

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2003-020**

April 15, 2004

**CALGARY POLICE SERVICE**

Review Number 2651

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

**Summary:** The Applicant made a request under the *Freedom of Information and Protection of Privacy Act* for access to all personal information collected by the Calgary Police Service, from January 1, 1998 to September 13, 2002, in regard to his employment application. The Applicant also requested access to any opinions about the Applicant made by the Calgary Police Service or by other individuals.

In response to the access request, the Calgary Police Service provided access to only a portion of the 264 pages of responsive records. At the time of the inquiry, 131 pages of records remained at issue. The Calgary Police Service cited sections 17 (unreasonable invasion of privacy), 19 (confidential evaluations), 20(1)(c) (harm to the effectiveness of investigative techniques and procedures), 20(1)(d) (confidential source of law enforcement information), 20(1)(m) (harm to security of property or system) and 26 (testing and auditing procedures and techniques) of the *Freedom of Information and Protection of Privacy Act* as its authority to withhold the records.

The Adjudicator held that the Calgary Police Service did not properly withhold some of the records at issue and ordered the Calgary Police Service to disclose those records to the Applicant. The Adjudicator also found that the Calgary Police Service did not fulfill its duty under section 10 when it initially responded to the access request. The Adjudicator found that the Calgary Police Service did not properly identify, on the Applicant's copy of the records, which portion of the records were severed and the

section number that it used as its authority to sever the records. In addition, the Adjudicator found that the Calgary Police Service did not provide a clear photocopy of a number of records.

The Adjudicator ordered the Calgary Police Service to provide the Applicant with a complete copy of the severed records that were originally provided to the Applicant in response to the access request. The Adjudicator ordered the Calgary Police Service to identify, on these records the portion that was severed and the section numbers that the Calgary Police Service claimed as its authority in this inquiry to withhold the records. The Adjudicator also ordered the Calgary Police Service to provide, as part of this copy, a better photocopy of several records.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c.F-25, ss. 1(n), 10, 17, 19, 20(1)(c), 20(1)(d), 20(1)(m), 26, 72.

**Authorities Cited: AB:** Order 98-021

## I. BACKGROUND

[para 1] On August 17, 1999, and on February 26, 2001, the Applicant applied for employment as a police officer with the Calgary Police Service (the “Public Body”). The Applicant was not successful in his applications.

[para 2] On September 17, 2002, the Public Body received an access request from the Applicant under the *Freedom of Information and Protection of Privacy Act* (the “Act”). The Applicant requested access to all personal information collected by the Public Body, from January 1, 1998 to September 13, 2002, in regard to his employment application. The Applicant also requested access to any opinions about the Applicant made by the Public Body or by other individuals.

[para 3] On November 26, 2002, the Public Body responded to the Applicant’s access request and provided the Applicant with a portion of the 264 records that were responsive to the request.

[para 4] On January 27, 2003, the Applicant requested a review of the Public Body’s decision. As a result of mediation, the Public Body released 10 additional pages in their entirety and one additional severed page to the Applicant. At the time of the inquiry, 131 pages of records remained at issue.

[para 5] During the inquiry the Public Body submitted an initial submission consisting of an open and an *in camera* portion which contained a copy of the records at issue (“initial copy of the records”). The Public Body did not submit a rebuttal. The Applicant submitted an initial submission and a rebuttal.

[para 6] In addition, in response to requests by this Office, the Public Body submitted two supplemental submissions to this Office. The first supplemental submission was submitted on November 10, 2003 and the second was submitted on January 9, 2004. The Public Body also submitted, as part of the second supplemental submission, another set of records which included all of the records previously disclosed to the Applicant as well as all of the records that remained at issue (the “second copy of the records”).

## **II. PRELIMINARY ISSUE – Did the Public Body Fulfill its Duty to Assist Under Section 10 of the Act?**

[para 7] On November 26, 2003, the Applicant wrote to this Office stating that there was a discrepancy between the records that the Public Body claims to have disclosed and the records the Applicant actually received. The Applicant stated that a number of pages were completely blank and that several pages did not have a page number.

