

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2005-021

March 9, 2007

MEDICINE HAT POLICE SERVICE

Case File Number 3102

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

Summary: On June 16, 2004, the Court of Queen's Bench issued an order appointing the Applicant as guardian of her adult son under the *Dependent Adults Act* (the "guardianship order"). On July 13, 2004, the Applicant applied under the *Freedom of Information and Protection of Privacy Act* (the "Act") to the Medicine Hat Police Service (the "Public Body") for access to all information about her son. The Applicant's access request referred to and included a copy of the guardianship order.

The Public Body responded that the authorization in the guardianship order to settle any "legal proceeding" dealt with civil proceedings, and did not contemplate obtaining information of the dependent adult's past dealings with the police. The Public Body denied the Applicant's access request on the ground that disclosure was an unreasonable invasion of the Applicant's son's personal privacy, as provided by section 17 of the Act.

The Applicant requested that the Commissioner's Office review the Public Body's decision. Mediation was unsuccessful and the matter proceeded to a written inquiry in which the application of section 84(1)(b) of the Act was at issue. Section 84(1)(b) allows a guardian or trustee appointed under the *Dependent Adults Act* to exercise any right or power conferred on an individual by the Act, if the exercise of the right or power under the Act relates to the powers and duties of the guardian or trustee. The right that the Applicant was attempting to exercise under the Act was her son's right of access to records, as provided by section 6(1) of the Act.

The Commissioner held that the power and authority granted to the Applicant under the *Dependent Adults Act* and the guardianship order to commence, compromise or settle any “legal proceeding” included criminal proceedings, which were the Applicant’s son’s past dealings with the police. Furthermore, the power and authority included the related duty to inquire into the affairs of the dependent adult to determine whether the interests of the dependent adult should be protected or promoted by commencing legal proceedings. Since the Applicant’s access request related to the powers and duties of the Applicant under the *Dependent Adults Act* and the guardianship order, the requirements of section 84(1)(b) of the FOIP Act were met. Therefore, the Commissioner ordered the Public Body to disclose to the Applicant the personal information about her son. Under section 17 of the Act, the Commissioner also ordered the Public Body to disclose the personal information of the Public Body’s employees and other individuals acting in formal, representative capacities, but not to disclose the personal information of complainants, witnesses, victims and individuals who were not acting in formal, representative capacities.

Statutes Cited: AB: *Dependent Adults Act*, R.S.A. 2000, c. D-11, ss. 1(j), 10(3)(g), 10(3)(h), 10(3)(j), 19(1)(a); *Designation and Transfer of Responsibility Regulation*, Alta. Reg. 44/2001; *Designation and Transfer of Responsibility Regulation*, Alta. Reg. 317/2006; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(h), 1(n), 17, 17(1), 17(4)(b), 17(5), 17(5)(a); 17(5)(c); 20(4), 68, 69, 71(2), 72, 84(1), 84(1)(b); *Government Organization Act*, R.S.A. 2000, c. G-10; *Health Information Act*, R.S.A. 2000, c. H-5, s. 35(1)(h); *Police Act*, R.S.A. 2000, c. P-17; *Young Offenders Act*, R.S.C. 1985, c. Y-1; *Youth Criminal Justice Act*, S.C. 2002, c. 1.

Orders Cited: AB: 96-015; 98-004; 2000-005; 2001-027; F2004-024; H2004-005.

Cases Cited: *Mr. C. v. Rockyview General Hospital*, [2003] A.J. No. 546 (Alta. Q.B.); *Re Osinchuk* [1983] A.J. No. 933 (Alta. Surr. Ct.); *Reference re: Dependent Adults Act*, [1983] A.J. No. 850 (Alta. Q.B.).

Authorities Cited: Black’s Law Dictionary, Eighth Edition; Concise Oxford Dictionary, Ninth Edition.

I. BACKGROUND

[para 1] On June 16, 2004, the Court of Queen’s Bench issued an order appointing the Applicant as guardian of her adult son under the *Dependent Adults Act* (the “guardianship order”). On July 13, 2004, the Applicant applied under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to the Medicine Hat Police Service (the “Public Body”) for access to all information about her son. The Applicant’s access request referred to and included a copy of the guardianship order.

