

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2005-007

December 20, 2006

ALBERTA JUSTICE and ATTORNEY GENERAL

Review Number 2993

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Summary: An employee of the Alberta Maintenance Enforcement Program of Alberta Justice and Attorney General (the “Public Body”) disclosed maintenance enforcement information about the Complainant, contrary to the *Maintenance Enforcement Act*. The Complainant filed a complaint with the Office of the Information and Privacy Commissioner under the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”), alleging that the disclosure of the Complainant’s personal information by the employee was contrary to Part 2 of the FOIP Act. The Public Body admitted the disclosure by its employee and said that it had taken disciplinary action.

The Commissioner raised the issue of whether the *Maintenance Enforcement Act* prevailed over the FOIP Act, which meant that the *Maintenance Enforcement Act* would govern the disclosure of the information, the FOIP Act would not apply, and the Commissioner would not have jurisdiction over disclosure of the information.

The Commissioner found that sections 12(3) and 15(1) of the *Maintenance Enforcement Act*, which are identical provisions and which were both in force at the time of the disclosure and complaint, applied to the disclosure of the information. At that time, section 12(3) was the provision that explicitly prevailed over the FOIP Act pursuant to section 5 of the FOIP Act and section 15(1)(g) of the *Freedom of Information and Protection of Privacy Regulation*.

The Commissioner also found that section 12(3) and section 15(1) of the *Maintenance Enforcement Act* were inconsistent or in conflict with the disclosure provisions in section 40 of the FOIP Act because section 40 contemplates numerous other disclosures than the limited disclosures allowed under the *Maintenance Enforcement Act*.

Therefore, the Commissioner held that section 12(3) and section 15(1) of the *Maintenance Enforcement Act* governed the disclosure of the information, the FOIP Act did not apply, and he did not have jurisdiction over the disclosure. In an alternative analysis of section 5 of the FOIP Act, the Commissioner came to the same conclusion that he did not have jurisdiction over the disclosure.

Statutes Cited: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 5, 5(b), 40, 40(1)(i), 65(3), 72, Part 2; *Freedom of Information and Protection of Privacy Regulation*, Alta. Reg. 200/95, s. 15(1)(g) [in force until February 8, 2006, when the reference to section 12(3) of the *Maintenance Enforcement Act* was deleted and substituted by the reference to section 15(1) of the *Maintenance Enforcement Act*: see A.R. 27/2006, s. 5(a)]; *Health Information Act*, R.S.A. 2000, c. H-5; *Maintenance Enforcement Act*, R.S.A. 2000, c. M-1, ss. 12(3) [in force from January 31, 2003 until April 30, 2005, when it was repealed and substituted by S.A. 2004, c. 18, s. 7 (brought into force on May 1, 2005 by O.C. 215/2005)], 15, 15(1), 15(2), 15(3), 15(3)(e) [in force from March 30, 2004 to the present: see S.A. 2004, c. 18, s. 11]; *Maintenance Enforcement Regulation*, Alta. Reg. 2/86, s. 2.2, 2.2(1)(f); *Public Health Act*, R.S.A. 2000, c. P-37, s. 75.

Orders Cited: **AB:** Orders 99-034, 2000-002, 2001-012.

Authorities Cited: *Sullivan and Driedger on the Construction of Statutes*, Butterworths (4th Edition, 2002).

I. BACKGROUND

[para 1] Under section 65(3) of the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”), a person who believes that the person’s own personal information has been collected, used or disclosed in contravention of Part 2 of the FOIP Act may ask me to review that matter.

[para 2] On May 26, 2004, an individual (the “Complainant”) made a written complaint to my Office that his personal information held by the Alberta Maintenance Enforcement Program of Alberta Justice and Attorney General (the “Public Body”) had been disclosed contrary to the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”).

[para 3] The Complainant indicated that the Public Body had improperly disclosed the child maintenance enforcement record or a Creditor’s Statement of Account from the office of the Director of Maintenance Enforcement.