[para 8] In response to these concerns raised by the Applicant, on December 8, 2003, I wrote to the Public Body and to the Applicant. I asked the Public Body to provide me with a copy of all records responsive to the access request. In addition, I asked the Public Body to provide its views, by way of a supplemental written submission, on how the apparent discrepancies may have occurred. I also asked the Applicant to provide a full copy of the records that the Applicant had received from the Public Body.

[para 9] After reviewing the Applicant’s set of records I found that the Public Body did not assign a page number to the front page of records 48, 179, 182 and 194 and did not assign a page number to the back page of any of the records where information was contained on both sides. I also found that the Public Body did not clearly identify, on the Applicant’s copy of the records, the portion of each record that was withheld, nor did it clearly identify the section number that was applied to each severed portion.

[para 10] In addition, I found that a number of the records disclosed to the Applicant were illegible and that the Public Body did not take appropriate care in providing the Applicant with a copy of these records. I found that the Applicant’s copy of records 134, 135, 135A, 136, 136A, 153, 153A, 154 and 154A either contained blank portions or contained very faint writing. On these records the Public Body stamped the notation “best copy possible” which indicated that the Public Body was unable to provide the Applicant with a better copy. However, the Public Body was able to provide me with a more legible copy of these same records. I believe that the Public Body could have provided the Applicant with a copy of records that was similar in quality to that provided to me.

[para 11] For clarification, I note that the Public Body also stamped the notation “best copy possible” on records 137, 137A and 138. However, after closely reviewing

these records, I did not find that any of the information on these records was illegible. It appears that the Public Body placed this notation on these records in error.

[para 12] I also found that the Public Body did not provide the Applicant with a proper copy of record 113. This copy contained a photocopy of a post-it note which covered the portion of the record beneath it.

[para 13] Section 10 states that the head of the Public Body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely. Given my findings above, I find that Public Body did not fulfill its duty under section 10. I intend to order the Public Body to provide the Applicant with a new copy of the severed records that are at issue in this inquiry. This set of records should clearly identify, on each record, the portion of the information that was severed and the section number that the Public Body used, in this inquiry, as the authority to sever the information. One way to clearly identify the severed portion would be to draw a box around the portion of the page that was withheld and to write the section number within that box.

[para 14] In addition, I intend to order the Public Body to provide the Applicant with a better copy of several of the records. The Public Body has already provided the Applicant with a better copy of records 135 and 135A. As such, I will not require the Public Body to provide these records to the Applicant. However, I intend to order the Public Body to provide the Applicant with a better copy of records 134, 136, 136A, 153, 153A, 154 and 154A and the portion of record 113 that was originally covered by the post-it note.

### **III. RECORDS AT ISSUE**

[para 15] There are 131 pages of records at issue in this inquiry. Of these, 67 pages are withheld in their entirety, while 64 pages are partially withheld. The following records or portions of the following records are at issue in this inquiry:

3, 4, 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 50, 52, 53, 54, 55, 56, 57, 58, 60, 61, 63, 65, 66, 67, 68, 69, 70, 71, 73, 74, 76, 78, 79, 80, 81, 82, 83, 84, 86, 87, 89, 92, 98, 98A, 102, 107, 111, 113, 134A, 135A, 136, 136A, 137, 137A, 138, 138A, 139, 139A, 140, 140A, 141, 142, 142A, 143A, 144A, 145, 145A, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 151, 151A, 152A, 153A, 154, 154A, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159, 160, 160A, 180, 215, 218, 219, 220, 221, 224, 225, 226, 227, 228, 229, 230, 234

[para 16] In determining the records that remain at issue in this inquiry, I took into account that the Public Body did not number the back of the records at issue that contained information on both sides. In this Order, I will refer to the back of each record

that contains information by the letter “A”. For example, I will refer to the back of record 98 as “98A”, the back of record 134 as “134A” and so on.

[para 17] In determining the records that remain at issue, I also took into account that the Public Body’s record list should have identified record 202A as one of the records disclosed to the Applicant, and record 98A as one of the records that remained at issue.

