

**ALBERTA**

**INFORMATION AND PRIVACY COMMISSIONER**

**ORDER 2001-009**

March 6, 2001

**WORKERS' COMPENSATION BOARD**

Review Number 1427

**Office URL:** <http://www.oipc.ab.ca>

**Summary:** The Applicant wanted access under the *Freedom of Information and Protection of Privacy Act* (the "Act") to his personal information held by the Workers' Compensation Board (the "WCB"). The Applicant also wanted the WCB to correct a videotape of the Applicant's workplace. The Commissioner decided that the WCB had properly withheld some information from the Applicant, but ordered other information to be disclosed. The Commissioner also found that the WCB had properly refused to correct the videotape, but ordered the WCB to link the videotape with the correction request.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, S.A. 1994, c. F-18.5, ss. 1(1)(m) and (n), 4(1)(c), 4(1)(l), 9, 9(1), 11(2), 16, 16(2)(g) (section number before the May 19, 1999 amendments), 16(4)(g)(i) and (ii) (section number after the May 19, 1999 amendments), 16(5) (section number after the May 19, 1999 amendments), 19, 19(1)(d), 23, 23(1)(a), 26, 26(1)(a) and (b), 26(1)(b)(iii), 28, 28(1)(a), 35, 35(1) and (2), 67(2), 68; *Ombudsman Act*, R.S.A. 1980, c. O-7.

**Authorities Cited: AB:** Orders 97-008, 98-002.

## **I. BACKGROUND**

[para 1.] On March 2, 1998, the Applicant asked for access under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to all his personal information held by the Workers’ Compensation Board (the “Public Body”). On obtaining access, the Applicant was not satisfied that the Public Body located all the records. The Applicant also objected that the Public Body severed certain records.

[para 2.] On April 24, 1998, the Applicant asked for a review. Mediation was authorized. During that time, the Public Body took a videotape of the Applicant’s workplace. The Applicant asked for a correction of the videotape under section 35 of the Act. The Public Body refused. Instead, the Public Body said it made an annotation to the correction request. A review of the Public Body’s decision under section 35 was included in this review.

[para 3.] Mediation was not successful, and the matters were set down for a written inquiry. In January 2001, before the date of the inquiry, the Public Body released further records to the Applicant. Those records included Special Investigations Unit records, of which the Public Body had refused to confirm or deny the existence under section 11(2) of the Act while an investigation was ongoing. Some information was severed from those records. The parties included that severed information in this inquiry.

[para 4.] Both the Public Body and the Applicant provided written initial and rebuttal submissions for the inquiry. A few days before the inquiry, the Applicant sent further information for the inquiry. As is the practice with this Office when a party sends unsolicited information after the date for providing submissions, this Office returned that information to the Applicant.

[para 5.] 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, with one exception noted in this Order.

## **II. RECORDS AT ISSUE**

[para 6.] Pages 3-5 of the Public Body’s initial submission contain a table of the records at issue and the sections of the Act under which the records have been excluded or severed.

[para 7.] In this Order, I will refer to the records according to the manner in which they are listed in the Public Body’s table.

### **III. PRELIMINARY MATTERS**

[para 8.] The Applicant says that the Public Body did not account for pages 767-776 and 877 of the Appeals Commission records. I am satisfied with the Public Body's explanation that pages 767-776 were missed due to a numbering error, and that there are no pages missing. I am also satisfied with the explanation that page 877 is a blank page with no information severed.

[para 9.] I am further satisfied that section 11(2) no longer applies to the Special Investigations Unit records, as the Public Body released those records (with some minimal severing) dating to March 2, 1998, the date of the Applicant's access request.

[para 10.] Finally, the Applicant points out that there are no records related to an investigation that was concluded in 1999. The Applicant wants this to be treated as an additional issue under the duty to assist and thoroughness of the search (section 9(1) of the Act).

[para 11.] The Public Body objects. The Public Body says that the Applicant's access request was to March 2, 1998. The Public Body says it included all the records to that date. The Public Body maintains that the Applicant must make a new access request for access to records created after that date.

[para 12.] In previous Orders, I have said that an applicant cannot unilaterally require that a public body search for records beyond the date of an access request. It follows that an applicant cannot unilaterally require that such records be included in an inquiry. I agree that the Applicant has to make a new access request for any records created after March 2, 1998. I will not include such records in this inquiry under section 9(1) or any other section.