[para 4] The Public Body said that it did an investigation and concluded that an employee had disclosed the Complainant's maintenance enforcement information, contrary to the *Maintenance Enforcement Act*. The investigation found that the information had been disclosed to persons who were not entitled to that information under the *Maintenance Enforcement Act*. The Public Body also stated that it had disciplined the employee.

[para 5] The Complainant's matter was scheduled for a written inquiry under the FOIP Act. The issue was whether I had jurisdiction under the FOIP Act to deal with a complaint about disclosure of information that fell within section 12(3) of the *Maintenance Enforcement Act*. Section 5 of the FOIP Act and section 15(1)(g) of the *Freedom of Information and Protection of Privacy Regulation* ("FOIP Act Regulation") provided that section 12(3) of the *Maintenance Enforcement Act* prevailed despite the FOIP Act.

II. RECORDS AT ISSUE

[para 6] The records consist of two documents: a computer generated report (EB4) and a Debtor Statement of Account. The records are at issue only to the extent that I will decide whether disclosure of the information contained in the records falls within my jurisdiction under the FOIP Act.

III. ISSUE

[para 7] The Notice of Inquiry posed one jurisdictional issue for the inquiry:

Does the Information and Privacy Commissioner have jurisdiction under the *Freedom of Information and Protection of Privacy Act* over a disclosure of information that falls within the *Maintenance Enforcement Act*?

[para 8] To assist me in answering the jurisdictional issue, the Notice of Inquiry posed a number of questions for the Public Body and the Complainant to consider when preparing their written submissions:

1. What information was disclosed? Does that information fall within the *Maintenance Enforcement Act*?
2. To whom was the information disclosed, and for what purpose? Was the disclosure permitted under the *Maintenance Enforcement Act*?
3. Does section 12(3) of the *Maintenance Enforcement Act* deal with the disclosure of information, or does it deal only with the use of information? In answering this

question, please also refer to section 15 of the *Maintenance Enforcement Act* and section 2.2 of the *Maintenance Enforcement Regulation*.

4. If section 12(3) does not deal with the disclosure of information, is there an inconsistency or conflict with the disclosure provisions under section 40 of the FOIP Act? Please provide an explanation with your answer.

5. If section 12(3) deals with the disclosure of information, but the disclosure is not permitted under the *Maintenance Enforcement Act*, is there an inconsistency or conflict with the disclosure provisions under section 40 of the FOIP Act? Please provide an explanation with your answer.

6. If section 12(3) deals with any disclosure of information, whether or not the disclosure is permitted under the *Maintenance Enforcement Act*, is there an inconsistency or conflict with the disclosure provisions under section 40 of the FOIP Act? Please provide an explanation with your answer.

7. Does the *Maintenance Enforcement Act* contain its own complete scheme for disclosure of information? If it does, is that scheme for disclosure a relevant consideration under section 5 of the FOIP Act? Can that scheme stand together with the disclosure provisions under section 40 of the FOIP Act? Would compliance with one scheme be a breach of the other? For a discussion of schemes for disclosure under other legislation, see Orders 2000-002 and 2001-012.

[para 9] The Notice of Inquiry informed the parties that if I decided that I did not have jurisdiction under the FOIP Act over a disclosure of information that fell within the *Maintenance Enforcement Act*, my finding would conclude the Complainant's complaint.

[para 10] However, if I decided that I had jurisdiction, the Notice of Inquiry informed the parties that I would proceed to decide whether disclosure in this case was in contravention of Part 2 of the FOIP Act. Consequently, the parties were advised to also make a submission on whether any provisions under section 40 of the FOIP Act authorized the disclosure.

IV. DISCUSSION OF THE ISSUE

A. Relevant legislation

[para 11] Section 5 of the FOIP Act reads:

5 If a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless

(a) another Act, or

(b) a regulation under this Act

expressly provides that the other Act or regulation, or a provision of it, prevails despite this Act.