[para 18] Furthermore, I also took into account that the Public Body’s set of records should have identified the score box on records 140, 140A, 141, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 155, 155A, 156, 156A, 157, 157A, 158, 158A and 159 as information that is at issue in this inquiry. The Applicant’s copy of the records shows that this information was not disclosed to the Applicant.

[para 19] In this inquiry, I will address record 98A and the score box on pages 140, 140A, 141, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 155, 155A, 156, 156A, 157, 157A, 158, 158A, and 159 under the same sections that the Public Body applied to the rest of each of these records.

[para 20] As indicated above, there were numerous inaccuracies within the Public Body’s submission as well as discrepancies between the Public Body’s set of records and the Applicant’s copy of records. These inaccuracies and discrepancies resulted in an inquiry that was much more time-consuming and complex than it would otherwise have been. In the future, I encourage the Public Body to give greater attention and care to the preparation of its submission and records prior to an inquiry.

#### **IV. ISSUES**

[para 21] There are four issues in this inquiry:

- A) Did the Public Body properly apply section 19 of the Act [confidential evaluations] to the records/ information?
- B) Did the Public Body properly apply section 26 of the Act [testing and auditing procedures and techniques] to the records/ information?
- C) Does section 17 of the Act [personal information] apply to the records/ information?
- D) Did the Public Body properly apply sections 20(1)(c), 20(1)(d) and 20(1)(m) of the Act [law enforcement] to the records/ information?

## V. DISCUSSION

### A) Did the Public Body properly apply section 19 of the Act [confidential evaluations] to the records/ information?

[para 22] Section 19 reads:

*19(1) The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material compiled for the purpose of determining the applicant's suitability, eligibility or qualifications for employment or for the awarding of contracts or other benefits by a public body when the information is provided, explicitly or implicitly, in confidence.*

*(2) The head of a public body may refuse to disclose to an applicant personal information that identifies or could reasonably identify a participant in a formal employee evaluation process concerning the applicant when the information is provided, explicitly or implicitly, in confidence.*

*(3) For the purpose of subsection (2), "participant" includes a peer, subordinate or client of an applicant, but does not include the applicant's supervisor or superior.*

[para 23] The Public Body applied section 19 to the following records:

a) Records: 3, 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 60, 61, 63, 73, 74, 76, 86, 87, 98A, 111, 134A, 142, 142A, 143A, 151, 151A, 152A, 160, 160A, 180, 218, 219, 220, 221, 224, 225, 226, 227, 228, 229, 230, 234;

b) "Key actions" portion of records: 52, 53, 54, 55, 56, 57, 58, 65, 66, 67, 68, 69, 70, 71, 78, 79, 80, 81, 82, 83, 84, 135A, 136, 136A, 137, 137A, 138, 138A, 139, 139A, 140, 140A, 141, 144A, 145, 145A, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 153A, 154, 154A, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159;

c) "Observation" portion and/or score box on records: 52, 53, 54, 55, 56, 57, 58, 65, 66, 67, 68, 69, 70, 71, 78, 79, 80, 81, 82, 83, 84, 135A, 136, 136A, 137, 137A, 138, 138A, 139, 139A, 140, 140A, 141, 144A, 145, 145A, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 153A, 154, 154A, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159; and

d) Various severing on records: 4, 92, 98, 102, 107, 113.

[para 24] In Order 98-021, the Commissioner said that in order for section 19(1) to apply, all three parts of the following three-part test must be met:

- (1) The information must be personal information that is evaluative or opinion material;
- (2) The personal information must be compiled solely in order to determine the applicant's suitability, eligibility or qualifications for employment, to award a government contract, or to award other benefits; and
- (3) The personal information must have been provided, explicitly or implicitly in confidence.

[para 25] The Public Body states that the records listed above fulfill the criteria under section 19(1). The Public Body stated that the records contain personal information that is evaluative or opinion material that was compiled for the sole purpose of determining the Applicant's suitability, eligibility or qualifications for employment. The Public Body states that if the Applicant had not submitted the application for employment, the information would not have been collected and the records would not have been created. The Public Body also states that the personal information was submitted in confidence. In support, the Public Body referred to its *in camera* affidavit and the fact that the word "confidential" was marked on some of the records. The Public Body also refers to its recruiting information bulletin that was posted on its website which states that the Public Body will not release the results of its recruitment investigations.

