary exceptions in regard to this heading, the Public Body must disclose this information to the Applicant.

-

**Issue F: Did the Public Body correctly apply section 21 to the records?**

[para 90.] The Public Body applied section 21 to record 39. As I have decided that this record was properly withheld under section 23(1)(c), I will not address this record under section 21.

**Issue G: Does section 31(1)(b) require the Public Body to disclose the records?**

[para 91.] Section 31(1)(b) states:

*31(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people, to any person or to an applicant...*

*(b) information the disclosure of which is, for any other reason, clearly in the public interest.*

[para 92.] The Applicant states that it is in the public interest to disclose the extent of the Public Body’s role in the Alberta Treasury Branches’ (the “ATB”) financing of West Edmonton Mall. On page 14 of the Applicant’s submission, the Applicant states:

*“Should evidence be presented in the courts that senior officials of the Government of Alberta were clearly involved in approving the refinancing transactions for the West Edmonton Mall, Alberta taxpayers would ultimately be responsible for covering any loss incurred by the ATB and its shareholder - - Her Majesty the Queen in Right of Alberta - - as a result of the court decision.”*

[para 93.] I have already determined that the Public Body did not correctly apply sections 15(1), 16, 23(1)(a), 23(1)(b) and 23(1)(c) to a portion of the records and must therefore disclose those records to the Applicant. Therefore, I only find it necessary to consider whether the severed information in following records should be disclosed under section 31(1)(b):

4, 39, 51 (name, phone number and city of an individual at the top of the record), 82 (information below the “re” heading), 83 (paragraphs 1, 2, and 6), 84 (phone numbers), 85 (paragraph 3), 87(paragraph 3), 88 (beginning in the 2<sup>nd</sup> sentence of paragraph 2), 89 (information before the heading entitled “HFT”), 90 (beginning in the 2<sup>nd</sup> sentence of paragraph 2), 91(information before the heading entitled “HFT”), 135, 136

[para 94.] In this case, I am of the view that the extent of the government’s involvement in the refinancing of West Edmonton Mall is a public interest issue. The ATB guaranteed a loan to West Edmonton Mall and took a second mortgage at a time when ATB was under the purview of Alberta Treasury. There is an issue as to whether the loan guarantee was economically sound. This is a matter of compelling public interest.

[para 95.] However, the Executive Council instructed the Auditor General to prepare a report and to release that report. In Order 96-011, I said that disclosure of information, rather than records, was the likely outcome under section 31(1)(b). In my view, disclosure of the Auditor General’s Report and the information contained in the report satisfies the requirement for disclosure under section 31(1)(b). I do not believe that disclosure of the foregoing records under section 31(1)(b) would accomplish any greater purpose than disclosure of the information contained in the Auditor General’s Report.

[para 96.] Since the Executive Council gave instructions to release the Auditor General’s Report, I find that there is compliance with the requirement of section 31(1)(b) to disclose the information. Therefore,

the Public Body is not required to disclose the records under section 31(1)(b).

## **V. ORDER**

[para 97.] Under section 68 of the Act, I make the following Order disposing of the issues in this inquiry.

**Issue A: Does the Act give me the jurisdiction to review the sufficiency of a section 29 notice or require me to provide an affected party with a copy or a description of the records that relate to that party?**

[para 98.] Section 62 does not permit a third party to ask for a review of a section 29 notice. Furthermore, section 57(3)(a) prohibits me from revealing, in advance of an inquiry, any information that the Public Body is refusing to disclose. In addition, section 64 does not require me to give affected parties a copy or description of the records that relate to them. Consequently, I have no jurisdiction to review the sufficiency of a section 29 notice nor am I required to provide the Affected Parties with a copy or a description of the records that relate to them.

**Issue B: Application of section 15(1) (third party business information)**

[para 99.] The Public Body did not correctly apply section 15(1) to the following records:

1, 2, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 80, 81, 86, 93, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 106, 107, 110, 115, 116, 117, 118, 119, 121, 123, 124, 125, 127, 128, 129, 137, 138, 139, 141, 142, 143, 144, 145, 146, 149, 150, 151, 156, 157, 158, 159

[para 100.] Furthermore, as there are no mandatory exceptions that apply and the Public Body did not claim any discretionary exceptions in regard to the following records, the Public Body must disclose these records to the Applicant:

