

**ALBERTA**  
**INFORMATION AND PRIVACY COMMISSIONER**

**ORDER 2000-009**

July 10, 2000

**ALBERTA TREASURY**

Review Number 1735

**I. BACKGROUND**

[para. 1.] Some years ago the Applicant obtained a provincial student loan (the “Loan”). The Applicant subsequently learned that a number of provincial student loans, including the Applicant’s Loan, had been sold to a collection agency.

[para. 2.] On August 15, 1999, the Applicant applied under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to the Alberta Students Finance Board for “copies of documents relating to the sale of my student loan to [a collection agency]. I require a copy of the sale agreement confirming the date of the sale and the amount paid by [a collection agency] for my Student Loan.”

[para. 3.] The Applicant’s request was forwarded to Alberta Treasury (“the Public Body”). The Public Body determined that the Applicant’s loan was part of a collection of diverse types of loans sold by the Public Body to a collection agency in 1992. I will refer to the purchase of those loans as the purchase of the “Crown Debt” in this Order.

[para. 4.] The Public Body notified the corporate successor of the collection agency that had originally purchased the Crown Debt (the “Third Party”) that the Applicant was seeking access to records relating to the Crown Debt purchase.

[para. 5.] In October 1999, the Third Party wrote to the Public Body. The Third Party opposed the release of any of the records, on the basis that they contained confidential commercial information.

[para. 6.] On October 29, 1999, the Public Body provided the Applicant with 15 pages of responsive documents. The Public Body gave the Applicant records disclosing the effective date of the purchase of the Crown Debt, some correspondence between the Public Body and the collection agency about the purchase, and most of the purchase agreement. The Applicant also received a record that contained the Applicant's name, account number and the value of the Applicant's Loan as of December 31, 1991. The Public Body severed portions of the records under section 15(1) (disclosure harmful to the business interests of a third party) of the Act, as well as section 16 (1) (disclosure harmful to personal privacy) of the Act.

[para. 7.] On November 2, 1999, the Applicant wrote to the Office of the Information and Privacy Commissioner (my "Office") to request a review of the Public Body's decision to sever the records.

[para. 8.] In that letter to my Office, the Applicant altered the original access request. The Applicant now wanted a letter from the Public Body showing "the amount paid per dollar for each [loan]" sold and the date of sale. With this information, the Applicant believed that the Applicant could calculate the amount paid for the Loan.

[para. 9.] Mediation was authorized and was unsuccessful. The Public Body did not agree to proceed on the basis of the Applicant's altered access request.

[para. 10.] A written inquiry began on April 11, 2000.

[para. 11.] After the initial inquiry, I directed my staff to ask for evidence from the Public Body on the confidential and sensitive commercial nature of the information severed from the records. That evidence was supplied in a statutory declaration in late April of this year. The inquiry concluded on May 11, 2000.

[para. 12.] This Order proceeds on the basis of the Act as amended on May 19, 1999.

## **II. RECORDS AT ISSUE**

[para. 13.] The Applicant does not dispute the Public Body's decision to withhold third party personal information from the records under section

16 of the Act. The Applicant wants access to the information in the records originally severed under section 15(1) of the Act. In this Order, I will refer to those records as the “Records”. The Records are summarized in the following table.

| <b>RECORD NUMBER</b> | <b>DESCRIPTION OF RECORD</b>  | <b>SECTIONS OF THE ACT CITED AS AUTHORITY FOR SEVERING THE INFORMATION</b> |
|----------------------|---|--|
| 1                    | Letter from the Public Body to the Third Party, accepting the Third Party offer to purchase the Crown Debt—the purchase price is severed  | Section 15(1)(a)(ii),(b),(c)(i)(iii)                                       |
| 7                    | Letter from the Third Party to the Public Body, enclosing a cheque for the balance owing on the purchase of the Crown Debt—the balance owing is severed   | Section 15(1)(a)(ii),(b),(c)(i)(iii)                                       |
| 10, 11, 12, 13, 14   | Agreement between the Public Body and the Third Party formalizing the purchase of the Crown Debt—the total purchase price paid is severed   | Section 15(1)(a)(ii),(b),(c)(i)(ii)  |
| 15                   | Undated breakdown of the Crown Debt purchased by the Third Party: categories include a description of the types of loans purchased, the number of loans sold per type, the amount outstanding per type of loan, the expected collection and commission of the Third Party, the risk undertaken by the Third Party in the purchase of the Crown Debt | Section 15(1)(a)(ii),(b),(c)(i)(iii), section 24(1)(b)(c)(i)(iii)          |

### **III. ISSUES**

[para. 14.] There are two issues in this inquiry:

A. Does section 15(1) apply to the Records?

B. Does section 24(1) apply to Record 15?

#### **IV. BURDEN OF PROOF**

[para. 15.] The relevant portion of section 67 reads:

*67(1) If the inquiry relates to a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part of the record.*

[para 16.] Because the Public Body denied the Applicant access to parts of the Records under section 15(1) of the Act, the burden of proof lies on the Public Body to justify its denial of access under section 15(1).