[para 26] The Applicant states that he does not want access to any third party's name, employment title, organization or phone number. The Applicant states that he only wants information regarding the Third Parties' statements about the Applicant. The Applicant states that, in any event, he knows the identity of each of his references as he provided their names to the Public Body in the first place. The Applicant also states that the recruiting information on the website is irrelevant as it is not the same process that was in effect when he first applied for employment with the Public Body. The Applicant also states that he did not sign an acknowledgement of the recruiting information bulletin nor did he have legal representation in this regard.

[para 27] In Order 98-021, the Commissioner defined the term "evaluative" as the adjective for "evaluate" which means "to assess, appraise, to find or state the number of". The Commissioner defined the term "opinion" as "a belief or assessment based on grounds short of proof; a view held probable". The Commissioner stated that an example of an opinion would be a belief that a person would be a suitable employee, based on that person's employment history. An "opinion" is subjective in nature, and may or may not be based on facts.

[para 28] After a review of the records and all the submissions of all the parties, I find that the Public Body properly withheld the following records under section 19(1) and properly exercised its discretion in this regard:

- a) Records: 3, 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 60, 61, 74, 87, 98A, 111, 142A, 151A, 160A, 180, 224, 225, 226, 234;
- b) The “observations” portion and score box on records: 52, 53, 54, 55, 56, 57, 79, 80, 135A, 136, 136A, 144A, 145, 145A, 154A;
- c) The observation notes on records: 153A and 154;
- d) The score box on records: 58, 65, 66, 67, 68, 69, 70, 71, 78, 81, 82, 83, 84; and
- e) The severed portion of records: 4, 92, 98, 102, 107, 113.

[para 29] I find that the above information is personal information which is evaluative and opinion material, compiled solely for determining the Applicant’s suitability, eligibility or qualifications for employment. I also find that this personal information was submitted in confidence to the Public Body. In coming to this conclusion, I took into account the *in camera* submission and the word “confidential” on some of the records. I also find that it is irrelevant whether the Applicant was aware at the outset of the application process that the Public Body would be collecting information in confidence or that he did not have legal representation in this regard. The issue under this section is whether the Public Body collected the information in confidence and not whether the Applicant was aware that the Public Body would be collecting information in confidence or whether the Applicant had legal representation.

[para 30] Conversely, I do not find that the following records fulfill the section 19(1) criteria:

- a) Records: 63, 73, 76, 86, 134A, 142, 143A, 151, 152A, 160, 218, 219, 220, 221, 227, 228, 229, 230;
- b) The “key actions” portions of records: 52, 53, 54, 55, 56, 57, 58, 65, 66, 67, 68, 69, 70, 71, 78, 79, 80, 81, 82, 83, 84, 135A, 136, 136A, 137, 137A, 138, 138A, 139, 139A, 140, 140A, 141, 144A, 145, 145A, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 153A, 154, 154A, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159;
- c) The “observation” portion and scorebox on records: 137, 137A, 138, 138A, 139, 139A; and



d) The score box on records: 140, 140A, 141, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 153A, 154, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159.

[para 31] In particular, I note that the “observations” portion and the scorebox portion of these records are blank and therefore cannot be withheld under section 19 as evaluative or opinion material. In addition, I do not find that any of the above information fulfills section 19(2) as the information does not relate to a formal employee evaluation process. However, the Public Body has applied section 26 to these records. As such, I will address these records under that section.

