ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2003-015

November 4, 2005

CAPITAL HEALTH AUTHORITY

Review Numbers 2516, 2536, 2550

Office URL: www.oipc.ab.ca

Summary: The Applicant made a number of requests under the *Freedom of Information and Protection of Privacy Act* (the "Act") to a Public Body (Capital Health Authority) that had provided the practical/clinical portion of a cytotechnology training program in which she had been enrolled. She asked for access to her personal information, for some specific general information, and for correction of results and scores related to her performance in her clinical training.

The Public Body provided some records, but severed some information on the basis that it was not responsive, or that disclosure would be an unreasonable invasion of the personal privacy of third parties under section 17 of the Act. It also refused to provide information on the basis that it was excluded from the scope of the Act by section 4(1)(g) (questions used on an examination), as well as in reliance on sections 24 (advice), section 25 (economic interest of a Public Body) and section 27 (privilege). The Public Body said it did not have some specific general information the Applicant requested. It refused to change the performance results and scores.

The Applicant asked for a review of the Public Body's decisions, and complained that it had failed to assist her and to conduct an adequate search under section 10(1) of the Act.

The Commissioner agreed that some of the records fell under the section 4(1)(g) and that he did not have jurisdiction over these records. He found that the Public Body had

fulfilled its duties under section 10(1) of the Act to assist the Applicant and to conduct an adequate search. With some very minor exceptions, he upheld the Public Body's decision to sever information on the basis that it was unresponsive, or that disclosure would be an unreasonable invasion of the personal privacy of third parties. He agreed that some of the information could be withheld on the basis it was privileged.

The Commissioner also upheld the Public Body's refusal to change the Applicant's performance results and scores. He found that this request amounted to asking that the *method* by which the results and scores are tabulated and calculated be changed – a matter to which section 36 is not applicable.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 1(n)(ix), 4(1)(g), 10(1), 17, 17(4)(g)(i), 17(5), 24, 24(1)(a), 25, 25(1), 25(1)(c)(i), 27(1), 27(1)(c)(iii), 27(2), 36, 36(1), 36(2), 72.

Authorities Cited: AB: Orders 96-015, 97-002, 97-009, 98-017, 2001-025**.**

Cases Cited: *Waugh v. British Railway Board*, [1979] 2 All E.R. 1169 (H.L.); *Solosky v. The Queen*, [1980] 1 S.C.R. 821.

I. BACKGROUND

[para 1] The Applicant was registered in a cytotechnology program between August, 1997 and December, 1998. The program consists of one year of classroom instruction provided by a technology institute, followed by one year of practical/clinical training with the Capital Health Region (the "Public Body").

[para 2] The Applicant completed her instructional year with the technology institute in June, 1998. She began her clinical training with the Public Body in the same month. In December of 1998 she was required to leave the program, on the basis that she had been unable to complete one of its minimum requirements. She appealed this decision, but the appeal was not successful.

[para 3] In March, 2002, the Applicant brought a legal action against the Public Body and against a particular employee of the Public Body (the Applicant's instructor). This action was dismissed on February 21, 2003.

[para 4] The Applicant made a number of requests for information to the Public Body under the *Freedom of Information and Protection of Privacy Act* (the "Act") between February, 2001 and July, 2002, as well as requests for correction of her information.

[para 5] The information requests pertinent to this inquiry (Review Number 2516), and related chronology of events, as these may be discerned from the materials before me, are as follows:

[para 6] On April 3, 2002, the Applicant requested copies of all personal information for the period June1, 1998 to March 27, 2002. Pursuant to an earlier request ((P-01-03-0030), the Public Body had already provided approximately1400 pages of records for the period June1, 1998 to March 27, 2001 (some records for this period were withheld or severed relying on exceptions in the Act). The Public Body applied to the Information and Privacy Commissioner for permission to disregard the April 3, 2002 request, but this application was denied on May 29, 2002. The Public Body thereupon assigned Number P-02-04-0061 to this request. On June 12, 2002 it informed the Applicant that it had already provided all the records in its custody and control for the period June1, 1998 to March 27, 2001. With regard to the remainder of the request period (March 28, 2001 to March 27, 2002), it provided a description of the types of records that had been located. A number of communications about potential dates on which the Applicant could examine these records followed, but no examination took place. On July 18, 2002 the Public Body provided a fee estimate for providing copies of the records outstanding from request P-02-04-0061.

[para 7] On July 30, 2002 the Applicant submitted four more requests. After seeking to clarify these requests between August and October, 2002, the Public Body treated them as a request for copies of all records, other than correspondence related to her requests, for the period March 28, 2001 to July 31, 2002. The Public Body says it provided 58 pages of unsevered records and 62 pages of partly-severed records.

[para 8] In correspondence to the Applicant dated August 7, 2002, the Public Body sought further clarification regarding request P-02-04-0061, and indicated with respect to this request that it was waiting for the Applicant's response to the fee estimate it had provided on July 18. On November 26, 2002, the Public Body wrote to the Applicant again, indicating there were records not yet provided to her for the period March 28, 2001 to March 27, 2002, and describing these records. This letter also provided another fee estimate, and stated that if the Public Body had not received a fee deposit by December 27, 2002, it would consider Request P-02-04-0061 abandoned. There is a factual dispute as to whether the Applicant responded within the 30-day time period prescribed in the Act. The Public Body declared Request P-02-04-0061 abandoned on December 27, 2002.

[para 9] Two other information requests by the Applicant were numbered P-02-05-0060 and P-02-06-0066 by the Public Body. The first, (originally received May 31, 2002 but altered on June 10 to extend the time period), was a request to examine records of all personal information and all severed information for the dates April 1, 1998 to July 30, 2002, and for manuals and policies of a named organization (not the Public Body). On July 2, 2002 the Public Body undertook to provide information to her about its decisions to withhold or sever information, and indicated the requested manuals were not in its possession. On July 4, 2002, it provided a list of previously-severed records for the period April 1, 1998 to March 27, 2001, describing the authority for severing, and indicating that 12 pages of previously-severed records would be available for examination in their entirety. (Copies of the latter records were provided on July 12). On July 18, after a further search for records, the Public Body provided the Applicant a table

of all records retrieved for examination, describing which records had already been disclosed, which would be withheld or severed, and the sections of the Act on which it was relying for withholding or severing.[1] It asked the Applicant to give two weeks' notice of the date on which she wished to attend to examine documents.

