ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 2000-023

February 13, 2001

CITY OF CALGARY

Review Number 1776

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Summary: The Applicant filed an access request with the City of Calgary for records relating to the Applicant's employment with the City. The Commissioner held that the City had properly applied s. 4(1)(h)(ii), but the City's search failed to satisfy s. 9(1). A further search was ordered. S. 16 applied to the records. S. 19 did not apply to the records. S. 26(1)(a) applied to most of the records for which it was claimed. The Commissioner rejected the s. 31 public interest claim.

Statutes Cited: *Freedom of Information and Protection of Privacy Act,* S.A. 1994, c.F-18.5, ss. 1(1)(h), 1(1)(n), 4(1)(h)(ii), 9(1), 16, 19(1)(c), 26(1)(a), 26(1)(b)(iii), 26(2), 31, 37(1), 37(4), 67(1), 67(2), 86(1)(a), 86(1)(a.1), 86(2)

Authorities Cited: AB: Orders 96-006, 96-019, 96-021, 97-003, 97-009

I. BACKGROUND

[para. 1.] On October 1, 1999, the City of Calgary (the "Public Body") received an access request under the *Freedom of Information and Protection of Privacy Act* (the "Act") for the Applicant's personal information (the "request"):

> I am requesting access to view all records about my employment at the City of Calgary… as well as any information compiled as a result of an investigation concerning allegations against me subsequent to my departure.

[para. 2.] On December 2, 1999, the Public Body sent the Applicant a letter reflecting their agreement to treat the part of the request for e-mails as a separate request under the Act ("request #38").

[para. 3.] The Public Body released records to the Applicant, but severed or withheld many responsive records. On December 14, 1999, the Applicant requested a review of the Public Body's conduct in relation to the Applicant's October 1, 1999 request.

[para. 4.] Mediation was authorized, but was unsuccessful.

[para. 5.] On January 11, 2000, the Public Body sent the Applicant a letter explaining the results of its search in response to request #38.

[para. 6.] A Notice of Inquiry was issued on June 23, 2000, setting down an oral inquiry.

[para. 7.] The inquiry began in Calgary on September 7, 2000. Later that day I adjourned the inquiry and asked the parties to provide me with additional evidence and submissions. The Public Body indicated during the inquiry that it had released severed copies of records 227-231, 340-344, 353-356, 809-813, and 945-957 to the Applicant.

[para. 8.] I reviewed the additional evidence and submissions and concluded the inquiry on November 20, 2000.

II. RECORDS AT ISSUE

[para. 9.] The severed or withheld records were collected in a binder and each page was number-stamped sequentially. These are the records at issue:

- records withheld under section 4(1)(h)(ii): 513-520.

- records severed under section 16: 51, 119-120, 122, 197, 207, 209-213, 217-219, 222-235, 242-244, 250-254, 257-259, 273, 278-279, 283-291, 332-334, 340-344, 353-355, 356, 390-392, 413-419, 420, 423-468, 509-520, 542-555, 803-827, 837, 839-842, 945-957.

- records severed under section 19: 51, 119-120, 122, 197, 207, 209-213, 217-219, 222-235, 242-244, 250-254, 257-259, 273, 278-279, 340-344, 353-355, 356, 390-392, 413-419, 420, 423-468, 542-555, 803-827, 837, 839-842, 993-1009.

- records severed under section 26(1)(a): 276-277, 297-306, 332-334, 345, 346, 347-352, 357-358, 393-398, 408-410, 411-412, 420, 423-468, 913, 915-942, 944, 959, 961-989, 991, 993-1009, 1015, 1025-1042, 1047-1052, 1055-1084, 1086-1103.

- records severed under section 26(2): 332-334, 345-346, 408-410, 1015, 1047-1052.

[para. 10.] In this inquiry I will refer to all of these records as the "records." I will also refer to each set of records severed under a particular section of the Act as the "records," and, as necessary, to an individual record using the number assigned to it by the Public Body.

III. PRELIMINARY ISSUES

[para. 11.] At inquiry the Applicant raised a public interest claim under section 31, and asserted that the Public Body had not discharged its duty to assist under section 9(1) of the Act.

[para. 12.] At inquiry the Public Body claimed certain records were not subject to the Act because of section 4(1)(h)(ii), and disputed whether the duty to assist should be examined in this inquiry.