[para 12] Section 5 is a “paramountcy” provision that determines whether the FOIP Act applies or some other legislative provision applies instead of the FOIP Act.

[para 13] Previous Orders of this Office under the FOIP Act, such as Order 2000-002, have established the approach for analyzing section 5 of the FOIP Act, as follows:

(i) I first decide whether the information falls within another enactment, or a provision of it, that expressly provides that the enactment or a provision of it prevails despite the FOIP Act. (In addition, I note that a regulation under the FOIP Act may also expressly provide that another Act or regulation, or a provision of it, prevails despite the FOIP Act, as provided by section 5(b) of the FOIP Act);

(ii) If the criteria in (i) above are met, I then decide whether there is an inconsistency or conflict between a provision of the FOIP Act and the other enactment, or a provision of it.

[para 14] Previous Orders of this Office have also said that the terms “inconsistent” or “in conflict with” refer to a situation where two legislative enactments cannot stand together, that is, compliance with one law involves breach of the other: see, for example, Orders 99-034 and 2000-002.

[para 15] If there is an inconsistency or conflict, the other Act or regulation, or a provision of it, governs the disclosure of the information, the FOIP Act does not apply, and I do not have jurisdiction over the information. If there is no inconsistency or conflict, the FOIP Act applies, and I have jurisdiction over the information under the FOIP Act.

[para 16] Section 15(1)(g) of the FOIP Act Regulation, as it read at the time of the disclosure and complaint, provided as follows:

15(1) The following provisions prevail despite the Freedom of Information and Protection of Privacy Act:

...

(g) Maintenance Enforcement Act, section 12(3);

[para 17] Section 12(3) of the *Maintenance Enforcement Act*, which was in force at the time of the disclosure and complaint and until April 30, 2005, provided as follows:

12(3) Information received by the Director under this Act may be used only for the purpose of enforcing a maintenance order and is otherwise confidential.

[para 18] The Public Body pointed out that section 12(3) and section 15(1) of the *Maintenance Enforcement Act* were both in force at the time of the disclosure and complaint, and that the wording of section 12(3) and section 15(1) are identical. Section 15(1) reads:

15(1) Information received by the Director under this Act may be used only for the purpose of enforcing a maintenance order and is otherwise confidential.

[para 19] Section 12(3) of the *Maintenance Enforcement Act* was in force from January 31, 2003 to April 30, 2005, when it was repealed and substituted by S.A. 2004, c. 18, s. 7 (brought into force on May 1, 2005 by O.C. 215/2005). Section 15(1) of the *Maintenance Enforcement Act*, as well as section 15(2) and section 15(3), which create exceptions to section 15(1), were in force from March 30, 2004 to the present: see S.A. 2004, c. 18, s. 11.

[para 20] Section 15(1)(g) of the FOIP Act Regulation was in force until February 8, 2006, when the reference to section 12(3) of the *Maintenance Enforcement Act* was deleted and substituted by the reference to section 15(1) of the *Maintenance Enforcement Act*: see A.R. 27/2006, s. 5(a).

[para 21] It is unusual to have two identical legislative provisions in force at the same time. The question is: Which provision applies? To answer that question, I consulted *Sullivan and Driedger on the Construction of Statutes*, Butterworths (4th Edition, 2002) (“Sullivan”).

[para 22] At page 264, Sullivan says that as long as overlapping provisions can apply (without conflict), it is presumed that they are meant to apply, and that each is meant to operate fully according to its own terms.

[para 23] There is no conflict between section 12(3) and section 15(1): both provisions are identical. Therefore, even though both provisions are not reflected in section 15(1)(g) of the FOIP Act Regulation at the relevant time, I find that both provisions operate and are applicable in this case. For section 15(1) to operate fully according to its own terms, the remainder of section 15 must also be considered, including sections 15(2) and 15(3) of the *Maintenance Enforcement Act* and section 2.2 of the *Maintenance Enforcement Regulation*.