[para 2] In the Public Body’s August 9, 2004 letter to the Applicant, the Public Body responded that the authorization in the guardianship order to settle any “legal

proceeding” dealt with civil proceedings, and did not contemplate obtaining information of the dependent adult’s past dealings with the police. The Public Body denied the Applicant’s access request on the ground that disclosure was an unreasonable invasion of the Applicant’s son’s personal privacy, as provided by section 17 of the Act. The Public Body said that during conversations with the Applicant, the Applicant herself stated that her son would not consent to the release of the information. The Public Body informed the Applicant that, in denying access, it also took into consideration the fact that the Applicant’s son’s whereabouts were unknown and that there was an outstanding warrant for his arrest.

[para 3] The Applicant requested that my Office review the Public Body’s decision. Mediation was unsuccessful and the matter proceeded to a written inquiry in which the application of section 84(1)(b) of the Act was at issue. Section 84(1)(b) allows a guardian or trustee appointed under the *Dependent Adults Act* to exercise any right or power conferred on an individual by the Act, if the exercise of the right or power under the Act relates to the powers and duties of the guardian or trustee. In this case, the right that the Applicant was attempting to exercise under the Act was her son’s right of access to records, as provided by section 6(1) of the Act.

II. RECORDS AT ISSUE

[para 4] The Public Body did not initially send any records for this inquiry, even though the Notice of Inquiry required that the Public Body provide me with a copy of the records at issue. When my Office notified the Public Body of the requirement to provide the records at issue, the Public Body sent numerous files. The Public Body’s letter accompanying the files said simply:

...Please find enclosed the following records of issue as it [sic] relates to the above noted inquiry:

File #2004-15340, File #2004-13945, File #2004-13462, File #2004-8811,
File #2004-9381, File #2004-7669, File #2004-7865, File #2004-2426,
File #2003-27831, File #2002-2359, File #2004-777, File #2004-743,
File #2003-504, File #2004-9203, File #2004-19276, File #2004-30519

[para 5] The file numbers appeared at the top left-hand corner of each page. The file numbers were also prefaced by certain letters appearing before the year of the file. The pages in each file were numbered from page one onward.

[para 6] To facilitate my review of the records, my Office rearranged the files in date order (with some exceptions), and renumbered the pages consecutively from pages 1-193. In this Order, I will refer to the pages according to how my Office has renumbered them, to avoid the confusion of referring to numerous “page ones”, for example, across the files.

[para 7] During the inquiry, I came across the following pages of records that clearly fell within the jurisdiction of the former federal *Young Offenders Act*, R.S.C. 1985, c. Y-1 (“YOA”): pages 133, 137-140, 144-148 and 188-193. Pages 133, 137-140 and 144-148 are in the Public Body’s File GO#2003-27831 (pages 21, 26-29 and 33-37, respectively, in the Public Body’s numbering system). Pages 188-193 are in the Public Body’s File GO#2002-2359 (pages 11, 12, 55, 58, 59 and 71, respectively, in the Public Body’s numbering system).

[para 8] Section 20(4) of the Act says that the head of a public body must refuse to disclose information to an applicant if the information is in a law enforcement record and the disclosure would be an offence under an Act of Canada. In Order 96-015, the former Commissioner found that it was an offence under the YOA to disclose records to which the YOA applied. The former Commissioner said that what is now section 20(4) of the Act both recognizes and reinforces the prohibitions against disclosure provided for by federal legislation, including the YOA. The former Commissioner also found that he had no authority under the Act to review records to which the YOA applied, as he had not been given that authority under the YOA. Therefore, he did not have jurisdiction over those records under the Act.

[para 9] I find that I do not have jurisdiction under the Act over pages 133, 137-140, 144-148 and 188-193 of the records, as those records fall within the jurisdiction of the YOA. The procedure for access to those records was under the YOA, which has since been repealed and substituted by the *Youth Criminal Justice Act*, S.C. 2002, c. 1 (in force April 1, 2003). Along with this Order, I will be returning those pages of records to the Public Body.