[para. 13.] Since section 4(1)(h)(ii) limits my jurisdiction, I must consider whether it applies. As the section 9(1) duty to assist is a positive duty, and the Public Body had an opportunity to make submissions on point, I will also consider it. Finally, as it is a public interest override, the section 31 issue will also be added to this inquiry.

IV. ISSUES

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

A. Does section 4(1)(h)(ii) apply to the records?
B. Did the Public Body properly apply section 26 to the records?
C. Did the Public Body properly apply section 19 to the records?
D. Does section 16 apply to the records?
E. Did the Public Body discharge its duty to assist the Applicant under section 9(1) of the Act?
F. Does section 31 of the Act require the Public Body to disclose the records, or information in the records?

Burden of Proof

[para. 15.] Under section 67(1) of the Act, the burden of proof lies on the Public Body for issues A, B and C. As for issue D, if the Public Body establishes that section 16 applies, under section 67(2) of the Act the burden to justify disclosure lies on the Applicant. As I have said in other Orders, a public body bears the burden under section 9(1). Therefore, the burden lies on the Public Body for issue E. The Applicant bears the burden for issue F.

V. DISCUSSION OF THE ISSUES

ISSUE A. Does section 4(1)(h)(ii) apply to the records?

(a.) Summary of the arguments of the parties

[para. 16.] The Public Body argues that these records are made from information from the office of the Registrar of Motor Vehicle Services.

[para. 17.] The Applicant made no submission on this issue.

(b.) Analysis

[para. 18.] Section 4(1) sets out the records to which the Act does not apply, and consequently the records over which I have no jurisdiction. Section 4(1)(h)(ii) specifically provides that the Act does not apply to a record "made from information in the office of the Registrar of Motor Vehicle Services".

[para. 19.] After reviewing the records and the evidence, I conclude that the records were made from information in the office of the Registrar of Motor Vehicle Services.

(c.) Conclusion under section 4(1)(h)(ii)

[para. 20.] I find that section 4(1)(h)(ii) applies to each of the records for which the section was claimed. Therefore, the Act does not apply to the records, and I have no jurisdiction over the records. I cannot order their production.

ISSUE B. Did the Public Body properly apply section 26 to the records?

(a.) Summary of the arguments of the parties

[para. 21.] The Public Body claims that either solicitor-client privilege, or litigation privilege, applies to the records under section 26(1)(a). The Public Body says that it may still sue or be sued by the Applicant. The Public Body also claimed at inquiry that all of the records fall within section 26(1)(b)(iii). Because of the nature of the records, the Public Body exercised its discretion not to disclose them. The Public Body severed records under section 26(2) that are covered by a legal privilege under section 26(1)(a) and contain information about persons other than the Public Body.

[para. 22.] The Applicant argues that no legal privilege attaches to the severed records, because the decision to commence litigation was arbitrary. But if a legal privilege could be claimed for any of the records, then it had been waived.

(b.) Analysis

[para. 23.] The relevant portions of section 26 read:

> 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…
>
> (b) information prepared by or for
> …
> (iii) an agent or lawyer of a public body,
> in relation to a matter involving the provision of legal services…
>
> (2) The head of a public body must refuse to disclose information described in subsection (1)(a) that relates to a person other than a public body.

(i.) Information prepared by or for a lawyer of a public body

[para. 24.] I am not persuaded that the Public Body applied section 26(1)(b)(iii) to all of the records when it severed them. This discretionary exemption was first raised at the inquiry stage, then was developed in the final written submission. In this case, accepting it would prejudice the Applicant by permitting the Public Body to put in a broad after-the-fact justification for its original exercise of discretion.

[para. 25.] Consequently, I will not consider whether section 26(1)(b)(iii) applies to the records.

(ii.) Solicitor-client privilege

[para. 26.] The Public Body claimed solicitor-client privilege for briefing notes, correspondence and working papers related to the provision of legal advice. In Order 97-003, I adopted this test for solicitor-client privilege, which must be met on a document-by-document basis:

a) it must be a communication between a solicitor and client,
b) which entails the seeking or giving of legal advice, and
c) which is intended to be confidential by the parties.

If the privilege is raised for an entire record, the whole record is exempted from disclosure. This privilege can only be waived by the client for whom the records were prepared.

[para. 27.] The Public Body submitted the Affidavit of a lawyer (the "first lawyer") employed in what was then the Public Body's Law Department. Another lawyer (the "second lawyer") signed the Affidavit as Commissioner for Oaths.