1, 2, 12 (except names and signature) 13, 14, 15 (except name and signature), 16, 17 (except names), 18 (except names), 19 (except names and signature), 20 (except name), 21, 22, 23 (except names

and signature), 24(except name), 25 (except names), 26, 27, 28 (except name), 29, 30, 31 (except name and signature), 32 (except name and signature) 33 (except name and signature), 34 (except names, signature and phone number), 35 (except name and signature), 36 (except name), 37, 38 (except name and signature), 40 (except name), 41 (except name), 42 (except names, signature and job title), 43, 44, 45, 46 (except name and signature), 47, 48, 49 (except name and signature), 50 (except name and signature), 80 (except names), 81 (except names and signature), 86 (except names), 95 (except names and signature), 96 (except name and signature), 97 (except name), 98 (except names), 99 (except names and signature), 100 (except names), 101 (except names), 102 (except names), 104 (except name), 105 (except name and signature), 106, 107 (except name and signature), 115 (except names and signature), 116 (except names and signature), 117 (except names), 119 (except names, job titles), 121 (except names, job titles), 123 (except names, job titles, fax numbers and phone numbers), 124 (except names, job titles, fax numbers and phone numbers), 125 (except names, job titles, fax numbers and phone numbers), 137, 138, 139 (except name and signature), 141, 142, 143 (except names and signature), 144, 145, 146 (except names and signature), 149 (except names and signature), 150, 151, 156 (except names), 157(except names, phone numbers and signature), 158 (except names and signature), 159 (except name and signature)

[para 101.] However, the Public Body applied section 16 to some of the names, signatures, fax numbers, phone numbers, and job titles on the following records and I will, therefore, subsequently consider those portions of the records under that section:

12, 15, 17, 18, 19, 20, 23, 24, 25, 28, 31, 32, 33, 34, 35, 36, 38, 40, 41, 42, 46, 49, 50, 80, 81, 86, 93, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 107, 110, 115, 116, 117, 118, 119, 121, 123, 124, 125, 127, 128, 129, 139, 143, 146, 149, 156, 157, 158, 159

**Issue C: Application of section 15(3)(c)**

[para 102.] As the Public Body did not correctly apply section 15(1) to the information contained in the records, I do not find it necessary to decide whether section 15(3)(c) applies to the records.

**Issue D: Application of section 16 (personal information)**

[para 103.] The Public Body correctly applied section 16(1) and 16(2) to the following records:

51 (name, phone number and city of an individual at the top of the record), 82 (name, phone number, hotel name, city and room number in the 2<sup>nd</sup> severed line), 83 (severed information in paragraph 6), 84 (phone numbers)

[para 104.] I also find that the Applicant has not met the burden of proving that the disclosure of this information would not be an unreasonable invasion of a third party's personal privacy. Therefore, I order the Public Body not to disclose this personal information.

[para 105.] The Public Body did not correctly apply section 16(1) or section 16(2) to the personal information on the following records:

12, 15, 17, 18, 19, 20, 23, 24, 25, 28, 31, 32, 33, 34, 35, 36, 38, 40, 41, 42, 46, 49, 50, the name severed in the last line of record 51, 52, 80, 81, 82 ( except for the name, phone number, hotel name and room number in the 2<sup>nd</sup> severed line), 83 ( except for the severed information in paragraph 6), 84 ( except phone numbers) 85, 86, 87, 88, 89, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 121, 122, 123, 124, 125, 127, 128, 129, 130, 131, 132, 133, 134, 135, 139, 143, 146, 147, 148, 149, 153, 154, 156, 157, 158, 159

[para 106.] Furthermore, as there are no other mandatory exceptions that apply and the Public Body did not claim any discretionary exceptions to the following records, the Public Body must disclose the personal information on the following records to the Applicant:

12, 15, 17, 18, 19, 20, 23, 24, 25, 28, 31, 32, 33, 34, 35, 36, 38, 40, 41, 42, 46, 49, 50, the name severed in the last line of record 51, 52, 80, 81, 82 (severed name in the "re" heading), 84 (except phone numbers), 85 (severed information in the heading, paragraphs 1 and 4), 86, 87 (severed information in the heading, paragraphs 1 and 4), 88 ( severed names in paragraph 1 and the 1<sup>st</sup> sentence of paragraph 2), 90 ( severed names in paragraph 1 and the 1<sup>st</sup> sentence of paragraph 2), 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 121, 122, 123, 124, 125, 127, 128,

129, 130, 131, 132, 133, 134, 139, 143, 146, 147, 148, 149,  
153, 154, 156, 157, 158, 159

[para 107.] However, the Public Body applied sections 23(1)(a), 23(1)(b) and 23(1)(c) to records 82 (severed information below the 2<sup>nd</sup> severed line), 83 (severed information in paragraphs 1 and 2), 85 (severed information in paragraph 3), 87 (severed information in paragraph 3), 88 (severed information beginning in the 2<sup>nd</sup> sentence of paragraph 2), 89, 90 (severed information beginning in the 2<sup>nd</sup> sentence of paragraph 2), 91 and sections 23(1)(b) and 23(1)(c) to record 135. Therefore, I have applied section 23(1) to these records.