**B) Did the Public Body properly apply section 26 of the Act [testing and auditing procedures and techniques] to the records/ information?**

[para 32] Section 26 reads:

*26 The head of a public body may refuse to disclose to an applicant information relating to*

*(a) testing or auditing procedures or techniques,*

*(b) details of specific tests to be given or audits to be conducted, or*

*(c) standardized tests used by a public body, including intelligence tests,*

*if the disclosure could reasonably be expected to prejudice the use or results of particular tests or audits.*

[para 33] The Public Body applied section 26 to the following records:

a) Records: 50, 60, 61, 63, 73, 74, 76, 86, 87, 98A, 111, 134A, 142, 142A, 143A, 151, 151A, 152A, 160, 160A, 180, 215, 218, 219, 220, 221, 224, 225, 226, 227, 228, 229, 230, 234;

b) The “key actions” portion of records: 52, 53, 54, 55, 56, 57, 58, 65, 66, 67, 68, 69, 70, 71, 78, 79, 80, 81, 82, 83, 84, 135A, 136, 136A, 137, 137A, 138, 138A, 139, 139A, 140, 140A, 141, 144A, 145, 145A, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 153A, 154, 154A, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159;

c) The “observation” portion and/or score box on records: 52, 53, 54, 55, 56, 57, 58, 65, 66, 67, 68, 69, 70, 71, 78, 79, 80, 81, 82, 83, 84, 135A, 136, 136A, 137, 137A, 138, 138A, 139, 139A, 140, 140A, 141, 144A, 145, 145A, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 153A, 154, 154A, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159; and

d) Various severing on records: 89, 92, 98, 102, 107, 113.

[para 34] The Public Body states that section 26 applies to the examination and interview questions, the Applicant's answers to those questions and "Key Factors" which were used to assess the candidate's answers. The Public Body states that the questions are used regularly by the Public Body for staffing purposes and that the disclosure of these questions would invalidate their future use. In addition, the Public Body states that if it disclosed the Applicant's answers, the Applicant would be able to reconstruct the questions and invalidate the future use of these questions. Lastly, the Public Body states that the Key Factors provide details to specific questions and how those questions are rated. If these Key Factors were disclosed, it would also invalidate the future use of the examination/interview questions as candidates would know how to formulate the answers.

[para 35] The Applicant states that he only wants access to the test scores and results. He does not want access to the test questions.

[para 36] The records that remain at issue under section 26 are as follows:

- a) Records 50, 63, 73, 76, 86, 134A, 142, 143A, 151, 152A, 160, 215, 218, 219, 220, 221, 227, 228, 229, 230;
- b) The "key actions" portion of records: 52, 53, 54, 55, 56, 57, 58, 65, 66, 67, 68, 69, 70, 71, 78, 79, 80, 81, 82, 83, 84, 135A, 136, 136A, 137, 137A, 138, 138A, 139, 139A, 140, 140A, 141, 144A, 145, 145A, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 153A, 154, 154A, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159;
- c) The "observation" and score box on records: 137, 137A, 138, 138A, 139, 139A;
- d) The score box on records: 140, 140A, 141, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 153A, 154, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159;  
and
- e) The severed portion on record 89.

[para 37] After a review of the records and the submission of all of the parties, I find that the Public Body properly withheld the following records under section 26(a) and properly exercised its discretion in this regard:

- a) Records: 50, 63, 73, 76, 86, 134A, 142, 143A, 151, 152A, 160, 215, 227, 228;  
and
- b) The "key actions" portion of records: 52, 53, 54, 55, 56, 57, 58, 65, 66, 67, 68, 69, 70, 71, 78, 79, 80, 81, 82, 83, 84, 135A, 136, 136A, 137, 137A, 138, 138A, 139, 139A, 140, 140A, 141, 144A, 145, 145A, 146, 146A, 147, 147A, 148, 148A,

149, 149A, 150, 153A, 154, 154A, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159.

[para 38] I find that the above records, or portions of records consist of testing procedures or techniques the disclosure of which could reasonably be expected to prejudice the use or results of these tests.

[para 39] I also find that the Public Body properly applied section 26(b) to records 219, 220, 221, 229, 230 and properly exercised its discretion in this regard. These records contain information relating to details of specific tests to be used by the public body, the disclosure of which could reasonably be expected to prejudice the use or results of those particular tests.

[para 40] However, I do not find that the Public Body properly withheld the following records under section 26(a), (b) or (c):

- a) Record: 218;
- b) The observation and score box on records: 137, 137A, 138, 138A, 139, 139A;
- c) The score box on records: 140, 140A, 141, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 153A, 154, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159; and
- d) The severed portion of record 89.