### **IV. ISSUES**

[para 13.] There are nine issues in this inquiry:

- A. Is certain information responsive to the Applicant's request?
- B. Do section 4(1)(c) and section 4(1)(l) exclude records from the application of the Act?
- C. Does section 16 (personal information) apply to the records?
- D. Did the Public Body properly apply section 23 (advice)?
- E. Did the Public Body properly apply section 19 (law enforcement)?
- F. Did the Public Body properly apply section 26 (privilege)?

G. Did the Public Body properly apply section 28?

H. Did the Public Body meet its duty to assist under section 9(1) by conducting a thorough search for records?

I. Did the Public Body properly refuse the Applicant's request for a correction under section 35?

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

### **ISSUE A: Is certain information responsive to the Applicant's request?**

[para 14.] The Public Body identified information severed from page 168 of the Government Relations records as being non-responsive to the Applicant's request. The Notice of Inquiry had listed that information as having been severed under section 16.

[para 15.] I have reviewed that information, and I agree that it is not responsive to the Applicant's access request because it is unrelated to the access request. The Public Body is not required to give the Applicant access to that information.

[para 16.] I then reviewed all the information to which the Public Body said that section 16 applied. It was evident that most of the severed information was not responsive to the Applicant's access request because it was unrelated to the access request. In many cases, the information was that of workers' compensation claimants other than the Applicant.

[para 17.] Therefore, I do not intend to consider whether section 16 applies to the information severed from the following: Appeals Commission records, page 667; and Government Relations records, pages 96, 236, 237, 301, and 316. That information is not responsive to the Applicant's access request. The Public Body is not required to give the Applicant access to that information.

### **ISSUE B: Do section 4(1)(c) and section 4(1)(l) exclude records from the application of the Act?**

#### **1. Application of section 4(1)(c)**

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

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

...

*(c) a record that is created by or is in the custody or under the control of an officer of the Legislature and relates to the exercise of that officer's functions under an Act of Alberta...*

[para 19.] The following records meet all the requirements of section 4(1)(c), as they are records created by the Ombudsman (who is an officer of the Legislature, as defined by section 1(1)(m) of the Act) and relate to the exercise of the Ombudsman's functions under the *Ombudsman Act*, R.S.A. 1980, c. O-7:

Appeals Commission records, pages 15, 16, 19  
Executive Office records, pages 9, 10, 13  
Government Relations records, pages 34, 35, 40

[para 20.] Certain records have been sent to the Ombudsman, and the Public Body has the file copies of those records. In Order 97-008, I said that file copies of records sent to the Ombudsman are in the custody or under the control of the Ombudsman for the purposes of section 4(1)(c). Therefore, the following records meet all the requirements of section 4(1)(c), as they are records in the custody or under the control of the Ombudsman, as discussed in Order 97-008, and relate to the exercise of the Ombudsman's functions under the *Ombudsman Act*:

Appeals Commission records, pages 18, 20  
Executive Office records, pages 11, 14  
Government Relations records, pages 38, 41

[para 21.] Consequently, all the foregoing records are excluded from the application of the Act by section 4(1)(c), and I have no jurisdiction over those records. The Applicant cannot get access to those records under the Act.

[para 22.] The following records do not meet the requirements of section 4(1)(c) because they were not created by and are not in the custody or under the control of the Ombudsman:

Executive Office records, page 12  
Government Relations records, pages 33, 39  
Office of the Appeals Advisor records, pages 8, 10A

[para 23.] Consequently, the foregoing records are not excluded from the application of the Act by section 4(1)(c), and I have jurisdiction over those records. As the Public Body has not applied any exceptions under the Act to those records, and as I find that no other exceptions apply, I intend to order the Public Body to disclose those records to the Applicant.

## 2. Application of section 4(1)(l)

[para 24.] Section 4(1)(l) reads:

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

...

*(l) a record created by or for*

*(i) a member of the Executive Council,*

*(ii) a Member of the Legislative Assembly, or*

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

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

[para 25.] The following records meet all the requirements of section 4(1)(l):

Appeals Commission records, pages 798, 799, 800

Client Services – Operations Case Review records, pages 54, 55, 56, 57

Government Relations records, pages 21, 319, 320, 321, 322, 325, 326

[para 26.] Consequently, all the foregoing records are excluded from the application of the Act by section 4(1)(l), and I have no jurisdiction over those records. The Applicant cannot get access to those records under the Act.