**Issue E: Application of sections 23(1)(a), (b), and (c) (advice)**

(i) Section 23(1)(c) (positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations)

[para 108.] The Public Body correctly applied section 23(1)(c) and properly exercised its discretion to withhold the severed information on the following records:

4, 39, 82 (beginning at the first underlined heading), 83 (severed information in paragraphs 1 & 2), 85 (severed information in paragraph 3), 87 (severed information in paragraph 3), 88 (severed information beginning in the 2<sup>nd</sup> sentence of paragraph 2), 89 (information before the heading entitled “HFT”), 90 (severed information beginning in the 2<sup>nd</sup> sentence of paragraph 2), 91 (information before the heading entitled “HFT”), 135, 136

[para 109.] The Public Body did not correctly apply section 23(1)(c) to the heading entitled “HFT” and the information after that heading on records 89 and 91. However, the Public Body applied sections 23(1)(a) and 23(1)(b) to this information and I have, therefore, considered this information under those sections.

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

[para 110.] The Public Body did not correctly apply section 23(1)(a) to the heading entitled “HFT” and the information after the heading on records 89 and 91. However, the Public Body applied section 23(1)(b) to records 89 and 91, and I have therefore considered this information under that section.

(iii) Section 23(1)(b) (consultations and deliberations)

[para 111.] The Public Body did not correctly apply section 23(1)(b) to the heading entitled “HFT” and the information after the heading on records 89 and 91. Furthermore, as there are no mandatory exceptions that apply and the Public Body did not claim any further discretionary exceptions in regard to this heading, the Public Body must disclose this information to the Applicant.

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**Issue F: Application of section 21 (Cabinet confidences)**

[para 112.] The Public Body applied section 21 to record 39. As I determined that this record was properly withheld under section 23(1)(c), I did not find it necessary to address this record under section 21.

**Issue G: Application of section 31(1)(b) (disclosure in the public interest)**

[para 113.] The extent of the government’s involvement in the refinancing of West Edmonton Mall is a public interest issue. However, since the Executive Council gave instructions to release the Auditor General’s Report, I find that there is compliance with the requirement of section 31(1)(b) to disclose the information. Therefore, the Public Body is not required to disclose the records which contain that information under section 31(1)(b).

[para 114.] I further order that the Public Body notify me in writing within 50 days of being given a copy of this Order, that the Public Body has complied with this Order. In order to assist the Public Body in determining what portions of the records I have ordered to be disclosed, I have attached an appendix to this Order that summarizes my findings for each record.

Robert C. Clark  
Information and Privacy Commissioner

## APPENDIX

[para 115.] The Public Body has already disclosed the following records to the Applicant. Therefore, these records are not at issue in this inquiry:

3, 5, 6, 7, 8, 9, 10, 11, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 94, 103, 120, 126, 140, 152, 155

[para 116.] For the reasons stated in this Order, the Public Body must disclose the following records in their entirety to the Applicant:

1, 2, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 80, 81, 86, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 121, 122, 123, 124, 125, 127, 128, 129, 130, 131, 132, 133, 134, 137, 138, 139, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 153, 154, 156, 157, 158, 159

[para 117.] For the reasons stated in this Order, the Public Body correctly withheld the following records or portions of the following records. In order to assist the Public Body in determining what portions of the records must be disclosed, I have provided the Public Body with a copy of these records. I have highlighted the portions that must be disclosed:

- 4 - withhold: all severed information – s.23(1)(c)  
disclose: remainder of the record
- 39 - withhold: all severed information – s.23(1)(c)  
disclose: remainder of the record
- 51 - withhold: the name, phone number, and city - s. 16  
disclose: remainder of the record
- 82 - withhold: severed information below the “re” heading – ss.16,  
23(1)(c)  
disclose: remainder of the record, including the severed  
name in the “re” heading



- 83 - withhold: all severed information – ss. 16, 23(1)(c)  
disclose: remainder of the record
- 84 - withhold: phone numbers – s. 16  
disclose: remainder of the record
- 85 - withhold: paragraph 3 – s. 23(1)(c)  
disclose: remainder of the record
- 87 - withhold: paragraph 3 – s.23(1)(c)  
disclose: remainder of the record
- 88 - withhold: severed information beginning in the 2<sup>nd</sup> sentence  
of paragraph 2 – s. 23(1)(c)  
disclose: remainder of the record
- 89 - withhold: severed information before the heading “HFT” – s.  
23(1)(c)  
disclose: remainder of the record
- 90 - withhold: severed information beginning in the 2<sup>nd</sup> sentence  
of paragraph 2 – s. 23(1)(c)  
disclose: remainder of the record
- 91 - withhold: severed information before the heading “HFT” – s.  
23(1)(c)  
disclose: remainder of the record
- 135 – withhold: all the severed information – s. 23(1)(c)  
disclose: remainder of the record
- 136 – withhold: all the severed information – s. 23(1)(c)  
disclose: remainder of the record