[para. 28.] The second lawyer had been involved in the search for records and then appeared before me as inquiry counsel for the Public Body. The Affidavit purported to describe the circumstances in which the records had been created and where they were found. The Affidavit showed that the first lawyer had a limited personal knowledge of the records, and had relied on what he had been told about the records by the second lawyer.

[para. 29.] Because the second lawyer was the source of much of the information in the Affidavit, his appearance as inquiry counsel blurs the roles of legal counsel and witness. These roles should remain separate to avoid conflicts and unnecessary adjournments to secure alternate counsel if the counsel is called as a witness.

[para. 30.] I gave little weight to the Affidavit because it is not the best evidence. However, after reviewing each of the records in light of the applicable law, I am satisfied that solicitor-client privilege applies to all of the records for which it was claimed.

(iii.) Litigation privilege

[para. 31.] Litigation privilege applies to records created or obtained by a client for its lawyer's use in litigation. The dominant purpose for which the record was prepared must be for the conduct of that litigation. The dominant purpose test has three parts: 1) the record was produced to assist the conduct of potential or existing litigation; 2) the record was confidential and produced for the dominant purpose of that litigation; 3) the prospect of litigation is reasonable at the time (Order 97-009).

[para. 32.]. Litigation privilege applies to documents created within one party's camp as it prepares for litigation, even if the number of people involved is considerable. Litigation privilege does not extend to open communications sent by one party to an adverse party.

[para. 33.] After reviewing the records in light of all of the evidence, and considering whether the privilege had been waived when the request was made, I find that litigation privilege applies to all records for which it was claimed, other than records 332, 333, and 1047-1052. These latter records relate to formal demand letters and are clearly sent to an adverse party "on the record."

(iv.) The Public Body's exercise of discretion

[para. 34.] The Public Body FOIP Coordinator testified that she considered the access provisions of the Act, and that disclosure might negatively impact the Public Body's investigations. Since the records pertain to the alleged misappropriation of Public Body-owned intellectual property, and litigation could not be ruled out, the Public Body decided not to disclose the records.

[para. 35.] I accept that these are reasonable and relevant considerations that weigh against disclosure.

[para. 36.] I find that the Public Body reasonably exercised its discretion not to disclose to the Applicant the records to which solicitor-client or litigation privilege applies.

(v.) Section 26(2)

[para. 37.] Section 26(2) reads:

> 26(2) The head of a public body must refuse to disclose information described in subsection (1)(a) that relates to a person other than a public body.

[para. 38.] Since the Public Body correctly claimed litigation privilege on its own behalf under section 26(1)(a) for records 334, 345, 346, 408-410, and 1015, I need not consider whether the Public Body correctly applied section 26(2) to these records.

[para. 39.] As I have rejected the Public Body's argument that litigation privilege applies to records 332, 333, and 1047-1052 under section 26(1)(a), section 26(2) cannot apply to those records. Since the Public Body claimed that section 16 also applies to records 332 and 333, I will consider that issue later in the Order. I intend to order that the Public Body disclose records 1047-1052, subject to the severing required under the Act.

(c.)Conclusion under section 26

[para. 40.] The Public Body properly claimed solicitor-client privilege for the records under section 26(1)(a). The Public Body properly claimed litigation privilege under section 26(1)(a) for the records, other than records 332, 333, and 1047-1052. Section 26(2) does not apply to any of the records.

ISSUE C. Did the Public Body properly apply section 19 to the records?

(a.) Analysis

[para. 41.] The relevant provisions of section 19 read:

> 19(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
> …
> (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement…

[para. 42.] The May 19, 1999, amendments to the Act included a new definition of "law enforcement." The Act now defines "law enforcement" in s. 1(1)(h) in this way:

> (h) 'law enforcement' means
>
> (i) policing, including criminal intelligence operations,
>
> (ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or
>
> (iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred…

[para. 43.] The first issue is whether the records relate to "law enforcement." I must determine if the Public Body's investigation of the Applicant was a "security or administrative investigation" that could lead to a "penalty or sanction" being imposed upon the Applicant by the Public Body or another body to which the matter could be referred.

[para. 44.] I find it important that the legislature retained the reference to "penalty or sanction" in the current definition of law enforcement. I see no reason to depart from my earlier interpretation of that phrase.