### **ISSUE C: Does section 16 (personal information) apply to the records?**

[para 27.] The only records remaining to be considered under section 16 are pages 18 and 19 of the Special Investigations Unit records.

[para 28.] Pages 18 and 19 of the Special Investigations Unit records are statements that the Applicant's co-workers made to the Public Body's claims investigator during an investigation of the Applicant's workplace duties. The Public Body disclosed the content of those statements to the Applicant, but severed the personal information of the co-workers. The personal information consists of the names and other identifying

information of the co-workers, as set out in the definition of “personal information” contained in section 1(1)(n) of the Act.

[para 29.] The Public Body says that disclosure of the co-workers’ (third parties’) personal information is presumed to be an unreasonable invasion of the third parties’ personal privacy, as provided by section 16(4)(g)(ii).

[para 30.] The Public Body applied section 16(4)(g) because that is the numbering of the provision after the amendments to the Act came into force on May 19, 1999. The former provision is section 16(2)(g). Section 16(4)(g) is the applicable provision in this case, rather than section 16(2)(g), because the Public Body disclosed the records in January 2001. However, the wording of the two provisions is the same.

[para 31.] Section 16(4)(g) reads:

*16(4) 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 32.] I find that the personal information meets the requirements of section 16(4)(g)(i) and (ii).

[para 33.] Section 16(5) provides that, in determining under section 16(1) or section 16(4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party’s personal privacy, a public body must consider all the relevant circumstances, including those listed in section 16(4)(a) to (i).

[para 34.] In this case, the Public Body did not specifically say what relevant circumstances it considered. The Public Body appears to rely on the fact that this was an investigation of the Applicant’s workplace duties, and the personal information was provided in that context. The Public Body also appears to rely on the fact that, except for the personal information of the Applicant’s co-workers, it disclosed to the Applicant all of the investigation report, including the co-workers’ statements.

[para 35.] Furthermore, the Applicant did not say why disclosure of the third parties’ personal information would not be an unreasonable invasion of the third parties’ personal privacy, as provided by section 67(2) of the Act.

[para 36.] Consequently, I have decided that disclosure of the third parties' personal information would be an unreasonable invasion of the third parties' personal privacy, based on the following relevant circumstances: (i) the Public Body disclosed all the investigation report, except for the personal information of the third parties; and (ii) the personal information would not assist the Applicant's objective of having the Public Body review his compensation claims.

[para 37.] I find that section 16 of the Act applies to the third parties' personal information severed from pages 18 and 19 of the Special Investigations Unit records. The Public Body must not disclose that personal information to the Applicant.

#### **ISSUE D: Did the Public Body properly apply section 23 (advice)?**

[para 38.] The only records remaining to be considered under section 23(1)(a) are page 344 of the Appeals Commission records and page 65 of the Government Relations records. Both pages are the same record. I do not intend to consider those records for which I have found that section 4(1)(l) applies.

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

*23(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal*

*(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council...*

[para 40.] To fall within section 23(1)(a), the information must meet all of the following requirements:

The "advice" should:

- (1) be sought or expected, or be part of the responsibility of a person by virtue of that person's position,
- (2) be directed toward taking an action,
- (3) be made to someone who can take or implement the action.

[para 41.] I find that the information severed from the foregoing pages meets the requirements of section 23(1)(a).



[para 42.] Section 23(1)(a) is a discretionary provision in that, even if the section applies, a public body may nevertheless decide to disclose the information. In this case, the Public Body exercised its discretion properly because of the minimal amount of information it withheld (only the one-sentence recommendation on each page).

[para 43.] I find that the Public Body properly applied section 23(1)(a) to the information severed from the following: Appeals Commission records, page 344; and Government Relations records, page 65. The Public Body is not required to disclose that information to the Applicant.

#### **ISSUE E: Did the Public Body properly apply section 19 (law enforcement)?**

[para 44.] I have found that section 16 applies to the same information to which the Public Body applied section 19(1)(d) (confidential source of law enforcement information). Therefore, I do not find it necessary to decide whether the Public Body properly applied section 19(1)(d) to that same information.