[para 10] On July 30, 2002, the Applicant asked the Information and Privacy Commissioner to review the Public Body's decisions to withhold records, or to sever records which it had provided. Mediation resulted in disclosure of one complete page, and parts previously severed from two others, on August 29, 2002.

[para 11] Four additional pages were located subsequently and provided to the Applicant on February12, 2003.

[para 12] Request P-02-06-0066 is for *copies of* all information severed or withheld in the Public Body's responses to the Applicant's earlier requests.

[para 13] This inquiry also relates to two requests for correction of results and scores related to the Applicant's performance in her clinical training.

[para 14] The first of the correction requests (Review Number 2536, Public Body's file number C-02-06-0076) asked the Public Body to correct the "grid boxes" the Public Body had provided to the Applicant in an earlier response (on March 27, 2002). The boxes are used to tabulate on a weekly basis the extent to which students' readings of GYN (gynecological) slides correspond with readings of the same slides made by a reviewer (a qualified cytechnologist), and based on these tabulations, to score the students' competency at reading slides. The weekly report sheets are compiled into a 10-week evaluation, which includes 10-week composite scores.

[para 15] In an earlier correction request, the Public Body had reviewed the Applicant's weekly summary sheets, and noted errors in tabulating data, and resulting errors in calculation. It had made changes to three of the weekly summary sheets, and corresponding recalculations of the scores, and appended them to the Applicant's files.

[para 16] In the request before me in this inquiry, the Applicant had asked the Public Body to change the way entries are made in the grid boxes - in particular, how 'codes' that reflect the similarity or dissimilarity with the reviewer's readings, are assigned. Specifically, she asked the Public Body to "Correct row 3 columns 3 thru 11 to code B. Correct column 3 rows 3 thru 11 as code B."

[para 17] The Public Body declined to make the changes to the way entries were made. It re-reviewed the grid box and all calculations, and declined to make any further changes of calculation of scores. The Applicant asked for a review of this decision.

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[1] The Public Body had severed or withheld information on the basis it was not responsive, was not within the scope of the Act by reference to section 4(1)(g), or could be withheld under sections 24 or 27 of the Act.

[para 18] In the second correction request (Review Number 2550, Public Body's Request Number C-02-07-0079) the Applicant asked the Public Body to correct the 'accuracy' or 'overall accuracy' scores for the Applicant's 10-week evaluations (the composites of the 10 weekly summaries), in particular, the final one. In her original request (and in her submissions to this office) the Applicant put forward several theories as to why this should be done, and alternate percentage scores. The Public Body refused to make the requested corrections, and the Applicant asked for a review of that decision.

[para 19] Mediation authorized by the Information and Privacy Commissioner was not successful. The Applicant asked that three requests for review proceed to inquiry.

II. RECORDS AT ISSUE

[para 20] The Applicant alleges in Review 2516 that the Public Body did not search adequately and that there were records that the Public Body did not locate. She also alleges that the Public Body did not properly assist her in that it did not respond to her request for a fee waiver, and did not supply copies of records relative to which she had made this waiver request.

[para 21] The other part of Review 2516 relates to withheld or severed information (Public Body's file numbers P-02-05-0060 and P-02-06-0066). The related records consist of 102 severed pages from the time period April 1, 1998 to March 27, 2001, and 164 severed pages from the period March 28, 2001 to March 27, 2002.

[para 22] The records in Reviews 2536 and 2550 are documents to which the Applicant requested corrections relating to her accuracy scores in tests of her competency in the cytotechnology program in which she was enrolled.

III. ISSUES

[para 23] The issues are:

Review 2516 (Public Body's file reference P-02-04-0061):

Issue A: Is the information/records responsive to the Applicant's request?

Issue B: Is the information /records excluded from the application of the Act by section 4(1)(g) (questions used on an examination)?

Issue C: Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 10(1) of the Act?

Issue D: Did the Public Body conduct an adequate search for responsive records as required by section 10(1) of the Act?

Issue E: Does section 17 of the Act (personal information) apply to the records/information?

Issue F: Did the Public Body properly apply section 24 of the Act (advice) to the records/information?

Issue G: Did the Public Body properly apply section 25 of the Act (economic interest of a Public Body) to the records/information?

Issue H: Did the Public Body properly apply section 27(1) of the Act (privileged information) to the records/information?

Issue I: Does section 27(2) of the Act (privileged information of a person other than a public body) apply to the records/information?

Review 2536 Public Body's file reference C-02-06-0076)

Issue J: Did the Public Body properly refuse to correct the Applicant's personal information, as authorized by section 36 of the Act?

Review 2550 (Public Body's file reference C-02-07-0079)

Issue K: Did the Public Body properly refuse to correct the Applicant's personal information, as authorized by section 36 of the Act?

IV. DISCUSSION OF ISSUES

Issue A: Is the information/records responsive to the Applicant's request?

[para 24] The Applicant's requests were for her personal information (as well as for specific general information). The Public Body located personal information of the Applicant, but before providing it, severed certain information on the basis that it was not responsive, in that it was not information about the Applicant. This consisted of the severed parts of Reference Numbers 1 to 5, 7 to 8, 10, 11 to 17, 19, 22, 23 to 26, 30, 31 to 34, 36 to 37, 42, 43, and 47, in the Public Body's Document Log.

[para 25] Personal information is defined in section 1(n). The relevant portions provide:

> *1 In this Act, …*
>
> > *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, …*
>
> *(viii) anyone else's opinions about the individual, and*
>
> *(ix) the individual's personal views or opinions, except if they are about someone else; … .*

[para 26] I have reviewed the severed information. I agree that with some minor exceptions the severed parts of the documents fall within one of the following

- personal information of persons other than the Applicant and not the Applicant's personal information,
- misfiled information unrelated to either the Applicant or the cytotechnology program, or
- information about subjects unrelated to the Applicant or her relationship with the Public Body

and therefore are not responsive.[2]

[para 27] The minor exceptions are:

- 000375 (this is similar to B-001 and B-002) – the signature on all three documents
- 000616 – the second entry in the bottom left margin
- 000634 – the material in the second paragraph (this was disclosed in any event in record 000172
- 000858 – the entry below the chart
- B-014 – B018 – the footer at the bottom of each of the pages
- B-023 – the heading.