[para 10] The Public Body’s file GO#2002-2359 is not responsive to the Applicant’s request for access to information about her son, except for six pages of records. My Office did not number the pages of that file for the inquiry, except for the six responsive pages that my Office numbered as pages 188-193. However, as discussed above, I have found that those responsive pages fall within the jurisdiction of the YOA. Furthermore, the entirety of file GO#2002-2359 falls within the jurisdiction of the YOA, and I find that I do not have jurisdiction over that file. Along with this Order, I will be returning that file to the Public Body.

[para 11] The Public Body provided me with file GO#2004-19276, which deals with the Applicant’s access request under the Act. My Office did not renumber that file because it is not responsive to the Applicant’s access request. I will not be considering that file in this inquiry. Along with this Order, I will also be returning that file to the Public Body.

[para 12] Finally, file GO#2004-30519 is outside of the date range of the Applicant’s access request (July 13, 2004), as are pages 13-15 and 26 of the Public Body’s File GO#2004-15340 (pages 13-15 and 26, respectively, in the Public Body’s numbering system). Otherwise, those records are responsive to the Applicant’s access request.

[para 13] I take from the Public Body's providing those records for the inquiry (even though it was not required to do so) that the Public Body wants me to consider those records. Therefore, I intend to consider those records, which will also avoid the Applicant's having to make a further access request for them.

III. ISSUES

[para 14] The Notice of Inquiry set out the following issues:

- Does the Applicant's access request under the Act relate to the powers and duties of the Applicant as a guardian or trustee under the *Dependent Adults Act*, as provided by section 84(1)(b) of the Act?
- Does section 17 of the Act (personal information) apply to the records/information?

IV. DISCUSSION OF THE ISSUES

ISSUE A: Does the Applicant's access request under the Act relate to the powers and duties of the Applicant as a guardian or trustee under the *Dependent Adults Act*, as provided by section 84(1)(b) of the Act?

1. Preliminary matter

[para 15] The Public Body did not provide me with a written submission for this inquiry. Upon receiving the Notice of Inquiry, the Public Body sent a letter to my Office dated May 26, 2005, which said:

...The Service does not wish to provide any further submissions in relation to this request. The Service's position was articulated in the August 19 [sic: 9], 2004 letter to [the Applicant], and to the portfolio officer that the Commissioner assigned to the file previously.

[para 16] In Order F2004-024, I said:

[para 24] Under section 69 of the Act, if a matter is not settled under section 68, I must conduct an inquiry to decide all issues of fact and law. An inquiry is a chance for the parties to come to me for a "fresh" decision that I have the power to make under section 69 when mediation has failed. The parties have the opportunity to present "fresh" evidence and arguments to me or to rebut or support the evidence and arguments that they may have already put forward to the Portfolio Officer in mediation.

[para 25] Consequently, in the oral inquiry, I told the parties that I would not take the mediation into consideration and would not take into consideration or adopt the findings of the Portfolio Officer. Instead, I would make a "fresh" decision as section 69 empowers me to do.

[para 17] In Order H2004-005, I also said:

[para 81] In the written submission, the Custodian says that section 35(1)(h) applies and authorizes the Custodian to make this disclosure. The Custodian says this provision is to be read disjunctively and therefore allows a custodian who is not a party to legal proceedings to disclose health information without consent. The Custodian says she agrees with the finding to that effect contained in Investigation Report #H0198, which was issued by my office.

[para 82] This Report came to my attention as part of the written submission provided by counsel for the Complainant. That report is the product of a separate process that includes an investigation and finding made by a staff member in my office. Mediation and investigation are separate processes from inquiry. The report is not binding on me in an inquiry because the parties can come before me and bring fresh evidence and argument. An inquiry is a “de novo” or new process in which I make my own independent decision.

[para 18] As set out above, mediation and inquiry are separate processes. Therefore, I will not be enquiring about the Public Body’s position from the Portfolio Officer assigned to investigate and mediate this file. It is the Public Body’s responsibility to make a submission for the inquiry that is separate from whatever submission it may have made to the Portfolio Officer.

[para 19] However, in this inquiry, I will consider the Public Body’s August 9, 2004 letter to the Applicant, as that letter is one of the documents that establishes my jurisdiction to conduct the inquiry. Furthermore, the Applicant provided a copy of that letter with her submission for the inquiry.