#### **ISSUE F: Did the Public Body properly apply section 26 (privilege)?**

[para 45.] The Public Body says that section 26(1)(a) and (b)(iii) apply to pages 149 to 164 of the Legal Services records, which are handwritten notes prepared by the Public Body's solicitor for the purpose of preparing himself for a judicial review as counsel to the Appeals Commission. The judicial review took place in August 1996.

[para 46.] I will consider section 26(1)(b) first. That section reads:

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

*...*

*(b) information prepared by or for an agent or lawyer of the Minister of Justice and Attorney General or a public body in relation to a matter involving the provision of legal services...*

[para 47.] The Public Body quoted section 26(1)(b)(iii) in error. That is the amended provision after May 19, 1999. I have said that this Order proceeds on the basis of the Act as it existed before that date. However, there is no difficulty in this case because the wording of section 26(1)(b)(iii), as amended, is "an agent or lawyer of a public body", which is the same wording as section 26(1)(b), before the amendment.

[para 48.] The information contained in the records is clearly information prepared by a lawyer of the Public Body in relation to a matter involving the provision of legal services. Therefore, I find that section 26(1)(b) applies to all the information severed from the records.

[para 49.] Having decided this, I do not find it necessary to decide whether section 26(1)(a) also applies to that same information.

[para 50.] Section 26(1)(b) is a discretionary provision in that, even if the section applies, a public body may nevertheless decide to disclose the information. In this case, the Public Body decided that it would be inappropriate to disclose the information because the notes would reveal the thinking and strategy of the Board/Appeals Commission counsel.

[para 51.] The Public Body released a great deal of other information from Legal Services, and subsequently released further information to which it originally applied section 26(1). Therefore, I find that the Public Body exercised its discretion properly under section 26(1)(b) when it refused to disclose the information severed from the foregoing records.

[para 52.] I find that the Public Body properly applied section 26(1)(b) to the information severed from pages 149 to 164 of the Legal Services records.

### **ISSUE G: Did the Public Body properly apply section 28?**

[para 53.] The Public Body says that section 28(1)(a) applies to the following records that were prepared for the purpose of a judicial review application the Applicant launched against the Public Body in 1996:

- Submission of the Applicant
- Brief of Respondent
- Record of Respondent Vol. 1 to 4
- Respondent's Book of Authorities

[para 54.] The Public Body says that the records were filed with the Court of Queen's Bench and can be obtained from the courthouse.

[para 55.] Section 28(1)(a) reads:

*28(1) The head of a public Body may refuse to disclose to an applicant information*

*(a) that is available for purchase by the public...*

[para 56.] I agree that the Public Body's copy of the foregoing records, if unaltered, would meet the requirements of section 28(1)(a). Having been filed in the courthouse, the information contained in such records is available for purchase by the public.

[para 57.] However, the Public Body made notes on its copy of the Submission of the Applicant, thus creating a new record that is not available for purchase by the public. The Public Body also made notes on its brief (Brief of the Respondent) and list of records (Records of the Respondent Vol. 1 to 4), creating new records. Consequently, the Public Body did not properly apply section 28(1)(a) to those records.

[para 58.] Therefore, I intend to require the Public Body to decide whether any exceptions under the Act apply to those records and, if so, to provide the Applicant with a severed copy of those records. If no exceptions apply, I intend to order the Public Body to disclose those records, unsevered, to the Applicant.

[para 59.] The only records that are unaltered are that part of the Submission of the Applicant containing the Applicant's authorities, and the Respondent's (Public Body's) Book of Authorities. I find that section 28(1)(a) applies to the information contained in those records.

[para 60.] Section 28(1)(a) is a discretionary ("may") provision. Even if the provision applies, a public body may exercise its discretion to disclose the information.

[para 61.] The Public Body says that it provided its own records to the Applicant at the time of the judicial review in 1996. The Public Body therefore exercised its discretion not to disclose under the Act. I find that the Public Body exercised its discretion properly when it refused to disclose to the Applicant the Applicant's authorities and the Respondent's (Public Body's) Book of Authorities.

[para 62.] I find that the Public Body properly applied section 28(1)(a) to the following: Applicant's authorities contained in the Submission of the Applicant, and the Respondent's (Public Body's) Book of Authorities. The Public Body is not required to disclose that information to the Applicant.