[para. 45.] In Order 96-006, I considered the meaning of the phrase "penalty or sanction" under the Act's definition of law enforcement. In that case, Alberta Justice had severed records relating to an employment investigation of a corrections officer's job

performance, claiming that the matter related to "law enforcement". However, I held that the investigation of a corrections officer's performance of his job did not fall within the definition of law enforcement. This was because the job duties were not imposed by law, such that a breach of those duties could result in the imposition of a sanction or penalty under a statute or regulation.

[para. 46.] The Public Body investigated whether the Applicant was disloyal and in a conflict by virtue of the Applicant's possible involvement with a private sector entity. The Public Body argued that the ultimate penalty that could have resulted from its investigation was the Applicant's dismissal at common law. The Public Body did not claim that a penalty or sanction could flow from a statute or regulation as a result of the alleged conduct being investigated. I do not agree that simply ending an employment contract for breach of an employer rule against conflict of interest is a "penalty" or "sanction" for the purposes of "law enforcement" under the Act. This conflict of interest investigation was not "law enforcement" under section 19.

(b.)Conclusion

[para. 47.] I find that the records are not within section 19. As the Public Body claimed section 16 as an alternate basis for severing most of these records, I will consider that next.

ISSUE D. Does section 16 apply to the records?

(a.) Analysis

[para. 48.] As I have found that section 4(1)(h)(ii) applies to records 513-520, and section 26(1)(a) applies to records 334 and 423-468, I do not need to consider whether section 16 applies to those records.

(i.) Do the records contain "personal information"?

[para. 49.] "Personal information," as defined in section 1(1)(n), includes recorded information about an "identifiable individual", including an individual's name, address, sex, age, identifying information such as an employee or social insurance number, and information about an individual's employment history. In Order 96-021, I held that information relating to the circumstances in which personal information is provided may be "personal information." I would extend personal information to include a person's initials or handwriting, where they could reveal a person's identity. In Order 96-019, I said that for the purposes of the Act an "individual" means a human being. A corporation is not an individual, and cannot have "personal information" under the Act.

[para. 50.] Having reviewed the unsevered records, I find that all of the records contain personal information of a third party that is intertwined with the Applicant's personal information.

(ii.) Would disclosure of the personal information be an unreasonable invasion of a third party's personal privacy?

[para. 51.] The relevant provisions of section 16 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.
> …
> (4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if...
> …
> (b) the personal information is an identifiable part of a law enforcement record…
> …
> (f) the personal information consists of personal … evaluations or personnel evaluations…
>
> (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. 52.] I find that the Public Body correctly determined under either of section 16(4)(g)(i) or (ii) that disclosure of the personal information in the records would be presumed to be an unreasonable invasion of a third party's personal privacy. I need not consider the other sections claimed by the Public Body.

(iii.) What relevant circumstances did the Public Body consider under section 16(5)?

[para. 53.] The relevant provisions of section 16(5) read:

> (5) In determining under subsections (1) and (4) 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 the relevant circumstances, including whether
> …
> (a) the disclosure is desirable for the purpose of subjecting the activities of…a public body to public scrutiny,
> …
> (b) the personal information is relevant to a fair determination of the applicant's rights,
> …
> (e) the third party will be exposed unfairly to financial or other harm,
> (f) the personal information has been supplied in confidence,
> (g) the personal information is likely to be inaccurate or unreliable,
> (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant…

[para. 54.] The Public Body argued that section 16(5)(a) is not relevant, as the Applicant failed to show any need for public scrutiny. Section 16(5)(e) weighed against disclosure, as certain corporations could be harmed if the records were released. Section 16(5)(f) was

relevant and weighed against disclosure, as the records related to confidential interviews, or interviews in which the interviewees were not alerted to the fact that their statements could be made public. Section 16(5)(g) was relevant and weighed against disclosure, as the truth of the investigators' notes "could be questioned." Section 16(5)(h) was relevant and weighed against disclosure, as the Public Body was concerned about potential harm to the Applicant's own reputation flowing from potentially erroneous statements in the records.

[para. 55.] I accept the Public Body's argument on section 16(5)(a) as well as its argument that the Applicant has no pressing need of the third party personal information. The consideration that corporations could be exposed to harm is not relevant, since a corporation is not an individual third party for the purposes of section 16.