2. The requirements of section 84(1)(b)

[para 20] Section 84(1)(b) of the Act reads:

84(1) Any right or power conferred on an individual by this Act may be exercised

...

(b) if a guardian or trustee has been appointed for the individual under the Dependent Adults Act, by the guardian or trustee if the exercise of the right or power relates to the powers and duties of the guardian or trustee,...

[para 21] Section 84(1) refers to “any right or power conferred on an individual by this Act”. Section 6(1) of the Act confers on an individual the right of access to any record in the custody or under the control of a public body, including a record containing personal information about the individual. Consequently, under section 6(1), the Applicant’s son would have a right of access under the Act to records containing personal information about him (subject to exceptions to disclosure under the Act).

[para 22] Section 84(1) recognizes that someone else may have the authority to exercise the individual’s rights under the Act, such as the right of access to records. In

this case, it is the Applicant who is attempting to exercise her son's right of access to records under the Act.

[para 23] As provided by section 84(1)(b) of the Act, a guardian or trustee appointed under the *Dependent Adults Act* may exercise any right or power conferred on an individual by the Act, if the exercise of the right or power under the Act relates to the powers and duties of the guardian or trustee.

[para 24] Two requirements must be met under section 84(1)(b) for the Applicant to exercise her son's right of access to records under the Act:

- a guardian or trustee must have been appointed for the individual under the *Dependent Adults Act*; and
- the exercise of the right or power must relate to the powers and duties of the guardian or trustee.

[para 25] In Order 98-004, the former Commissioner held that a public body was entitled to insist on evidence of a person's authority to act on behalf of an individual under what is now section 84(1)(a) of the Act. I adopt that same requirement for evidence in an inquiry under section 84(1)(b) of the Act. I find that the burden is on the person attempting to exercise the right or power under the Act on behalf of someone else, to prove that the person has the authority to exercise that right or power. The burden is on the Applicant to prove that she has the authority to exercise her son's right to make an access request for his personal information under the Act.

[para 26] The Applicant has provided evidence that she has been appointed as the guardian of her son under the *Dependent Adults Act*. Consequently, the Applicant has met the first requirement under section 84(1)(b).

[para 27] The second requirement under section 84(1)(b) is that the exercise of the right or power under the Act must relate to the "powers and duties" of the guardian or trustee.

[para 28] The guardianship order says that the Applicant has the power and authority relating to the following matters:

- To commence, compromise or settle any legal proceeding that does not relate to the estate of the dependent adult and to compromise or settle any proceeding taken against the dependent adult that does not relate to the dependent adult's estate (section 10(3)(g) of the [*Dependent Adults Act*]);
- To consent to any health care that is in the best interests of the dependent adult (section 10(3)(h) of the [*Dependent Adults Act*]);

- To make decisions regarding any other matters specified by the court and required by the guardian to protect the best interests of the dependent adult (section 10(3)(j) of the [*Dependent Adults*] Act), namely: [blank line]

[para 29] Under section 84(1)(b) of the Act, the exercise of the right or power must “relate” to the powers and duties of the guardian or trustee. The Concise Oxford Dictionary, Ninth Edition, defines “relate” to mean, among other things, “establish a connection between”. The Applicant must therefore establish a connection between the Applicant’s exercise of her son’s right of access to records under the Act and the powers and duties of the Applicant under the *Dependent Adults Act* and the guardianship order.

3. Powers and duties under the *Dependent Adults Act* and the guardianship order

[para 30] In the Public Body’s August 9, 2004 letter to the Applicant, the Public Body said that, when the Court gave the Applicant the power and authority to “make decisions regarding any other matters specified by the court and required by the guardian to protect the best interests of the dependent adult...”, the Court did not fill in the blank line in which the Court was to have specified the particular power or authority. It was the Public Body’s view that, since the Court left the line blank, that provision did not give the Applicant the power or authority to access her son’s personal information.

[para 31] I agree with the Public Body that the provision of the guardianship order allowing the Applicant to “make decisions regarding any other matters specified by the court and required by the guardian to protect the best interest of the dependent adult” does not assist the Applicant in obtaining access to her son’s personal information under the guardianship order or under the Act because the Court did not specify any other matters under that provision. The Court left that provision blank.