B. Does the information fall within another enactment or a provision of it that expressly provides that the enactment or a provision of it prevails despite the FOIP Act?

[para 24] The first record is a one-page document that is a print of a computer screen with the heading of “Alberta Justice Maintenance Enforcement Program, Party Updated” dated May 19, 2004. It contains the name, address, birthdate, contact information, Social Insurance Number and driver’s licence number of the Complainant.

[para 25] The second record contains five pages and is entitled “Debtor Statement of Account” dated May 19, 2004. It notes transaction dates, transaction types, amounts of credits and debits for maintenance payable to the maintenance enforcement program, any variances to the maintenance payments made by the court, and the balance owing by the Complainant in the program. The information also shows the amount of monthly maintenance payable under the maintenance order directed to the Complainant, including variations to an order by the court concerning maintenance payments, the means of payment or source and the dates the payments were received by the program.

[para 26] Both the Complainant and the Public Body submit that the information at issue is used by the Director in the administration of the maintenance enforcement program under the *Maintenance Enforcement Act*.

[para 27] I agree with the parties that this is information received by the Director for the purpose of enforcing a maintenance order. Therefore, sections 12(3) and 15(1) of the *Maintenance Enforcement Act* apply to the information at issue.

[para 28] The information relates to financial information of the Complainant as well as other personal information that clearly identifies the Complainant. Since the information is recorded information about an identifiable individual, the information is also the personal information of the Complainant, as provided by section 1(n) of the FOIP Act. Disclosure of personal information under the FOIP Act is governed by section 40 in Part 2 of the FOIP Act when there is no access request, as in this case.

[para 29] At the relevant time, section 15(1)(g) of the FOIP Act Regulation expressly provided that section 12(3) of the *Maintenance Enforcement Act* prevailed despite the FOIP Act. As discussed, section 15(1) of the *Maintenance Enforcement Act* was also in force at that time.

C. Is there an inconsistency or conflict between a provision of the FOIP Act and sections 12(3) and 15(1) of the *Maintenance Enforcement Act*?

[para 30] The next step is to decide whether there is an inconsistency or conflict between a provision of the FOIP Act and sections 12(3) and 15(1) of the *Maintenance Enforcement Act*. If there is an inconsistency or conflict, the *Maintenance Enforcement Act* governs the disclosure of the information, the FOIP Act does not apply, and I will not have jurisdiction over the information or any alleged breach of the FOIP Act. If there is

no inconsistency or conflict, the FOIP Act applies, and I will have jurisdiction over the information under the FOIP Act.

[para 31] As I have already stated in this Order, the terms “inconsistent” or “in conflict with” refer to a situation where two legislative enactments cannot stand together, that is, compliance with one law involves breach of the other.

[para 32] Both sections 12(3) and 15(1) were in force at the relevant time. The balance of section 15 provides limited and specific exceptions to the restriction in section 15(1) when information must or may be disclosed under the *Maintenance Enforcement Act* that would otherwise be confidential, as follows:

15(2) Notwithstanding subsection (1), the Director must provide information received by the Director under this Act to the Ombudsman for the purpose of an investigation conducted under the Ombudsman Act.