#### **ISSUE H: Did the Public Body meet its duty to assist under section 9(1) by conducting a thorough search for records?**

[para 63.] The Applicant questions whether the Public Body did a proper search for records. The Applicant believes that there should be files in the following areas of the Public Body:

- Vocational Rehabilitation Department (VRD files)
- Employer Services (Applicant's employer's file)
- Health files

[para 64.] The Public Body says that it conducted two searches for those files: one search when the Applicant made his access request on March 2, 1998 (Tab 26 of the Public Body's initial submission); and another search in January 2001 (Tab 27 of the

Public Body's initial submission). The Public Body has not located any further records in these areas.

[para 65.] Section 9(1) 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.] I am satisfied with the Public Body's explanations about the searches for records in the foregoing areas. I note that the VRD files were amalgamated with the claims files in 1993. I have considered that matter before in Order 98-002.

[para 67.] As to the search the Public Body conducted in January 2001, the Public Body says that the only place it located additional records was in the Special Investigations Unit. On the Applicant's access request, the Public Body had refused to confirm or deny the existence of those records under section 11(2) of the Act while the Public Body was conducting an investigation. Once the investigation was complete, the Public Body said that section 11(2) no longer applied. The Public Body released 25 pages of records (two pages with severing) dating to March 2, 1998, the date of the Applicant's access request.

[para 68.] The Public Body also admitted that it located a misplaced medical report in the Office of the Appeals Advisor. However, it gave evidence that that report had been on the Applicant's claims file when the Public Body made a decision about the Applicant's claim. The Public Body said that medical report is now on the Applicant's claims file.

[para 69.] The Public Body then did a third search of the Medical Services area (Tab 4 of the Public Body's rebuttal submission), but the Public Body did not find any further records.

[para 70.] I am satisfied that the Public Body conducted a thorough search for records. I am particularly convinced by the fact that the Public Body conducted a second search in January 2001 and did not locate any further records. I note that the Public Body has become more sophisticated in searching, and now searches more areas than it did in 1998. In my view, there is no other place the Public Body could have searched.

[para 71.] The Public Body's having located one misplaced record does not change my decision about the thoroughness of the search, as the standard under section 9(1) is reasonableness, not perfection.

[para 72.] I find that the Public Body met its duty to assist under section 9(1) by conducting a thorough search for records.

**ISSUE I: Did the Public Body properly refuse the Applicant's request for a correction under section 35?**

[para 73.] The Public Body took a videotape of the Applicant's workplace. Under section 35 of the Act, the Applicant requested that the Public Body correct what the Applicant believed to be inaccuracies in the videotape. The Applicant complained that the videotape was incomplete and misleading.

[para 74.] The Public Body refused to alter the videotape. The Public Body maintains that the videotape is a record of events of that day and, as such, is not subject to alteration, deletion or replacement.

[para 75.] The relevant portions of section 35 read:

*35(1) An applicant who believes there is an error or omission in the applicant's personal information may request the head of the public body that has the information in its custody or under its control to correct the information.*

*(2) If no correction is made in response to a request under subsection (1), the head of the public body must annotate or link the information with the correction that was requested but not made.*

[para 76.] The Public Body says that it attempted to address the Applicant's complaint by making an annotation to the Applicant's correction request (Tab 30 of the Public Body's initial submission). That annotation consists of gathering responses about the videotape from the Applicant's advocate and employer, and from the Public Body's staff. All that information became part of the Applicant's claims file (Tab 28 of the Public Body's initial submission).

[para 77.] Furthermore, the Public Body says the Applicant failed to specify what remained incorrect or incomplete. In the absence of identifying some specific deficiency in the record, other than a general dissatisfaction with the Public Body's refusal to make another videotape, the Public Body says there is nothing further to be done.

[para 78.] I agree with the Public Body's reason for not correcting the videotape. The videotape is a record of the events of the day that cannot be altered. I find that the Public Body properly refused the Applicant's request for a correction of the videotape of the Applicant's workplace.

[para 79.] The Public Body filled out an Annotation Form (Tab 30 of the Public Body's initial submission). The Public Body says that, on the Applicant's file, it placed the various responses set out above, including the Applicant's concerns about the videotape.

[para 80.] To properly annotate under section 35(2), the Public Body must annotate the information (the videotape) with the correction request. The correction request is on the Applicant's claims file, but there is no evidence that the videotape is on the file. Therefore, I find that the Public Body did not properly annotate the videotape with the correction request.