[para 32] The Applicant was also granted the power and authority to consent to health care that is in the best interests of her son. “Health care” has an extensive definition in section 1(j) of the *Dependent Adults Act*. The Applicant has submitted she requires the information to understand her son’s past to make good decisions about her son’s future health care.

[para 33] Having reviewed the records, I found one record in particular (page 67) that contained information about the Applicant’s son’s mental health. In my view, the Applicant’s exercise of her son’s right of access under the Act to that particular record relates to her power to consent to health care that is in the best interests of her son.

[para 34] However, the Applicant’s authority to access the rest of her son’s personal information remains to be considered under the provision of the guardianship order that allows the Applicant “to commence, compromise or settle any legal proceeding that does not relate to the estate of the dependent adult and to compromise or settle any proceeding taken against the dependent adult that does not relate to the dependent adult’s estate”.

[para 35] In the Public Body's August 9, 2004 letter to the Applicant, the Public Body rejected the position that the guardianship order gave the Applicant the ability to access the her son's personal information from the Public Body. In the Public Body's view, the words "legal proceeding" dealt with civil proceedings and did not contemplate obtaining information of the dependent adult's past dealings with the police. The records show that what the Public Body describes as past dealings with the police include such matters as investigations by the Public Body, and arrests of and charges against the Applicant's son.

[para 36] Black's Law Dictionary, Eighth Edition, defines "criminal proceeding" to mean "a proceeding instituted to determine a person's guilt or innocence or to set a convicted person's punishment; a criminal hearing or trial". In my view, the records involve criminal proceedings, as defined. Since the Public Body's view is that "legal proceeding" does not include past dealings with the police, the necessary implication is that "legal proceeding" does not include criminal proceedings.

[para 37] Black's Law Dictionary, Eighth Edition, also defines "legal proceeding" as "any proceeding authorized by law and instituted in a court or tribunal to acquire a right or to enforce a remedy."

[para 38] However, in deciding whether "legal proceeding" includes criminal proceedings, it is necessary to determine the meaning of "legal proceeding" within the context of the *Dependent Adults Act*, which is the statute under which the Applicant's power and authority is granted: see *Re Osinchuk*, [1983] A.J. No. 933 (Alta. Surr. Ct.) (discussed below).

[para 39] "Legal proceeding" is not defined in the *Dependent Adults Act*. In section 10(3)(g), those words appears with the word "proceeding", which is another undefined term. The two terms also differ in that a guardian may "commence, compromise or settle" any "legal proceeding" that does not relate to the estate of the dependent adult, but a guardian may "compromise or settle" any "proceeding" taken against the dependent adult that does not relate to the dependent adult's estate. I do not place much emphasis on the omission of the word "commence" here, since it would be nonsensical to say that a guardian could commence any proceeding "taken against" the dependent adult.

[para 40] I take from these differences in wording that a "legal proceeding" is some proceeding at law (hence, "legal") and some proceeding that is capable of commencement at law. The proceeding at law is also something that a guardian may compromise (agree to settle) or settle.

[para 41] "Proceeding" appears to be a more general term in that it is not confined to a proceeding at law. It appears in the context of compromising or settling a proceeding taken against the dependent adult.

[para 42] The only case I could find that even hints that "legal proceeding" in what is now section 10(3)(g) of the *Dependent Adults Act* may include criminal proceedings is

Reference re: Dependent Adults Act, [1983] A.J. No. 850 (Alta. Q.B.). In that case, the Alberta Court of Queen’s Bench says that the rights of the guardian relate to the “person” of the dependent adult, and that a proceeding for habeas corpus would clearly be within the authority of the guardian to bring. According to Black’s Law Dictionary, Eighth Edition, “habeas corpus” is used to bring a person before the court, usually to ensure that the person’s imprisonment or detention is not illegal.

[para 43] Along with her submission, the Applicant provided a document from Alberta Human Resources and Employment entitled “Your Role as Guardian”. Within that document is a document numbered NCN 810, entitled “Making Decisions...legal proceedings not related to an estate”. That document sets out a number of matters that may fall into the category of “legal proceeding”, including responding to a complaint about a dependent adult’s actions or behaviour; helping the dependent adult with any legal problems; and deciding when legal consultations or services are needed on the dependent adult’s behalf. The document goes on to discuss legal consultations or services in relation to pleading guilty or not guilty before the court.