[para 41] These records do not consist of information relating to testing or auditing procedures or techniques, details of specific tests to be given or audits to be conducted or relate to standardized tests, the disclosure of which could reasonably be expected to prejudice the use or results of those particular tests or audits. I will, however, address whether any of the above records fall under section 17 of the Act.

**C) Does section 17 of the Act [personal information] apply to the records/ information?**

[para 42] Section 17 is a mandatory (“must”) section of the Act. If section 17 applies, a public body must refuse to disclose the information. There are two criteria that must be fulfilled under section 17:

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

[para 43] Personal information is defined under section 1(n) of the Act as “recorded information about an identifiable individual”.

[para 44] The Public Body applied section 17 to the following records:

- a) Records: 3, 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 98A; and
- b) Various Severing on Records: 4, 98.

[para 45] As I have found that the Public Body properly applied section 19 to the above records, it is not necessary to address whether these records fall under section 17.

[para 46] However, as section 17 is a mandatory section in the Act, I will address whether section 17 applies to the following records that remain at issue:

- a) Record: 218;
- b) The observation and score box on records: 137, 137A, 138, 138A, 139, 139A;
- c) The score box on records: 140, 140A, 141, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 153A, 154, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159; and
- d) The severed portion of record 89.

[para 47] After a review of the remaining records at issue, I find that none of the records that remain at issue contain a third party's personal information. Record 218 consists of the coversheet from the Applicant's written communication test answer sheet. This record does not contain personal information of a third party. Similarly, the observation and score box severed on records 137, 137A, 138, 138A, 139, 139A and the score box severed on records 140, 140A, 141, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 153A, 154, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159 are blank and do not contain a third party's personal information. Lastly, the severed portion of record 89 consists of information regarding the Applicant's driving record. Although this information is the Applicant's personal information, it is not personal information of a third party. As such, this information does not fall under section 17.

[para 48] As I have found that none of these records which remain at issue contain personal information of a third party, I find that section 17 does not apply to this information. Furthermore, as the Public Body has not claimed any other discretionary exceptions in regard to this information and there are no other mandatory exceptions that apply to this information, I intend to order the Public Body to disclose this information to the Applicant.

**D) Did the Public Body properly apply sections 20(1)(c), 20(1)(d) and 20(1)(m) of the Act [law enforcement] to the records/ information?**

[para 49] The Public Body applied sections 20(1)(c), 20(1)(d) and 20(1)(m) to the severed portion of record 4 and records 5, 10, 11, 12, 13 and 14.

[para 50] As I have found that the Public Body properly withheld these records under section 19, it is not necessary for me to decide whether the Public Body properly applied sections 20(1)(c), 20(1)(d) and 20(1)(m) to these records.

**VI. ORDER**

[para 51] I make the following Order under section 72 of the Act:

**Preliminary Issue – Did the Public Body fulfill its duty to assist under section 10 of the Act?**

[para 52] I find that the Public Body’s response to the Applicant’s access request did not comply with the Public Body’s duty under section 10 to respond accurately and completely.

[para 53] I order the Public Body to provide to the Applicant a complete copy of the severed records that are at issue in this inquiry. On this copy of records, I order the Public Body to clearly identify what portion was severed and the section numbers that the Public Body used as its authority, in this inquiry, to withhold the information. In addition, I order the Public Body to provide the Applicant with a better copy of records 134, 136, 136A, 153, 153A, 154 and 154A and to provide the Applicant with the portion of record 113 that was originally covered by the post-it note.

**A) Did the Public Body properly apply section 19 of the Act [confidential evaluations] to the records/ information?**

[para 54] I find that the Public Body properly applied section 19 to the following records and properly exercised its discretion in that regard:

- a) Records: 3, 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 60, 61, 74, 87, 98A, 111, 142A, 151A, 160A, 180, 224, 225, 226, 234;
- b) The “observations” portion and score box on records: 52, 53, 54, 55, 56, 57, 79, 80, 135A, 136, 136A, 144A, 145, 145A, 154A;
- c) The observation notes on records: 153A and 154;
- d) The score box on records: 58, 65, 66, 67, 68, 69, 70, 71, 78, 81, 82, 83, 84; and

e) The severed portion of records: 4, 92, 98, 102, 107, 113.