[para. 17.] As the Public Body asserted at the inquiry that section 24(1) also applies to justify the denial of access, it bears the burden of proof under that section as well.

#### **V. DISCUSSION OF THE ISSUES**

##### **ISSUE A. Does section 15(1) apply to the Records?**

###### **a.) The Act**

[para. 18.] The relevant portions of section 15 read:

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

*(a) that would reveal*

*...*

*(ii) commercial...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,*

*...or*

*[iii] result in undue financial loss or gain to any person or organization...*

###### **b.) Positions of the Parties**

[para. 19.] The Applicant's position is as follows. The Applicant says that the severed information is the Applicant's "personal information." Therefore, the Applicant has the right to access that information. Further, an official with the Students Finance Board told the Applicant that information about the purchase of the Crown Debt had been published in newspapers at the time of the transaction. Any sensitive commercial information has long been in the public realm. The information is not commercially sensitive, as collection agencies routinely disclose their commissions. Disclosure of the severed information would not harm the Third Party's business, its ability to engage in collection activity, or impair the agency's legal remedies if debts were not repaid.

[para. 20.] The Public Body's position is as follows. The Public Body says that the Applicant's loan was not individually priced. It was one of many student loans sold to the Third Party. Disclosing the severed information would violate section 15(1), because the information is commercial information that was supplied in confidence by the Third Party to the Public Body. Disclosure of even part of the severed information could enable an individual to infer the total estimated and actual value of the loans that were sold. Any disclosure would help a debtor to calculate the average discount on the loans sold, and damage the ability of the collection agency to collect on those debts. Disclosure of the details of this transaction would make the future purchase of accounts from the Public Body considerably less attractive to collection agencies, setting the stage for the Public Body's arguments on section 24(1), which I will not summarize here.

[para. 21.] The Third Party says that section 15(1) applies to the severed information. Contract pricing is sensitive commercial information. The Third Party consistently treats its purchase of these types of accounts as confidential. Given the "overall [contractual] dealings" between the Third Party and the provincial government, there was an implicit understanding that the sale of the Crown Debt was conducted on a confidential basis. Releasing the severed information would significantly harm the competitive position of Third Party in future business opportunities of a similar nature, largely because disclosure of the withheld information could assist competitors in tailoring contract bids for similar business opportunities. As well, debtors could use the information to negotiate a reduction in their total repayments. Consequently, the Third Party would suffer undue financial harm from disclosure.

### **c.) Discussion**

[para. 22.] As there was no agreement by the Public Body to process the Applicant's modified request, I will only review the Public Body's

response to the Applicant's original request, and its position that the severed information was properly withheld under section 15(1).

[para. 23.] I reject the Applicant's argument that the severed information is the Applicant's personal information. Section 1(1)(n) says that "personal information" "means recorded information about an identifiable individual." The information severed from the Records under section 15(1) does not relate to persons who can be individually identified. The information severed is not "personal information" under the Act.

[para. 24.] The Public Body claims that all of the information severed under section 15(1) is commercial information. Therefore, section 15(1) is where my analysis must begin.

[para. 25.] Section 15(1) focuses upon the effects of the disclosure of all or part of the records at issue upon the business position of a third party. As I stated in Order 99-018, section 15(1) is a mandatory exception to the Act's general rule of disclosure. For information to fall under section 15(1), the following three-part test must be fully satisfied:

- 1) release of the severed information would reveal commercial information of the Third Party (section 15(1)(a)); and
- 2) the severed information was supplied explicitly or implicitly in confidence (section 15(1)(b)); and
- 3) disclosure of the severed information could reasonably be expected to harm significantly the Third Party's competitive or negotiating position, or result in undue financial loss or gain to any person or organization (section 15(1)(c)(i)(iii)).

**i.) Is the severed information "commercial information"?**

[para. 26.] I have repeatedly considered the meaning of "commercial information" under the Act. In Order 96-013, at paragraphs 14 to 16, I accepted that "commercial information" does include a contract price and information relating to the buying, selling, or exchange of merchandise or services for the purposes of the Act.