[para. 56.] I am not persuaded by the section 16(5)(f) argument that investigation informants are always entitled to confidentiality. In this case, the City's informants might well have been called as witnesses if the Applicant's contract had been terminated and had sued the Public Body as a result of that termination. Therefore, any confidentiality was likely conditional, whatever the informants thought or were told.

[para. 57.] Section 16(5)(f) is not the sole determinant for finding there is an unreasonable invasion of privacy in all informant cases. It is but one of the relevant circumstances, which I have considered here. I have also considered that the Applicant's contract was not terminated as a result of the investigation, and the matter is several years old. Therefore, I will give more weight to the Public Body's argument that confidentiality is a relevant circumstance under section 16(5)(f).

[para. 58.] After considering all of the relevant circumstances, I find that they weigh against disclosure of the personal information. As the Public Body properly concluded that the relevant circumstances weigh in favour of not disclosing third party personal information, the burden of proof shifts to the Applicant to prove on a balance of probabilities that disclosure would not be an unreasonable invasion.

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

[para. 59.] I find that the Applicant has failed to establish that disclosure of the severed information would not be an unreasonable invasion of third parties' privacy, and so has failed to meet the burden of proof.

(v.) Would the remaining information be meaningless after the personal information is severed?

[para. 60.] After reviewing the records, it is my view that most of the remaining information would be meaningless after the personal information of third parties is severed. However, the personal information of third parties in records 223, 227-231, 332, 333, 340-344, 353-356, 545-555, 809-813, 815, and 945-957 could be severed without making the remaining information completely meaningless.

(c.)Conclusion under section 16

[para. 61.] I find that section 16 applies to records 51, 119, 120, 122, 197, 207, 209-213, 217-219, 222, 224-226, 232-235, 242-244, 250-254, 257-259, 273, 278-279, 283-291, 390-392, 413-420, 509-512, 542-544, 803-808, 814, 816-827, 837, 839-842, and that after severing the information remaining in these records would be meaningless. I do not intend to order the Public Body to disclose the remaining information to the Applicant.

[para. 62.] I find that section 16 applies to records 223, 227-231, 332, 333, 340-344, 353-356, 545-555, 809-813, 815 and 945-957. The Public Body properly severed the personal information of third parties in these records. I intend to order the Public Body to release the remaining information in those records to the Applicant, if it has not already done so.

ISSUE E. Did the Public Body discharge its duty to assist the Applicant under section 9(1) of the Act?

(a.) Summary of the arguments of the parties

[para. 63.] The Public Body argues that it met its duty. The request for e-mails is a separate access request that is not part of this inquiry.

[para. 64.] The Applicant argues that the request for e-mails ought to be part of this inquiry, as the creation of request #38 was nothing more than "internal housekeeping". The Applicant alleged that the Public Body had not produced or accounted for all responsive records. Therefore, on either basis, the duty was not discharged.

(b.) Analysis

[para. 65.] The duty of a public body to assist an applicant is found in section 9(1) of the Act, which reads:

> 9(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[para. 66.] The duty to assist includes the obligation to conduct an adequate search for the records requested by an applicant. The standard directed by the Act is not perfection, but what is "reasonable." The records clearly show that the parties agreed that the responsive electronic records would become a separate access request. I therefore reject the Applicant's argument that the search for e-mails is part of this inquiry, and relevant to whether the Public Body discharged its duty.

[para. 67.] However, after considering all of the evidence, I am not satisfied that the Public Body performed an adequate search for responsive records. The records produced for my review contain gaps in the chain of decision-making, particularly at the highest

levels. These gaps frustrate the basic principles of transparency and accountability fundamental to the Act.

(c.) Conclusion under section 9(1)

[para. 68.] I find that the Public Body failed to do an adequate search and did not discharge its section 9(1) duty. I intend to order that the Public Body conduct a further search of the offices of all the persons mentioned in Record 280.

Issue F. Does section 31 of the Act require the Public Body to disclose the records, or information in the records?

(a.) Summary of the arguments of the parties

[para. 69.] The Public Body argues that the records relate solely to the Applicant's own private interests. The Applicant failed to establish a public interest basis for disclosing the records, or information in the records.

[para. 70.] The Applicant argues that the Public Body's investigation was a reckless and arbitrary investigation of a private citizen that used the mechanism of legal privilege to circumvent disclosure under the Act. The demand letters sent were a "public and unfounded accusation" against the Applicant. Ordering disclosure of records is in the public interest, as it would tell the Public Body that such investigations will not be tolerated.