These items are responsive. Four of them are not personal information, and there appears to be no basis for withholding them. The remaining two contain personal information relating both to the Applicant and to third parties. It is therefore necessary to consider if their disclosure would be an unreasonable invasion of the privacy of third parties under section 17 of the Act (see below).[3]

[para 28] Reference Number 53 contains documents (pages B-158 to B-164) that are identical copies of some of the documents listed in paragraph 24 above (for example, of the documents in Reference Number 1). They appear to have been mistakenly intermixed with documents for which legal privilege was claimed. The parts of these

[2] With Respect to Public Body's Reference Numbers 14 and 17, I note that the Applicant specifically questioned (in her rebuttal submission at page 17) whether the severed parts of these documents consist of third-party personal information, and I confirm that they do consist of such information.

[3] I find, in the part of this decision dealing with section 17 (below), that disclosure of these two items would not be an unreasonable invasion of the privacy of the third parties.

documents that are unresponsive are to be severed and withheld in the same manner as in Reference Number 1.

[para 29] I note that some of the records withheld as unresponsive include the Applicant's opinion about someone else (in Public Body's Reference Numbers 5 and 24). According to section 1(n)(ix) of the Act, this information is not the Applicant's personal information. Therefore, although the information records a statement made by the Applicant, it is not responsive to her request.[4]

Issue B: Is the information /records excluded from the application of the Act by section 4(1)(g) (questions used on an examination)?

[para 30] Section 4(1)(g) provides:

> *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:*
> …
> *(g) a question that is to be used on an examination or test … .*

[para 31] This exemption was claimed for the Public Body's Reference Numbers 6 and 27.

[para 32] I have examined the severed parts of the records for which this exemption is claimed. The severed parts are questions from an examination or test and the choices for the correct answer. The Public Body has provided evidence that these questions and possible answers are part of a multiple-choice question bank that is still in use in the program. Thus I accept they fall within section 4(1)(g), and are outside my jurisdiction. I make no order about these records.

[para 33] The Public Body's argument says that the Public Body provided the Applicant "with the parts of the records that contained her name, her marks, her circled answer choice (i.e., a, b, c, or d) and the hand-written notes that she had made". However, I note that the severing on the documents provided to me by the Public Body does not seem to have been done in a consistent manner, in that in some cases (questions 42 to 57 in both Reference Numbers), the Applicant's circled answer choice appears to be, in contrast to the Public Body's submission, also severed. The fact some of the answer choices were disclosed suggests that this disclosure would not prejudice the future use of the 'question bank', and that the severing should have been done consistently in such a manner that the answer-choices are disclosed.

[4] I also deal with this same information under section 17 of the Act. There, I come to the conclusion that even if I were to treat this as the Applicant's personal information, it is not separable from the personal information of the third party that is the object of the information, and that disclosure of the third party's information would be an unreasonable invasion of that person's privacy.

Issue C: Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 10(1) of the Act?

[para 34] Section 10(1) of the Act provides:

10(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 35] The Public Body has provided a highly-detailed list of the steps it took to clarify the Applicant's requests, to locate responsive documents, and to communicate the results of its efforts to her. The steps it outlined included a great many communications with the Applicant relative to the scope and status of her requests, fee issues, appointments for examinations, and explanations for withholding or severing records. The Public Body also retained an independent privacy consultant to conduct a review of the Applicant's file and to communicate with the Applicant with regard to any outstanding issues.

[para 36] The Public Body concedes that some documents were located in later searches that had not been found in earlier ones (but it says it provided these documents when they were found, and with respect to some of them, apologized for the omissions). It also acknowledges that involvement of the Information and Privacy Commissioner's Office at some points resulted in the provision of some information that had previously been severed. It acknowledges that a succession of officials handled the Applicant's file, making it harder to manage the file, and harder for the Applicant to know with whom she was dealing.

[para 37] However, the Public Body contends that the steps it outlined show that it was flexible in dealing with the Applicant relative to appointment times and scope of her requests, and that it made every reasonable effort to assist her.

[para 38] The Applicant remains dissatisfied with the Public Body's response. Her points include the following:

- She complains that the Public Body required that she provide two weeks' notice before giving her an opportunity to examine records, but that there is no such requirement in the Act. In my view this requirement for notice was reasonable to allow the Public Body to arrange for the examination.
- She complains that the Public Body sent certain correspondence by mail whereas most correspondence was sent by courier. (She seems to suggest this negatively impacted her ability to plan her examination of documents to coincide with a trip she was making to Edmonton.) I do not accept there was any intention on the part of the Public Body to interfere with the Applicant's ability to make travel plans in order to examine documents, or to compromise her planning in any other way.
- She complains about the timing of the provision of certain documents to her relative to the time of the beginning of the discussions about when she could

examine these documents. The precise reason why she is dissatisfied is unclear, and I can reach no conclusion adverse to the Public Body from this point.

- She says she requested a fee review to which the Public Body did not respond. The Public Body had declared a particular request for copies of records (Request P02-06-0061) to be abandoned on the basis the Applicant had not responded to a fee estimate (dated November 26, 2002) within the 30-day period prescribed by the Act. The Applicant says she sent a response, by regular mail, in which she stated that she was unable to pay, and provides a copy of her letter to this effect dated December 17, 2002 - before the expiry of the 30-day period. The Public Body says it did not receive this response within the prescribed time (but that it did receive a copy of the letter at a date (February 20, 2003) that followed the expiry of the 30-day period). The Public Body has treated the Applicant's series of information requests with seriousness and in a professional manner. I do not accept that it would have received a timely response but denied this in order to avoid meeting its obligations under the Act. Thus while I accept that the Applicant believes she sent the letter requesting a fee waiver, I also accept the Public Body's evidence that it did not receive this letter within the prescribed time. Thus I accept the Public Body's contention that the Act entitled it to treat Request P-02-06-0061 as abandoned because the Applicant did not respond to the fee estimate within 30 days.
- With respect to Request P02-10-0102, the Applicant complains that she asked for only 13 records in this request and that 19 were provided, therefore she cannot know if these are the "right" documents, that is, those referenced in a chart that accompanied correspondence to her from the Public Body of July 18, 2002; however, the set of documents referred to by the Applicant in support of this complaint reveal only 13 pages – the number she requested. With respect to Requests P02-10-0103; P02-10-0104; P02-10-0105, the Applicant complains that she received more documents than she asked for and thus that she cannot know if the Public Body is "inflating the page numbers" and which documents are duplicated. However, the Public Body in each case sent a letter explaining what it was providing.
- The Applicant complains that the backs of many pages were severed, referring to the Public Body's correspondence to her which indicates this. I note that some of the Public Body's correspondence to the Applicant refers to the backs of pages, and to the fact they were severed (meaning parts of them that were unresponsive were blanked-out), but this does not mean, if that is what the Applicant thinks it means, that the backs of pages were not provided.