[para. 27.] After reviewing the Records, I find that the severed information in Records 1, 7, 10, 11, 12, 13, and 14 shown in the chart above pertains to the purchase of Crown Debt and the Third Party's potential financial risk and profit from the purchase. This information is commercial information of the Third Party under the Act. Some of the severed information in Record 15 is also Third Party commercial information. However, some other severed information in Record 15 is

not Third Party commercial information under the Act. This information is found under the headings “Description of Business,” “Outstanding \$” and “Inventory Accounts.” I will deal with that information later in this Order. For the rest of my analysis under section 15(1), I will consider only the severed information that I have found is commercial information of the Third Party.

**ii.) Was the information “supplied in confidence” ?**

[para. 28.] In Order 99-018, I considered the confidentiality element of the section 15(1) test. I found that where there was no evidence of an explicit agreement that the information in question would be held confidential, then all of the relevant facts and circumstances must be examined to determine if there was a common understanding, or at least a reasonable expectation, that the information was supplied on the basis that it would be confidential. In Order 96-013, I accepted an affidavit and a statutory declaration executed by managerial employees of a public body setting out the belief of the parties that the information at issue was confidential.

[para. 29.] The Records in this inquiry suggest that the Public Body and the Third Party did not agree that the sale would be conducted on a confidential basis. Record 11, Paragraph 1, which was disclosed to the Applicant, contains a standard contractual clause. It says that the written contract is the “entire agreement between the parties...there are no oral agreements, statements, representations, warranties, collateral agreements, undertakings, conditions or agreements whatsoever respecting the subject matter hereof” [my emphasis].

[para. 30.] However, the Public Body presented me with a statutory declaration by a civil servant who says that he was personally involved in the transaction. The civil servant says that during negotiations for the purchase of the Crown Debt he verbally advised the purchaser that information pertaining to the negotiations, and in particular the purchase price, would be kept confidential. The civil servant says that he believes that the parties implicitly understood that the transaction was confidential “without regard for the passage of time”. I am troubled by this discrepancy. The Public Body signed a contract that denied any collateral agreement, including a confidentiality agreement. Then, many years later, it asserts that the transaction was confidential.

[para. 31.] Given the statutory declaration, which exposes the civil servant to penalties for lying in this declaration, and the realities of the business world, where contracts are sometimes treated too casually, I will accept that the parties originally intended the transaction to be confidential, but neglected to alter the boilerplate language in Record 11.

I recommend that the Public Body, and private companies contracting with local public bodies subject to the Act, properly document all agreements respecting confidentiality at the time these agreements are made, but only when appropriate.

[para. 32.] After reviewing all of the evidence, I find that the severed information at issue, with the exception of the responsive information in Record 15 under the headings “Description of Business”, “Outstanding \$” and “Inventory Accounts”, is commercial information of the Third Party that was supplied in confidence.

**iii.) Could disclosure of the information reasonably be expected to significantly harm the Third Party?**

[para. 33.] At paragraph 47 of Order 99-018, I said that the party who is asserting harm under the third part of the section 15(1) test must provide objective evidence of three things: first, that there is a connection between the disclosure of the specific information and the resulting harm that it is alleged would result; secondly, how the expected harm constitutes "damage" or "detriment" to the third party; thirdly, that there is a reasonable expectation that the harm will in fact occur. In Order 96-016, I held that it was not reasonable to expect harm would result from the disclosure of information already in the public domain.

[para. 34.] I have reviewed the arguments of all of the parties on this element of the test. I find that disclosure of the severed information could reasonably be expected to significantly harm the competitive position of the Third Party, and result in undue financial loss to the Third Party. The transaction was not a one-time purchase. The Third Party is in the business of collecting on loans. It has made similar purchases of debt from the Public Body, and may engage in more purchases of that kind in the future. There are competitors who could take advantage of the disclosure of the commercial information in the records to tailor a bid that could result in the Third Party being outbid in the future. Further, some of the debts sold to the Third Party in the lot of loans at issue are still outstanding. It is reasonable to expect that releasing information that could directly or indirectly reveal the potential profit margins of the Third Party would have an adverse impact on the Third Party's ability to collect the full amount owing on those loans, causing undue financial loss to the Third Party.

[para. 35.] My conclusion might be different if there was solid evidence that commercial information relating to the purchase of the Crown Debt was public knowledge at the time of the purchase, and evidence that the information had been disclosed publicly by the Third Party. However, the Applicant did not present any evidence to prove that any commercial



information pertaining to the Crown Debt was public knowledge and had been disclosed publicly by the Third Party. I therefore reject the Applicant's argument on this point.