[para 44] Effective in 2001, the Minister of Human Resources and Employment was responsible for the *Dependent Adults Act*: see *Designation and Transfer of Responsibility Regulation*, Alta. Reg. 44/2001, made under the *Government Organization Act* (the Minister of Seniors and Community Supports is currently responsible for the *Dependent Adults Act*: see *Designation and Transfer of Responsibility Regulation*, Alta. Reg. 317/2006, made under the *Government Organization Act*). Therefore, the document numbered NCN 810, which was published by the then responsible ministry, is also some evidence of the intent to include criminal proceedings within “legal proceeding” in section 10(3)(g) of the *Dependent Adults Act*.

[para 45] I have found that a “legal proceeding” is a proceeding taken at law. Based on the definition of “criminal proceeding”, it is also a proceeding taken at law. Therefore, I find that “legal proceeding” includes criminal proceedings. The meagre case law and the Applicant’s submission have assisted somewhat in my finding. It follows that I do not agree with the Public Body’s narrow interpretation of “legal proceeding” as being limited to civil proceedings.

[para 46] If I am wrong in finding that “legal proceeding” in section 10(3)(g) of the *Dependent Adults Act* and the guardianship order includes criminal proceedings, I find that the more general word “proceeding” includes criminal proceedings.

[para 47] In my view, there cannot be a more pressing or urgent issue than a dependent adult’s being accused of a criminal act and there being possible, pending or actual criminal charges against a dependent adult that a guardian must see to.

[para 48] The Surrogate Court in *Re Osinchuk* [1983] A.J. No. 933 (Alta. Surr. Ct.), considered the scope of the power and duty provided to a guardian with respect to legal proceedings under the former section 10(3)(g) of the *Dependent Adults Act*. While the focus in that case was whether a guardian or a trustee was the appropriate party to

commence a legal proceeding against a health care facility, Justice McDonald also commented that a guardian having the power under what is now section 10(3)(g) of the *Dependent Adults Act* also had the duty to inquire into the affairs of the dependent adult to determine whether there was some interest, other than relating to the estate, that should be protected or promoted by commencing legal proceedings.

[para 49] Consequently, I find that the power granted to a guardian under section 10(3)(g) of the *Dependent Adults Act* and the guardianship order includes the duty to inquire into the affairs of the dependent adult to determine whether the interests of the dependent adult should be protected or promoted by commencing legal proceedings (other than estate-related proceedings). In my view, the Applicant equally has a duty to inquire into her son's affairs to determine if his interests should be protected or promoted by compromising or settling any legal proceeding or proceeding taken against him (other than estate-related proceedings). This conclusion is supported by the general duty of a guardian found in section 19(1)(a) of the *Dependent Adults Act*, which requires that a guardian exercise the guardian's power and authority "in the best interests of the dependent adult".

4. The purpose for which the access request is made

[para 50] I am left to decide whether the exercise of the right of access by the Applicant relates to the powers and duties that I have found were granted to her.

[para 51] I will deal first with the Applicant's duty as guardian to inquire into the affairs of the dependent adult to decide whether there is some interest that should be protected or promoted by commencing legal proceedings.

[para 52] The Applicant generally expressed concern regarding her son's treatment by the Public Body and specifically was concerned about the Public Body's handling of an outstanding warrant originating out of Calgary for a by-law offence. She was also concerned about her son's incarceration for 30 days, and she "still today as his guardian do not understand his [sic] charges against him."

[para 53] Wrongdoing by the Public Body could result in a complaint against the Public Body under the *Police Act*. I find that the Applicant's access request for the records relates to her duty to inquire into the affairs of her son and relates to the Applicant's power to commence any legal proceeding, such as a proceeding under the *Police Act*.

[para 54] I turn next to the Applicant's power as guardian to "commence, compromise or settle any legal proceeding" and to "compromise or settle any proceeding taken against the dependent adult". I have found that the terms "legal proceeding" and "proceeding" in this context include criminal proceedings. The Public Body says that there is an outstanding warrant for the Applicant's son's arrest.