[para 39] None of the Applicant's specific complaints about the Public Body's actions persuade me that it failed in its duty to assist her under section 10(1) of the Act. I find that the Public Body met this duty.

Issue D: Did the Public Body conduct an adequate search for responsive records as required by section 10(1) of the Act?

[para 40] The Public Body has provided a detailed list of the steps it took to locate responsive records. It says it directed several searches of its departments and that it challenged the departments to ensure the searches were thorough.

[para 41] As already noted, it concedes that some records were located in later searches that had not been found in earlier ones, but it says it provided documents as they were found.

[para 42] The Applicant still contends that all available records have not been provided. She points, in both her initial submission and her rebuttal, to particular documents, often those supplied to her in earlier requests, as demonstrating that further documents exist but were not supplied. Due to the high volume and complexity of these suggestions, I will deal with them separately in an Appendix to this decision (Appendix A). For the most part, they are based on misinterpretations of the contents or intended meaning of these referenced documents, and do not satisfy me that there were documents that were not located and provided.

[para 43] There is one exception to this general conclusion. The Applicant says that she provided her instructor with a document which she refers to as a 'signed appeal form' at the time she requested an internal review of her case readings. The Public Body responded to this part of the Applicant's request by saying that the Applicant "never launched a formal case appeal, therefore there is no form". The Applicant contested this in her subsequent correspondence of July 30, 2002, by saying she knows what she submitted to her instructor, and that she had put forward an appeal form. The Public Body did not provide evidence from the instructor that no 'form' was provided. Thus I accept the Applicant's uncontradicted evidence that she provided her instructor with a document which she refers to as a 'signed appeal form' at the time she requested the internal review. This 'form' was not found, and it is possible it was not retained. However, I find that the fact this single document was not found or produced does not constitute a failure by the Public Body to conduct an adequate search.

[para 44] Thus I am satisfied the Public Body took all reasonable steps to identify and locate responsive documents in its possession. I find that the Public Body conducted an adequate search for responsive records.

Issue E: Does section 17 of the Act (personal information) apply to the records/information?

[para 45] The relevant parts of section 17 provide as follows:

> *17(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 …*

(g) the personal information consists of the third party's name when

(i) it appears with other personal information about the third party,… .

(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 the Government of Alberta or a public body to public scrutiny,…

(c) the personal information is relevant to a fair determination of the applicant's rights,…

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

(i) the personal information was originally provided by the applicant.

[para 46] For most of the information for which the Public Body claimed reliance on section 17, I have already held that the information is unresponsive. This includes most of the severed information in Public Body's Reference Numbers 1 to 5, 7 to 8, 11 to 17, 19, 23 to 26, 30, 42, and 47. It is not necessary, therefore, for me to deal with this information under section 17.

[para 47] I must, however, deal with two items of information that I found were responsive, and also contained the personal information of third parties (see above at paragraph 27).

[para 48] The first item (the signature on records 000375, B-001 and B-002) triggers the presumption under section 17(4)(1(g). However, the person who made the notes to which the signature is attached did so in the course of performing her duties, which is a factor weighing in favour of disclosure. The author of the notes is also already known to the Applicant by reference to their contents. Therefore I find it would not be an unreasonable invasion of personal privacy to disclose this signature.

[para 49] The second item (record 000634) was disclosed in record 000172, and on this account I find it could not be an unreasonable invasion of personal privacy to disclose it.

[para 50] I will also deal with two items of information under this heading that I have already dealt with as unresponsive.

[para 51] The first is the Applicant's statement of her opinion about someone else (as severed from the Public Body's Reference Numbers 5 and 24). I have concluded above that according to the definition in section 1(n)(ix) of the Act, this statement, though made by the Applicant, is not her personal information – rather, it is the personal information of the person about whom the statement was made. Therefore, since the Applicant asked only for her own personal information, this item of information is unresponsive according to the definition. However, the Applicant has in her rebuttal submission specifically complained that this item of information was not disclosed to her. Therefore, for greater certainty relative to my conclusion that this item should be withheld, I will also treat it as though it also contained the Applicant's personal information.

[para 52] In my view, this information cannot be disclosed, by reference to section 17 of the Act. Even if it contains the Applicant's personal information, it is also the personal information of the third party about whom the statement was made, and is intermingled with that information in such a way that it cannot be severed. For the reasons that follow, disclosure of the information would be an unreasonable invasion of the privacy of the third party under section 17 of the Act.

[para 53] In the item of information in question, the name of the third party appears together with other personal information about that person. Thus section 17(4)(g)(i) creates a presumption that disclosure would be an unreasonable invasion of the personal privacy of the third party.

[para 54] There are no factors in section 17(5) that favour disclosure such as would outweigh the presumption arising under section 17(4)(g)(i). Though the Applicant complains of unfair treatment by the Public Body, the information in question could not help her to subject its activities to scrutiny (even assuming, which I do not accept, that the activities of the Public Body have been called into question[5]). Nor could the information help her to vindicate her rights. Further, the Applicant already knows the information, as she herself made the statements that are recorded in the document. Lastly, the information could unfairly damage the reputation of its subject.

[para 55] Thus I conclude that the severed information in the Public Body's Reference Numbers 5 and 24 cannot be disclosed by reference to section 17.

[para 56] The second category of information is the names of other people who were enrolled in the cytotechnology program. This information appears in many of the severed records, Arguably, the names of her fellow classmates is recorded information about the Applicant in that it identifies people with whom she interacted as classmates. If

[5] In Order 97-002, the Commissioner stated that in order to fulfill what is now section 17(5)(a), there must be evidence that the activities of the Government of Alberta or a public body have been called into question which necessitates the disclosure of personal information.

this is so, however, the comments just made with respect to Public Body's Reference Numbers 5 and 24 apply. As with the former information, this is also third party personal information to which the presumption under section 17(4)(g)(i) applies. There are no factors favouring disclosure, and the Applicant already knows the information. Therefore all this information must also be withheld under section 17.