(3) Notwithstanding subsection (1), the Director may, subject to the regulations,

(a) provide information as to the address and location of a debtor or creditor that is in the records of the Director

(i) to a person in a position similar to that of the Director in a reciprocating jurisdiction under the Interjurisdictional Support Orders Act, or

(ii) to a court or a person engaged in the administration of

(A) the Interjurisdictional Support Orders Act, or

(B) legislation similar to the Interjurisdictional Support Orders Act in a reciprocating jurisdiction under the Interjurisdictional Support Orders Act

for the purpose of facilitating the service of an application under the Interjurisdictional Support Orders Act or an application under the Divorce Act to vary a support order;

(b) in a case where a reciprocating jurisdiction under the Interjurisdictional Support Orders Act is enforcing a maintenance order at the request of the Director on behalf of a creditor residing in Alberta, advise the creditor of the name of that jurisdiction;

(c) in a case where the Director is enforcing a maintenance order at the request of a reciprocating jurisdiction under the Interjurisdictional Support Orders Act, advise the debtor of the name of that jurisdiction;

(d) if a debtor is in arrears in the payment of maintenance under a maintenance order filed with the Director, provide that information and any other ancillary information

(i) to any person or organization that provides credit ratings in respect of persons, and

(ii) to any professional or occupational association or organization of which the debtor may be a member;

(e) provide information received by the Director under this Act to any person who may have an interest in the financial affairs of the debtor and to any other person specified by the regulations;

(f) if the Director considers it appropriate to do so, provide to a peace officer any information received by the Director under this Act.

[para 33] Section 2.2 of the *Maintenance Enforcement Regulation* provides further limits and guidelines concerning the kind of information the Director may provide and to whom pursuant to section 15(3)(e) of the *Maintenance Enforcement Act*.

[para 34] One of the questions posed to the parties in this inquiry was whether the alleged breach was a use or a disclosure of the information. Both parties agreed that sections 12(3) and 15 of the *Maintenance Enforcement Act* and section 2.2 of the *Maintenance Enforcement Regulation* worked together to address both uses and disclosures of information received by the Director.

[para 35] I agree with the parties that sections 12(3) and 15(1) deal with both the use and disclosure of information received by the Director. As the Complainant took issue with the disclosure of information by the Public Body, it is necessary to decide whether the disclosure provisions of the FOIP Act contained in section 40 are inconsistent or in conflict with sections 12(3) and 15(1) of the *Maintenance Enforcement Act*.

[para 36] The Public Body submits that section 12(3) and section 15(1) of the *Maintenance Enforcement Act* specifically state that the information received by the Public Body “may only be used for the purpose of enforcing a maintenance order” and is “otherwise confidential.” The Public Body argues that the phrase “otherwise confidential” in sections 12(3) and 15(1) means that information cannot be disclosed for any reason other than enforcing a maintenance order and as set out by the *Maintenance Enforcement Act*. The Public Body agrees that the disclosure of the Applicant’s information was outside of the disclosure and use provisions set out in the *Maintenance Enforcement Act*.

[para 37] The Public Body argues that there is an inconsistency or conflict with respect to section 40 of the FOIP Act and the disclosure provisions in the *Maintenance*

Maintenance Enforcement Act, as governed by sections 12(3) and 15, and section 2.2 of the *Maintenance Enforcement Regulation*. If section 40 of the FOIP Act was applicable to the information, the Public Body argues that the information collected under the *Maintenance Enforcement Act* would be more widely disclosed to more parties and under many more circumstances than is permitted under the disclosure scheme set up by the *Maintenance Enforcement Act*. The Public Body states that the *Maintenance Enforcement Act* and *Maintenance Enforcement Regulation* set up a complete scheme for disclosure under the *Maintenance Enforcement Act* that is inconsistent and in conflict with the provisions of section 40 of the FOIP Act.