**d.) Conclusion under section 15(1)**

[para. 36.] I find that section 15(1) applies to information severed from Records 1, 7, 10, 11, 12, 13, and 14 under section 15(1) of the Act. The Public Body correctly refused to disclose that information. I find that section 15(1) applies to the severed information in Record 15 relating to the breakdown of the purchase price of the loans, and the Third Party's risk and expected profit globally, and per type of loan. The Public Body correctly refused to disclose that information.

[para. 37.] However, I find that some of the severed information in Record 15 does not come within the scope of section 15(1). This information is found in Record 15 under the headings "Description of Business," "Outstanding \$" and "Inventory Accounts".

[para. 38.] Therefore, I must determine if section 24(1) applies to the severed information in Record 15 to which section 15(1) does not apply.

**Issue B. Does section 24(1) apply to record 15?**

**a.) The Act**

[para. 39.] The relevant portions of section 24(1) read:

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

...

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

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

*i) result in financial loss to,*

*ii) prejudice the competitive position of, or*

*iii) interfere with contractual or other negotiations of, the Government of Alberta or a public body...*

**b.) Positions of the Parties**

[para. 40.] The Applicant made no submission on this issue.

[para. 41.] The Public Body says that it is not in the economic interest of the government to disclose its estimates of the recoverable value of debtor accounts and the factors that it considers in determining the marketable value of accounts sold to collection agencies. Disclosing this information would make these accounts less attractive to collection agencies. The Public Body's returns from sale of the overdue accounts would diminish. The Public Body's negotiating power in future sales of debt to collection agencies would also diminish.

[para. 42.] The Third Party made no submissions on this point.

### **c.) Discussion**

[para. 43.] Section 24(1) focuses upon harm to a public body or the provincial government. Section 24(1) states the general principle. It gives the head of a public body the discretion to refuse to disclose information if disclosure could reasonably be expected to harm the economic interest of the government of Alberta or the provincial government's ability to manage the economy.

[par. 44.] In Order 98-005, I restated the test for harm in a section 24 analysis. There must be a clear cause and effect relationship between the specific disclosure and harm that would allegedly result from that disclosure. The disclosure must cause harm and not simply interference or inconvenience. The likelihood of harm must be genuine and conceivable. In Order 98-005, I said that the evidence must demonstrate a probability for harm from that specific disclosure and not just a well-intentioned but unjustifiably cautious approach to the avoidance of any risk whatsoever because of the sensitivity of the matters at issue.

[para. 45.] This inquiry concerns the sale of provincial loans. Those loans were public assets before they were sold and became a business asset of the Third Party. The responsive parts of Record 15 that I am considering here do not disclose the projected or actual resale or recovery value of these loans. They simply describe the type of loan, the number of loans of that type sold, and the outstanding amount owed collectively under the loan type.

[para. 46.] Unlike the information referred to in paragraph 36 above, I would compare the release of this information to the disclosure of one piece of a very complicated puzzle. Without the rest of the information contained in Record 15, the Applicant cannot derive information that could injure the economic interest of the provincial government or the Public Body. Disclosing the description of one bundle of loans among many bundles of loans sold to the Third Party could not reasonably be expected to harm the economic interest of the Public Body or the

provincial government. The release of general information pertaining to the lot of student loans sold will, however, strike the proper balance between disclosure and severing that the Act requires.

### **Conclusion under section 24(1)**

[para. 47.] I find that the test under section 24(1) is not met. The responsive portions of Record 15 under the headings “Description of Business,” “Outstanding \$” and “Inventory Accounts” can be disclosed because disclosure could not reasonably be expected to harm the economic interest of the Public Body or the provincial government.

[Para. 48.] The ability of the Government to manage the economy will also not be affected by this disclosure.

### **V. ORDER**

[para. 49.] Under section 68 of the Act, I make the following Order:

1. Sections 15(1)(a)(ii),(b),(c)(i) and (iii) of the Act apply to all of the severed information at issue in the Records, other than the responsive information found in Record 15 under the headings “Description of Business,” “Outstanding \$”, and “Inventory Accounts”. I uphold the action of the Public Body and order the head of the Public Body not to release this information.
2. Sections 15(1)(a)(ii),(b),(c)(i) and (iii) and 24(1) do not apply to the responsive information found in Record 15 under the headings “Description of Business,” “Outstanding \$”, and “Inventory Accounts”. I do not uphold the action of the Public Body in severing this information. I order the head of the Public Body to disclose this information. Along with this Order, I will provide a highlighted copy of Record 15 to the Public Body, indicating the information the Public Body must disclose to the Applicant.
3. I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with this Order.

Robert C. Clark,  
Information and Privacy Commissioner