[para 57] Because section 17 is a mandatory provision, I must also deal under this section with a record that contains the personal information of third parties, for which section 17 was not claimed. The Public Body withheld Reference Number 38 on the basis that it was the subject of a third party's legal privilege (that of the Public Body's employee against whom the Applicant took legal action). I do not accept that this record was privileged information of the third party (see below at paragraph 74). However, this document contains personal information of the third party employee, as well as of another third party. The presumption in section 17(4)(g)(i) applies to this information, and there are no factors favouring its disclosure under section 17(5). Accordingly, I find disclosure of this record would be unreasonable invasion of the personal privacy of these third parties, and it must be withheld under section 17 of the Act.

Issue F: Did the Public Body properly apply section 24 of the Act (advice) to the records/information?

[para 58] The Public Body applied section 24(1)(a) to six lines of information in its Reference Number 21, and to one page of the records in its Reference Number 29. I intend to deal with this information and record under section 27(1)(a) instead of section 24. (See the discussion below.)

Issue G: Did the Public Body properly apply section 25 of the Act (economic interest of a Public Body) to the records/information?

[para 59] Section 25(1) of the Act provides:

> *25(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 …, including the following information:*
>
> *(c) information the disclosure of which could reasonably expected to*
>
> *(i) result in financial loss to…*
>
> *a public body; … .*

[para 60] The Public Body relied on section 25(1)(c)(i) to sever its account and credit information with a courier company used to send correspondence to the Applicant (in Public Body's Reference Number 35).

[para 61] I accept the Public Body needs to keep such account and credit information confidential as a matter of sound business practice, to avoid other persons charging courier services on its account, and that it properly exercised its discretion to withhold the information for this reason.

[para 62] I note in addition that this information is not the Applicant's personal information, and thus is not responsive to her request.

Issue H: Did the Public Body properly apply section 27(1) of the Act (privileged information) to the records/information?

[para 63] The relevant provisions of section 27(1) are as follows:

> *27(1) The head of a public body may refuse to disclose to an applicant*
>
> *(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege,, …*
>
> *(c) information in correspondence between …*
>
> *iii) an agent or lawyer of a public body,*
>
> *and any other person in relation to a matter involving the provision of advice or other services … by the agent or lawyer.*

[para 64] The Public Body withheld the records in Reference Numbers 9, 20, 21, 28, 29, 40, 44 to 46, 48 to 50, and 52 on the basis of section 27(1)(a).

[para 65] It also withheld the records in Reference Number 28 on the basis of section 27(1)(c)(iii).

[para 66] The Public Body argues that all of these records related to pending litigation between itself and the Applicant. It claims, on this account, that some of the records may be withheld on the basis of litigation privilege, and some may be withheld both on this basis, and on the basis of solicitor-client privilege.

[para 67] Litigation privilege does not apply to solicitor-client communications. Rather, it applies to third-party communications - papers and materials created or obtained by the client for the lawyer's use in existing or contemplated litigation, or created by a third party or obtained from a third party on behalf of the client for the lawyer's use in existing or contemplated litigation: See Order 97-009, citing *Waugh v. British Railway Board*, [1979] 2 All E.R. 1169 (H.L.). The Public Body cannot rely on litigation privilege (as it claimed it could do for its Reference Numbers 40, 44, 45, 46, 48, 49, 50 and 52) with respect to communications between officials of the Public Body and

its legal advisors. Furthermore, litigation privilege may be claimed only while litigation is pending. Once litigation has been concluded, the privilege no longer applies. (See Order 98-017 at paragraph 52; Order 2001-025 at paragraph 61). In this case, the Applicant's legal action against the Public Body and its employee has been dismissed.

[para 68] However, all of the communications listed in paragraph 64 above were made for the purpose of seeking or providing legal advice, relative either to the Applicant's appeal to the Public Body about her required withdrawal, her information requests, or to the litigation then-pending. All of them were communications or records of communications between members of the Public Body and either a lawyer retained by the Public Body to act for it in the legal claim against it, or its corporate counsel (or the corporate counsel acting as agent for the outside counsel). As set out in *Solosky v. The Queen*, [1980] 1 S.C.R. 821 (discussed in Order 96-015), solicitor-client privilege applies to:

(i) a communication between solicitor and client,
(ii) which entails the seeking or giving of legal advice, and
(iii) which is intended to be confidential by the parties.

By reference to their content, all of these communications were implicitly confidential. Therefore all the documents fall under section 27(1)(a) of the Act.

[para 69] I also accept the Public Body's submission that its Reference Number 28 falls within the terms of section 27(1)(c)(iii), as it is a communication by a lawyer of the Public Body, relative to the provision of advice or services by the lawyer.

[para 70] The Public Body relied on section 27(2) (rather than 27(1)(a)) to withhold records B-149 and B-150 in Reference Number 53. In my view, however, the legal advice in these records was being given to the Public Body rather than to some other person. I find, therefore, that these records fell under section 27(1)(a) (rather than section 27(2)).

[para 71] With respect to its exercise of discretion under section 27(1), the Public Body submitted that revelation of the legal advice could have prejudiced its ability to defend itself in the litigation against it. I agree that legal advice about what action to take in one's dealings with someone who is, or may become, on the other side of a legal dispute, relative to the subject matter of the dispute, may lose its utility if it is disclosed. Withholding documents that relate to obtaining legal advice in order to preserve the utility of that advice is proper, and consistent with the purposes of the Act.

Issue I: Does section 27(2) of the Act (privileged information of a person other than a public body) apply to the records/information?

[para 72] The Public Body relies on section 27(2) to withhold documents 38, 39, 41, 51 and 53. It says that all these records are subject to litigation privilege and meet the criteria of section 27(1)(a), and all of them are the privileged information of the Public Body's employee - a third party in that she was also sued by the Applicant in her individual capacity.

[para 73] I have reviewed these records.

[para 74] With respect to Reference Number 38, while I agree it was a third-party communication, I do not accept that this document was prepared for the lawyer's advice and use in litigation. It was prepared to communicate certain facts to the individual to whom it was addressed. This document cannot, in my view, be withheld on the basis of section 27(2). I have already held, however, that this record must be withheld on a mandatory basis under section 17.