[para 38] The Public Body used the example of section 40(1)(i) of the FOIP Act to demonstrate that the FOIP Act contemplates disclosures that are other than those permitted by the *Maintenance Enforcement Act*. Section 40(1)(i) of the FOIP Act provides that a public body may disclose personal information to an officer or an employee of a public body or to a member of the Executive Council if the disclosure is necessary for the delivery of a common or integrated program or service and for the performance of the duties of the officer or employee or member to whom the information is disclosed. Section 15(3)(e) of the *Maintenance Enforcement Act* provides that the Director has the discretion to provide information to any person who may have an interest in the financial affairs of the debtor and to any other person specified by the regulations. Section 2.2(1)(f) of the *Maintenance Enforcement Regulation*, as it appeared at the time of the complaint and disclosure, specifically addressed what information could be given to Government employees. Disclosure of information to Government employees was restricted to determining the creditor's or debtor's suitability for a Government program or benefit, investigating fraud, or preparing or making an application or agreement under specific pieces of legislation. The Public Body says that this is an example of how the FOIP Act provision that permits disclosure to a government employee is much broader than the scheme contemplated by section 15 of the *Maintenance Enforcement Act* and section 2.2 of the *Maintenance Enforcement Regulation*.

[para 39] The Complainant submits that the *Maintenance Enforcement Act* and the FOIP Act are not inconsistent or in conflict as both do not allow the particular disclosure and only allow disclosure and use of the information for the one designated purpose.

[para 40] There is no doubt that the disclosure does not comply with either the FOIP Act or the *Maintenance Enforcement Act*. But to decide whether there is an inconsistency or conflict between the disclosure provisions, I must consider all the allowable disclosures and prohibitions against disclosure under both Acts. Section 40 is the "provision of" of the FOIP Act that deals with disclosures that are not access requests. Sections 12(3) and 15(1) of the *Maintenance Enforcement Act*, the related provisions under sections 15(2) and 15(3) of the *Maintenance Enforcement Act*, and section 2.2 of the *Maintenance Enforcement Regulation* comprise the "provision of" the other enactment that deals with disclosures.

[para 41] Sections 12(3) and 15(1) of the *Maintenance Enforcement Act* both provide that the information received by the Director is prohibited from disclosure or is

“otherwise confidential” if the disclosure is not solely for the purpose of enforcing a maintenance order. Sections 15(2) and (3) of the *Maintenance Enforcement Act* and section 2.2 of the *Maintenance Enforcement Regulation* set out limited and specific exceptions to disclosure. This is in contrast to section 40 of the FOIP Act, which is much broader in scope and purpose with respect to when personal information may be disclosed.

[para 42] In my view, the *Maintenance Enforcement Act* creates its own complete scheme of disclosure. The disclosure provisions of the *Maintenance Enforcement Act* and *Maintenance Enforcement Regulation* are a complete scheme for disclosure of information received by the Director that limits the use and subsequent disclosure of information to a greater extent than the disclosure provisions of the FOIP Act.

[para 43] I find that section 40 of the FOIP Act is inconsistent or in conflict with sections 12(3) and 15(1) of the *Maintenance Enforcement Act*. The disclosure provisions in the FOIP Act contemplate other, more expansive disclosures than are contemplated by sections 12(3) and 15(1) of the *Maintenance Enforcement Act*.

[para 44] Therefore, I find that *Maintenance Enforcement Act* governs the disclosure of the information, the FOIP Act does not apply, and I do not have jurisdiction under the FOIP Act over the disclosure of the information.

[para 45] As a result, I have no jurisdiction to decide whether disclosure in this case was in contravention of Part 2 of the FOIP Act.

D. Alternative approach for analyzing section 5 of the FOIP Act

[para 46] As already set out in this Order, previous orders under the FOIP Act, such as Order 2000-002, have established the approach for analyzing section 5 of the FOIP Act.

[para 47] For some time now, I have been considering the language of section 5 of the FOIP Act and whether that language supports an alternative analysis.

[para 48] I have recently discussed that alternative analysis in an Order under the *Health Information Act*. I intend to adopt that same analysis, with the necessary modifications, in this Order under the FOIP Act, as follows.

[para 49] I have found that the information disclosed by the Public Body falls under both the *Maintenance Enforcement Act* and the FOIP Act. The issue then is whether the *Maintenance Enforcement Act* or the FOIP Act applies to disclosure of the information, which requires that I first consider section 5 of the FOIP act as it pertains to inconsistencies or conflicts between legislative provisions.