[para 55] As such, I uphold the Public Body's decision to withhold these records from the Applicant.

[para 56] I do not find that the following records fulfill the section 19 criteria:

a) Records: 63, 73, 76, 86, 134A, 142, 143A, 151, 152A, 160, 218, 219, 220, 221, 227, 228, 229, 230;

b) The "key actions" portions of records: 52, 53, 54, 55, 56, 57, 58, 65, 66, 67, 68, 69, 70, 71, 78, 79, 80, 81, 82, 83, 84, 135A, 136, 136A, 137, 137A, 138, 138A, 139, 139A, 140, 140A, 141, 144A, 145, 145A, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 153A, 154, 154A, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159;

c) The "observation" portion and score box on records: 137, 137A, 138, 138A, 139, 139A; and

d) The score box on records: 140, 140A, 141, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 153A, 154, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159.

[para 57] However, as the Public Body applied section 26 to these records, I addressed these records under that section.

**B) Did the Public Body properly apply section 26 of the Act [testing and auditing procedures and techniques] to the records/ information?**

[para 58] I find that the Public Body properly applied section 26(a) to the following records and properly exercised its discretion in this regard:

a) Records: 50, 63, 73, 76, 86, 134A, 142, 143A, 151, 152A, 160, 215, 227, 228; and

b) The "key actions" portion of records: 52, 53, 54, 55, 56, 57, 58, 65, 66, 67, 68, 69, 70, 71, 78, 79, 80, 81, 82, 83, 84, 135A, 136, 136A, 137, 137A, 138, 138A, 139, 139A, 140, 140A, 141, 144A, 145, 145A, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 153A, 154, 154A, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159.

[para 59] I also find that the Public Body properly applied section 26(b) to records 219, 220, 221, 229, 230 and properly exercised its discretion in this regard.

[para 60] As such, I uphold the Public Body's decision to withhold these records from the Applicant.

[para 61] I do not find that the Public Body properly withheld the following records under section 26(a)(b) or (c):

- a) Record: 218;
- b) The observation and score box on records: 137, 137A, 138, 138A, 139, 139A;
- c) The score box on records: 140, 140A, 141, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 153A, 154, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159; and
- d) The severed portion of record 89.

[para 62] However, as section 17 is a mandatory section, I considered whether section 17 applied to these records.

**C) Does section 17 of the Act [personal information] apply to the records/ information?**

[para 63] As I have found that the Public Body properly applied section 19 to the following records, it is not necessary to address whether these records fall under section 17:

- a) Records: 3, 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 98A; and
- b) Various severing on records: 4, 98.

[para 64] I also find that section 17 does not apply to the following records that remain at issue:

- a) Record: 218;
- b) The observation and score box on records: 137, 137A, 138, 138A, 139, 139A;
- c) The score box on records: 140, 140A, 141, 146, 146A, 147, 147A, 148, 148A, 149, 149A, 150, 153A, 154, 155, 155A, 156, 156A, 157, 157A, 158, 158A, 159; and
- d) The severed portion of record 89.

[para 65] Furthermore, as there are no other mandatory exceptions that apply to the information in the above records and the Public Body has not claimed any other discretionary exceptions in regard to these records, I order the Public Body to disclose these records to the Applicant. Along with this Order, I have provided the Public Body with a copy of these records, highlighting the information that is to be disclosed.

**D) Did the Public Body properly apply sections 20(1)(c), 20(1)(d) and 20(1)(m) of the Act [law enforcement] to the records/ information?**

[para 66] As I have found that the Public Body properly withheld the severed portion of record 4 and records 5, 10, 11, 12, 13 and 14 under section 19, it is not necessary for me to decide whether the Public Body properly applied sections 20(1)(c), 20(1)(d) and 20(1)(m) to these records.

[para 67] I further order that the Public Body notify me in writing, within 50 days of receiving this Order, that the Public Body has complied with this Order.

Dave Bell  
Adjudicator