[para 75] With respect to Reference Numbers 39 and 51, I do not accept the Public Body's submission that these records are the subject of litigation privilege. In my view these records are not third-party communications. They are, however, communications between the third party and the third party's legal advisers, providing advice about steps that are necessary for the litigation process. As such, they are subject to solicitor-client privilege of a third party, and must be withheld under section 27(2).

[para 76] With respect to Reference Number 41, and pages B-148 and B151 to B-157 of Reference Number 53, these documents have a dual character. The Applicant's legal claim was against both the Public Body, and against an individual who was an employee of the Public Body. Information about the facts and circumstances sought from and given by the employee for the purpose of obtaining and providing legal advice, and the advice provided, was for a dual purpose. The same correspondence was sent both for the defence of the claim against the Public Body, and for the defence of the claim against the individual. With respect to the former claim, the employee and the Public Body can be equated as the client, and with respect to the latter, the employee is the client, but in either case, the communications are directly between the client and the legal adviser. Thus the records are not third-party communications, and cannot be the subject of litigation privilege.[6] Again, however, because these records are communications between a client and the client's legal adviser with respect to the seeking or giving of legal advice, all of them are subject to solicitor-client privilege. They can be withheld on a discretionary basis under section 27(1)(a) insofar as they are the privileged information of the Public Body, and they must be withheld under section 27(2) on the basis that they are the privileged information of the third party.

[para 77] The same point – that section 27(2) applies on a mandatory basis because the information is also the privileged information of the third-party employee – also applies to the following records (already dealt with under section 27(1)(a)): Reference Numbers 40, 44, 45, 46, 48, 49, 50.

Review 2536 (Public Body's file reference C-02-06-0076)

Issue J: Did the Public Body properly refuse to correct the Applicant's personal information, as authorized by section 36 of the Act?

[6] As already noted in paragraph 67, the litigation has in any event been concluded, and the privilege can no longer be claimed.

[para 78] The relevant parts of section 36 provide:

> *36(1) An individual who believes there is an error or omission in the individual'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)** Despite subsection (1), the head of a public body must not correct an opinion, including a professional or expert opinion.*
>
> ***(3)** If no correction is made in response to a request under subsection (1), or if because of subsection (2) no correction may be made, the head of the public body must annotate or link the personal information with that part of the requested correction that is relevant and material to the record in question.*

[para 79] In this request the Applicant had asked the Public Body to change the way entries are made in the grid box used for tabulating comparisons of a student's slide readings or classifications and those of a reviewer - in particular, how 'codes' that reflect the similarity or dissimilarity between the student's reading or classification, and that of the reviewer, are assigned. She bases this request on the idea that other institutions or organizations apply different methods for determining accuracy[7] in slide reading of cytotechnologists, and that the Public Body should, or is required to, apply these methods, rather than the ones it applied in her case and that of other students in her program.

[para 80] The Public Body replies to some of the Applicant's particular suggestions for alternative methods of tabulation, by pointing out that some of them do not relate to standards for training institutions, but rather, relate to standards applied to laboratories to ensure patient care is not compromised. It also points out the method of evaluation used by the Public Body was approved by the body that accredits the program (the Canadian Medical Association Conjoint Committee on Accreditation), and has been in use for over seven years.

[para 81] Section 36(1) of the Act permits requests for corrections to personal information. In my view the crux of this request is not based on an alleged error or omission in the Applicant's personal information. It is based on an alleged error in how the Public Body treated the personal information (the Applicant's slide readings) – in the way the Public Body assigns the codes that reflect how a student's slide readings compare with the readings of the reviewer. It is true that if the Public Body were to change the way codes are assigned, but applied the same formula for calculating accuracy, this would result in different scores for the Applicant based on the same

[7] With respect to the weekly and 10-week summaries, there is no difference, in the way I use the term 'accuracy', from 'overall accuracy'. I refer in either case to the score that results when the formula at page 24 of the Clinical Training Manual is applied, or to the composite 10-week score. Page 19 of the Clinical Training Manual uses the term 'accuracy' to refer to a different percentage score, but that score is created for the purpose of determining a component of the final grade, and has no relevance here.

readings. However, treating the Applicant's personal information (her readings) in a different way – changing the methods for assigning codes - is not correcting her personal information. I accept the Public Body's argument that what the Applicant requests cannot be the subject of correction under section 36 of the Act.

[para 82] Furthermore, the legislation does not permit the Applicant, nor does it give the power to me, to instruct an institution engaged in training about how to set up its evaluation processes. According to section 36(2) of the Act, the head of a public body *must not* correct an opinion, including a professional or expert opinion. The methods for tabulating performance results (assigning 'codes'), and calculating performance scores, are matters for the professional scientific and educational expertise of the Applicant's training instructors and other professionals. Which tabulation and calculation methods are to be applied to evaluate a student's competency is a matter of such opinion. Therefore which method is applied cannot become the subject of correction under the Act (though errors of recording or errors of mathematical calculation conceivably could be[8]). To put this another way, the calculated scores, based on the tabulated data, are a professional or expert opinion about whether the Applicant has met the necessary skills requirements for her continuation in the training program.

[para 83] Most of the Applicant's submissions under this heading appear to be efforts to demonstrate that there is a more proper or better way to assign codes for assessing accuracy in GYN slide reading, or one that conforms to more general standards. I cannot accept such submissions as support for the Applicant's request for correction of her personal information. I have examined each of her submissions closely to determine whether they are aimed at the Public Body's method for assigning codes. This has been necessary because, intertwined with the Applicant's insistence that the codes be assigned in a different manner, there is occasionally a suggestion that the Public Body's method of assigning codes was not properly applied in her case. In some parts of her argument, she suggests that the Public Body was not consistent relative to how codes are to be assigned; (thus she thinks it assigned codes in her case in a way that was contrary to their own methods). Throughout her materials she also alleges that the charts recording her results, on which her accuracy scores were based, were 'falsified'. This would potentially, (depending what the Applicant means by 'falsified'), be a matter subject to correction. I wanted to identify and look closely at such assertions.