[para 50] Ruth Sullivan, in *Sullivan and Driedger on the Construction of Statutes*, discusses the basis of interpretive strategies developed by the courts to resolve conflicts between legislative provisions, as follows:

It is presumed that the provisions of legislation are meant to work together, both logically and teleologically, as parts of a functioning whole. The parts are presumed to fit together logically to form a rational, internally consistent framework; and because the framework has a purpose, the parts are also presumed to work together dynamically, each contributing something toward accomplishing the intended goal.

The presumption of coherence is also expressed as a presumption against internal conflict. It is presumed that the body of legislation enacted by a legislature does not contain contradictions or inconsistencies, that each provision is capable of operating without coming into conflict with any other (pp. 262, 263).

[para 51] As also discussed by Sullivan, interpretive strategies to resolve conflicts are subject to any express solutions provided by the legislature. To resolve conflicts between legislative provisions, the legislature sometimes enacts a “paramouncy” provision, which allows one legislative provision to prevail over another legislative provision, by excluding the application of that other legislative provision.

[para 52] Section 5 of the FOIP Act is a “paramouncy” provision. It sets out two rules. In my view, the first and second rules in section 5 should be read independently of each other.

[para 53] The first rule in section 5 of the FOIP Act is that when a provision of the FOIP Act is inconsistent or in conflict with a provision of another enactment, the provision of the FOIP Act prevails. An inconsistency or conflict is resolved by applying the provision of the FOIP Act, rather than the provision of the other enactment.

[para 54] However, under the first rule, when there is no inconsistency or conflict between a provision of the FOIP Act and a provision of another enactment, the provision of the FOIP Act does not prevail. The provision of the FOIP Act and the provision of the other enactment both apply.

[para 55] The second rule in section 5 of the FOIP Act is that another Act or a regulation under the FOIP Act may expressly provide that the other Act or regulation, or a provision of it, prevails despite the FOIP Act. The second rule is independent of the first rule and does not require an analysis of whether provisions are inconsistent or in conflict. Under the second rule, the FOIP Act does not apply. The other Act or regulation, or a provision of it, applies, according to its own terms.

[para 56] As expressly provided by section 15(1)(g) of the FOIP Act Regulation, section 12(3) and now section 15(1) of the *Maintenance Enforcement Act* prevail over the FOIP Act. Consequently, sections 12(3) and 15(1) apply, according to their own terms.

[para 57] Sections 12(3) and 15(1) of the *Maintenance Enforcement Act* do not contain the words “inconsistent” or “in conflict with”. The Legislature could have included those words in sections 12(3) and 15(1), as it did in the paramountcy provision in section 75 of the *Public Health Act*, for example, but it did not. Therefore, I must conclude that the legislature did not intend that sections 12(3) and 15(1) be analyzed for inconsistencies or conflicts with the FOIP Act. The rationale for my conclusion is that the legislature has already recognized that the FOIP Act and the *Maintenance Enforcement Act* are inconsistent or in conflict, and has provided the mechanism for resolving the inconsistency or conflict by allowing sections 12(3) and 15(1) to prevail over the FOIP Act.

[para 58] Sections 12(3) and section 15(1) of the *Maintenance Enforcement Act* prevail and must be applied according to their own terms. Therefore, I do not have jurisdiction under the FOIP Act over the disclosure of the information that falls within the *Maintenance Enforcement Act*.

V. ORDER

[para 59] I make the following Order under section 72 of the FOIP Act.

[para 60] I find that the *Maintenance Enforcement Act* governs the disclosure of the information, the FOIP Act does not apply, and I do not have jurisdiction under the FOIP Act over the disclosure of the information.

[para 61] As a result, I have no jurisdiction to decide whether disclosure in this case was in contravention of Part 2 of the FOIP Act.

Frank Work, Q.C.
Information and Privacy Commissioner