[para 81.] It may not be possible to annotate the videotape, which would likely require putting the correction request in the videotape holder, if any. Instead, I believe that the Public Body will have to link the videotape with the correction request. I intend to order the Public Body to do this by noting on the videotape label that there is a correction request on the Applicant's claim file.

## **VI. ORDER**

[para 82.] I make the following Order under section 68 of the Act.

### **A. Non-responsive information**

[para 83.] The Public Body properly determined that the information severed from page 168 of the Government Relations records was not responsive to the Applicant's access request. The Public Body is not required to give the Applicant access to that information.

[para 84.] I have determined that the information severed from the following is not responsive to the Applicant's access request: Appeals Commission records, page 667; and Government Relations records, pages 96, 236, 237, 301, and 316. The Public Body is not required to give the Applicant access to that information.

### **B. Records excluded under section 4(1)(c) and section 4(1)(l)**

[para 85.] The following records meet the requirements of section 4(1)(c) and are excluded from the application of the Act by section 4(1)(c):

Appeals Commission records, pages 15, 16, 18, 19, 20  
Executive Office records, pages 9, 10, 11, 13, 14  
Government Relations records, pages 34, 35, 38, 40, 41

[para 86.] Consequently, I do not have jurisdiction over the foregoing records. The Applicant cannot get access to those records under the Act.

[para 87.] The following records do not meet the requirements of section 4(1)(c) and are not excluded from the application of the Act by section 4(1)(c):

Executive Office records, page 12

Government Relations records, pages 33, 39  
Office of the Appeals Advisor records, pages 8, 10A

[para 88.] As no other exceptions apply to the foregoing records, I order the Public Body to disclose those records to the Applicant.

[para 89.] The following records meet all the requirements of section 4(1)(l) and are excluded from the application of the Act by section 4(1)(l):

Appeals Commission records, pages 798, 799, 800  
Client Services – Operations Case Review records, pages 54, 55, 56, 57  
Government Relations records, pages 21, 319, 320, 321, 322, 325, 326

[para 90.] Consequently, I do not have jurisdiction over the foregoing records. The Applicant cannot get access to those records under the Act.

### **C. Application of section 16 (personal information)**

[para 91.] Section 16 applies to the third parties' personal information severed from pages 18 and 19 of the Special Investigations Unit records. The Public Body must not disclose that personal information to the Applicant.

### **D. Application of section 23 (advice)**

[para 92.] The Public Body properly applied section 23(1)(a) (advice) to the information severed from the following: Appeals Commission records, page 344; and Government Relations records, page 65. The Public Body is not required to disclose that information to the Applicant.

### **E. Application of section 19 (law enforcement)**

[para 93.] I have found that section 16 applies to the same information to which the Public Body applied section 19(1)(d) (confidential source of law enforcement information). Therefore, I do not find it necessary to decide whether the Public Body properly applied section 19(1)(d) to that same information.

### **F. Application of section 26 (privilege)**

[para 94.] The Public Body properly applied section 26(1)(b) to the information severed from pages 149 to 164 of the Legal Services records.

### **G. Application of section 28**

[para 95.] The Public Body properly applied section 28(1)(a) to the following: Applicant's authorities contained in the Submission of the Applicant, and the

Respondent's (Public Body's) Book of Authorities. The Public Body is not required to disclose that information to the Applicant.

[para 96.] The Public Body did not properly apply section 28(1)(a) to the following: Submission of the Applicant (except the Applicant's authorities); and the Public Body's Brief of the Respondent, and Record of the Respondent Vol. 1 to 4. I order the Public Body to decide whether any exceptions under the Act apply to those records and, if so, to provide the Applicant with a severed copy of those records. If no exceptions apply, I order the Public Body to disclose those records, unsevered, to the Applicant.

#### **H. Duty to assist/thoroughness of the search under section 9(1)**

[para 97.] The Public Body met its duty to assist under section 9(1) by conducting a thorough search for records.

#### **I. Correction under section 35**

[para 98.] The Public Body properly refused the Applicant's request for a correction of the videotape of the Applicant's workplace.

[para 99.] However, because there is no evidence that the videotape is on the Applicant's claims file along with the correction request, the Public Body did not properly annotate the videotape with the correction request. I order the Public Body to link the videotape with the correction request by noting on the videotape label that there is a correction request on the Applicant's claims file.

[para 100.] I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that the Public Body has complied with this Order.

Robert C. Clark  
Information and Privacy Commissioner