[para 84] The results of my review show that the Applicant's issue is with the assignment of codes 'C' and code 'D' to particular discrepancies – ones where either the student or reviewer has classified the case as 'ASCUS'[9] and the other has classified it as either higher or lower in terms of its indication of disease.[10] The Public Body assigns the codes 'C' and 'D' to such cases (depending whether they are 'false positive' or 'false negative', or, applying different terminology also used by the Public Body, on whether

[8] As already noted, such corrections have already been made pursuant to the Applicant's requests.
[9] This refers to 'atypical squamous cell of unknown significance'.
[10] I am not sure if the Applicant has the same objection where the classification involves 'AGUS' (atypical glandular cells of unknown significance), but this is irrelevant as my conclusions would be the same for those types of readings as well.

they are ‘significant overcalls’ or ‘significant undercalls’). When the formula for calculating accuracy is applied, the total number of code ‘C’s and ‘D’s are subtracted in a way that lowers the percentage score. In the Applicant’s view, in the case of a discrepancy involving ‘ASCUS’, the student’s error is not a ‘false’ reading (either ‘false positive’ or ‘false negative’) – it is merely an overcall or an undercall. Therefore, she contends, it should be given a code ‘B’, which is to be assigned for “marginal error in judgment not significantly affecting the management of the case”, rather than code ‘C’ or code ‘D’. This latter method of assigning codes would result in higher scores because ‘B’ readings do not lower the scores for accuracy (when the formula is applied) in the same way that ‘C’ or ‘D’ readings do.

[para 85] In support of her idea, the Applicant has presented material which in her view demonstrates either that the Public Body’s practice in this regard is internally inconsistent, or that it fails to follow standards or practices of other institutions or organizations that are superior in her view, or that would dictate a uniform practice. With respect to the latter, in support of her position, she offers excerpts from extraneous materials (not forming part of her course materials) – definitions of particular terms, or discussions of various other cytology-related topics, and replies from persons involved in the field to whom she posed questions. She says that the Public Body continues its practice “despite all literature to the contrary”, and that “there are no definitions [referring to the definitions from alternate sources] using overcalls and undercalls to calculate accuracy”. In support of her idea that uniformity is required, she refers to excerpts from the websites of some cytology-related associations.[11]

[para 86] I will deal first with the Applicant’s suggestion that there is an internal contradiction in the Public Body’s approach to the code assignment issue.

[para 87] In a May, 2002 query to the Public Body (consisting of written and telephone communications), the Applicant asked whether the D codes in rows 4 to 11, column 3 in the Gyn cytology evaluation sheets are ‘detected Ds’ or ‘undercall Ds’. The Public Body’s officials replied, on May 22, 2002, that “the Ds in question are ‘undercall Ds’ ”. The Applicant seems to have taken this reply as an indication that from the Public Body’s standpoint, the spaces in the specified row/column are for undercalls and not for ‘false negatives’. The Applicant thinks that in consequence, the Public Body should assign these particular spaces for ‘undercall Ds’ the code of ‘B’ rather than ‘D’.

[para 88] The Applicant goes on to point out various indicators, throughout the Public Body’s materials and in its practice, that it assigns code ‘D’ to both undercalls and

[11] These include the Canadian Society of Cytology Guidelines for Practice and Quality Assurance in Cytopathology, as well as the mission statement of the Society; a document that was on the website of the Manitoba College of Physicians and Surgeons entitled “Guidelines and Statements for Cytology Standards of Accreditation”; a statement of the goals of the Canadian Society for Medical Laboratory Science; and some guidelines for the litigation context taken from the College of American Pathologists. While some of these documents contain statements that one of the purposes of the respective organization is to promote uniformity of standards, none of them relates to standards of assessment for training, and none of them makes uniformity mandatory.

false negatives, (and code ‘C’s to both overcalls and false positives). The Applicant sees this as an impermissible contradiction. In her view, both terms cannot apply.

[para 89] However, the Clinical Training Manual makes it perfectly clear (at page 22) that where a student or reviewer reads/classifies a case as ‘ASCUS’ or ‘AGUS’, and the reviewer reads it as lower or higher, it will be assigned a code ‘C’ or a code ‘D’ – in other words, that this is regarded as a *significant overcall or significant undercall*. The Public Body in fact uses the term ‘undercall’ and ‘false negative’ in the context of student accuracy assessments *interchangeably* (as demonstrated in the Clinical Training Manual at pages 21 and 22) [12]. Though this use of more than one term to describe the same phenomenon (that of a significant difference between two readings) may, as it did for the Applicant, cause some confusion, it is not an internal contradiction.

[para 90] The Applicant is thus mistaken to believe that by affirming that the spaces in the specified column/row are for undercalls, the Public Body’s reply to her query was meant to indicate that these spaces are not for ‘false negatives’. She is also mistaken in her idea that assigning code ‘D’s and code ‘C’s to classifications involving ‘ASCUS’ is wrong because it means assigning the same code to *both* undercalls/overcalls and false positives/false negatives. According to the Clinical Training Manual, and the Public Body’s practice, a significant undercall *is* a false negative and a significant overcall *is* a false positive. Thus I reject the idea that the Public Body’s assignment of codes in the Applicant’s case cannot be supported because the Public Body was not properly applying its own methods in her case.

[para 91] In support of her other arguments relative to assigning codes, the Applicant cites definitions or discussions taken from a variety of sources. She offers them in support of her idea that the Public Body should use the method that she suggests for assigning codes, rather than the one it currently uses. As I have said, I am not empowered to order the Public Body to make such a change. I do not, therefore, need to rule on the merits of her various suggestions.

[para 92] However, I have included a review of the suggestions and materials she presents so the Applicant may know they were considered. My review indicates that none of them has any direct relevance to the matter of comparing a student’s classification of cases to that of a reviewer’s classification. For example, the Applicant cites a definition of ‘false positive’, used in the context of a discussion (in a reply from a physician at Calgary Laboratory Services to a query by the Applicant) of slide classifications made by practicing cytologists when compared with biopsies relative to the same patient,. The Applicant points out that this definition does not “include the category of ASCUS”. I note first that the issue of whether or not a patient actually has a disease as indicated by a biopsy relative to whether a cytologist read a slide as indicating this, is different from whether a student and reviewer both classified the same case (slide readings) in the same manner. I note further that the referenced discussion does not either specifically ‘exclude’ or ‘include’ ‘ASCUS’ – it simply doesn’t mention it: the correspondent gives a different example of a discrepancy that would constitute a ‘false positive’ in the sense he uses this

[12] Similarly, it uses ‘overcall’ and ‘false positive’ interchangeably.

term – normal versus LSIL (low-grade dysplasia), but does not say whether a reading of normal versus a reading of 'ASCUS' would also constitute a false positive.