(b.) Analysis

[para. 71.] The relevant provisions of section 31(1) read:

> 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 … clearly in the public interest.

[para. 72.] Section 31 is an override provision that will be narrowly interpreted. Section 31(1)(b) obliges the head of a public body to release information without delay when there is a matter of compelling public interest at stake.

[para. 73.] After reviewing all of the evidence and the parties' submissions, I find that the Public Body did not arbitrarily investigate a private citizen. It investigated the actions of an ex-employee whom it suspected of misconduct, to decide whether to sue that ex-employee and others. As an employer, the Public Body may use its legal resources to investigate whether an ex-employee misappropriated valuable property during the course of the ex-employee's employment with the Public Body, even after the employee has quit.

[para. 74.] Further, I find that there is nothing in the evidence or the submissions that would justify disclosure of information in the records, or the records themselves, under section 31(1)(b).

(c.) Conclusion under section 31

[para. 75.] There is nothing before me that would lead me to find that the records, or that information in the records, should be disclosed on the basis that there is a compelling public interest under the Act.

VI. A FINAL COMMENT

[para. 76.] The Public Body's FOIP Coordinator testified that she was pressured to disclose the identity of the Applicant to other fellow employees, but refused to do so. I think it appropriate to comment on the obligation to keep the identity of an applicant confidential under the Act.

[para. 77.] An access request is "personal information" under section 1(1)(n) of the Act, because it is "recorded information about an identifiable individual." Part 2 of the Act controls the proper use of personal information collected by a public body. Section 37(1)(a) permits a public body to use personal information only for the purpose for which the information was compiled, or for a use consistent with that purpose. Section 37(4) permits a public body to use personal information only to the extent necessary to enable it to carry out its purpose in a reasonable manner. In short, the Act prohibits a person from revealing the identity of an applicant to a fellow employee who does not need to know that information.

[para. 78.] Willfully revealing the identity of an applicant in violation of the Act is an offence under section 86(1)(a) of the Act. A willful attempt to gain access to the identity of an applicant in violation of the Act is an offence under section 86(1)(a.1) of the Act, whether or not that attempt is successful. A person convicted of either offence is liable to a maximum fine of $10,000.00 under section 86 (2) of the Act.

VII. ORDER

[para. 79.] Under section 68 of the Act, I make the following Order:

1. I find section 4(1)(h)(ii) applies to records 513-520. I have no jurisdiction over these records. The Applicant cannot get access to these records under the Act.

2. I find that the Public Body properly applied section 26(1)(a) to records 276-277, 297-306, 334, 345, 346, 347-352, 357-358, 393-398, 408-410, 411-412, 420, 423-468, 913, 915-942, 944, 959, 961-989, 991, 993-1009, 1015, 1025-1042, 1055-1084, 1086-1103. I uphold the decision of the Public Body to refuse to disclose these records.

3. I find that the Public Body did not properly apply section 26(2) to records 332, 333, and 1047-1052. I order the Public Body to release those records in their entirety, subject to severing required under the Act.

4. I find that the Public Body did not properly apply section 19 to the records.

5. I find that section 16 applies to records 51, 119-120, 122, 197, 207, 209-213, 217-219, 222, 224-226, 232-235, 242-244, 250-254, 257-259, 273, 278-279, 283-291, 390-392, 413-420, 509-512, 542-544, 803-808, 814, 816-827, 837, and 839-842. The information remaining in the records would be meaningless after severing the third party personal information in them, and I will not order the Public Body to disclose that meaningless information. I uphold the decision of the Public Body to refuse to disclose these records to the Applicant.

6. I find that section 16 applies to records 223, 227-231, 332, 333, 340-344, 353-356, 545-555, 809-813, 815 and 945-957. I uphold the Public Body's decision to refuse to disclose the personal information contained in these records. I order the Public Body to sever that personal information and to disclose the remaining information in those records to the Applicant.

7. I find that the Public Body failed to discharge its duty to assist the Applicant under section 9(1). I order the Public Body to make a further search of the offices of all of the persons whose names appear in Record 280. I further order the Public Body to provide the Applicant and my Office with a statement of the results of that search.

8. I find that section 31 does not require the Head of the Public Body to disclose the records, or information in the records.

9. I further order the Public Body to notify me in writing, within 50 days of receiving a copy of this Order, that the Public Body has complied with this Order.

Robert C. Clark
Information and Privacy Commissioner