[para 93] The Applicant makes several additional submissions, and provides materials in support, to try to show that some other practice for assigning codes should be used. Because they are numerous and detailed, I attach these submissions, and my comments on them, as an appendix (Appendix B) to this decision. Though I do not need to decide this, I note that none of them is persuasive.

[para 94] My conclusions about what the Applicant is arguing enable me to deal with the contention she makes, throughout her submissions, that her charts were 'falsified'. The Applicant believes that where a discrepancy between one of her classifications and that of a reviewer involved 'ASCUS', but was assigned a code 'C' or 'D', this is a 'falsification'. In some places in her submissions, she refers to particular charts that tabulate her case results, pointing to instances in which her instructor crossed out 'B's and substituted 'C's or 'D's. In other places she refers to the charts more generally as having been 'falsified' by reference to the Public Body's code-assignment practice.

[para 95] Based on my review of the Applicant's arguments, I do not accept that the Public Body's assignment of code 'C' and code 'D' for cases involving the 'ASCUS' classification is a 'falsification' – it is simply an application of the usual rule, as set out in the Clinical Training Manual at pages 21 and 22. Therefore, there is no basis on which to uphold the request to correct the so-called 'falsifications'.

[para 96] The Applicant also contends that the Public Body's practice of assigning codes was different for her than for other students in the program. She says the Public Body defined 'ASCUS' as a 'false positive' and 'false negative' for her statistics, while other students were only penalized .2 demerits. However, the Applicant does not refer me to anything that substantiates this suggestion. The Public Body has indicated, and I accept, that all students' readings are treated in the same manner, that is, in accordance with the directions in the Clinical Training Manual.

Review 2550 (Public Body's file reference C-02-07-0079)

Issue K: Did the Public Body properly refuse to correct the Applicant's personal information, as authorized by section 36 of the Act?

[para 97] In this correction request, the Applicant asked the Public Body to correct the 'accuracy' or 'overall accuracy' scores for the Applicant's 10-week evaluations (the composites of the 10 weekly summaries), in particular, the final one. In her original request (and in her submissions to this office) the Applicant put forward several theories as to why this should be done, and alternate percentage scores. The Public Body refused to make the requested corrections, and the Applicant asked for a review of that decision.

[para 98] I have already dealt, in the preceding section, with the suggestion that the Public Body should correct the Applicant's accuracy scores on the basis that its assignment of codes for particular readings was in error. I rejected this suggestion.

[para 99] However, the Applicant has also done various additional re-calculations of her scores, and suggested that they should replace the calculations made by the Public Body.

[para 100] I have, again, examined the Applicant's submissions with respect to calculations of her scores, and supporting materials, in detail, to determine whether they are directed at the evaluation process itself, or at some misapplication of it in the Applicant's case.

[para 101] One of the Applicant's primary submissions is that the Public Body should accept her calculations of her accuracy that she did according to what she describes as the 'CSMLS' method or guidelines. The source of the formula she applies is a document entitled "Cytology Standards of Accreditation – 1425", which was taken from the website of the University of Manitoba, and which appears to have emanated from, or had some association with, the Manitoba College of Physicians and Surgeons. The document appears to relate to the accreditation of cytology laboratories; (it is not clear from the face of the document or from the Applicant's submissions to which laboratories these standards apply). It imposes requirements on laboratories, including that of measuring performance indicators of practicing cytotechnologists. The method of calculation cited by the Applicant, and relied on throughout her submissions, is the means by which the particular laboratories to which these standards apply are to assess a cytotechnologist's overall accuracy rate relative to biopsy results, according to a system that subtracts 1 to 3 points (from a total of 3 per case) for discrepancies. This is to be done for the purpose of quality assurance and to indicate the necessity for performance enhancement for cytotechnologists who do not meet the standard.

[para 102] This submission by the Applicant is essentially that a different formula should be applied to her slide readings to determine her accuracy score than the one that is currently used by the Public Body.[13] In addition to the 'CSLMS' method, the Applicant refers to a number of additional calculations she has made of her accuracy for the period at issue (as well as for the earlier evaluation period). Again, I have reviewed these so the Applicant may be assured her arguments were considered. Because they are numerous and detailed, I attach these submissions and calculations, and my comments on them, as an appendix (Appendix C) to this decision. Each of these alternative calculations is based on the Applicant's application of some formula or method for assessing accuracy

[13] The Applicant has calculated her own accuracy scores by first creating a classification system that converts her readings to the readings that are used by the formula, and then by applying the formula. She has recalculated record 001039 (for the weeks September 6 to November 13) to show her accuracy as 92.82% [Applicant's Tab 21 p. 4]; In Tab 27 pp.1-6, referred to in the Applicant's point number 56, her recalculation for the same period is 92.58%, and her recalculation for the weeks June 29 to September 4 is 91.35%.

that is different from the one currently used by the Public Body. Indeed the Applicant's arguments in favour of the correction include the following statements:

> [The Public Body] developed its own standards to calculate my accuracy.

and

> [The instructor's] own admission uses standards set by [the Public Body]. These are not accredited standards.

[para 103] As I have said earlier, I do not have the power under the legislation to direct that some other formula be used. What the Applicant requests in both Review 2536 and Review 2550 cannot be the subject of correction under section 36 of the Act. To put this another way, section 36 is not applicable to either of these requests.

IV. ORDER

[para 104] I make this order under section 72 of the Act.

[para 105] I have no jurisdiction to make an order with respect to most of the records severed by the Public Body in reliance on section 4(1)(g) of the Act (questions used on an examination). However, some records were improperly severed, as described in paragraph 33, and this must be corrected.

[para 106] I find the Public Body made every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 10(1) of the Act

[para 107] I find the Public Body conducted an adequate search for responsive records as required by section 10(1) of the Act.

[para 108] With the exception of the information listed at paragraph 27, which is to be disclosed, I find the Public Body properly withheld or severed information on the basis that it was unresponsive, that disclosure would be an unreasonable invasion of personal privacy, or that it was the privileged information of the Public Body or of a third party. A rotation schedule mistakenly included at the end of Public Body's Reference Number 53 is to be severed in the same manner as was done in Reference Number 1.

[para 109] I uphold the Public Body's decisions to refuse to change the Applicant's performance results and scores as she requested in Review 2536 (Public Body's file number C-02-06-0076**)** and in Review 2550 (Public Body's file reference C-02-07-0079).

Frank Work, Q.C.
Information and Privacy Commissioner