[para 55] In her access request, the Applicant indicated that she was requesting information since her son did not have legal counsel as at the date of the access request. The Applicant's submission indicates she wants the records because the information will help her better understand her son's history of problems so that she can appropriately help him, which is in the "best interest of the dependent adult". The Applicant also says she wants the information to help her son clear up his "legal mess". She wants confirmation of whether the "legal mess" that her son was involved in with respect to the Public Body has concluded. She believes that this "legal mess" may have been cleared up, and believes that the information she requested could confirm this for her.

[para 56] I find that the Applicant's access request for the records relates to the Applicant's power to compromise or settle any legal proceeding or, in the alternative, to compromise or settle any proceeding taken against her son in relation to the warrant. I concede that there might be limits to the Applicant's powers in this regard. For example, it is not necessary to conclude that the Applicant would have authority to make decisions for her son that would impinge on his personal liberty. Possibly any such decisions that needed to be made could be made by her son in consultation with a legal counsel who could advise him. However, in my view, the Applicant's powers and duties under section 10(3)(g) of the *Dependent Adults Act*, together with her duty to inquire into his affairs and act in his best interests, extend to the power to retain a legal counsel who could provide the necessary advice as to what would be in her son's best interests, and who could represent her son in court or in negotiations with the Public Body. The Applicant cannot take any steps to fulfil her duties without information as to the status of the warrants or other outstanding matters.

[para 57] In conclusion, I am satisfied that the Applicant has met the burden of proof under section 84(1)(b). I find that the Applicant's access request under the Act relates to the powers and duties of the Applicant as guardian under the *Dependent Adult's Act*, as provided by section 84(1)(b) of the Act.

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

[para 58] In the Public Body's August 9, 2004 letter to the Applicant, the Public Body denied access to all the requested information, citing section 17(1) and section 17(4)(b) of the Act. Those provisions read:

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 the third party's personal privacy.

...

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation,...

[para 59] The Public Body denied the Applicant's access request under section 17 because the Public Body did not accept that the Applicant had the authority to access her son's personal information. Consequently, the Public Body treated the Applicant as any other member of the public who was making an access request for a third party's personal information. The Public Body said that it was declining to release the information to protect the privacy rights of the Applicant's son. The Public Body's view was that disclosing the personal information would be an unreasonable invasion of the son's personal privacy under section 17.

[para 60] I have found that the Applicant's access request under the Act relates to the powers and duties of the Applicant as guardian under the *Dependent Adult's Act*, as provided by section 84(1)(b) of the Act. Consequently, the Public Body must treat the Applicant's access request as if the Applicant's son were making the access request under section 6(1) of the Act, and give the Applicant access to her son's personal information, subject only to the application of section 17 to the personal information of other third parties. Given my finding under section 84(1)(b), the Applicant's son is not a third party for the purposes of the application of section 17.

[para 61] Furthermore, in *Mr. C. v. Rockyview General Hospital*, [2003] A.J. No. 546 (Alta. Q.B.), the Alberta Court of Queen's Bench found that, when a guardianship order is in place, the dependent adult is deprived of any concurrent rights under section 10(3)(g). Therefore, the Applicant's son may not inquire into his own affairs, may not commence, compromise or settle any legal proceedings, and may not compromise or settle any proceedings taken against the dependent adult. Consequently, the Public Body's reliance on section 17 to refuse to disclose the son's personal information is misguided. Since section 84(1)(a) applies in relation to the powers and duties given to the Applicant under the guardianship order, it is the Applicant as guardian who has the right to make the access request. In my view, the Applicant's son is deprived of concurrent rights to make the access request.

[para 62] What remains to be considered under section 17 is whether the disclosure of the personal information of other third parties would be an unreasonable invasion of those third parties' personal privacy. The Public Body withheld all third parties' personal information under section 17 when it withheld the Applicant's son's personal information. However, it appears that the Public Body's arguments under section 17 did not include those third parties.

[para 63] Section 17(1) is a mandatory ("must") provision, requiring that a public body refuse to disclose the personal information of a third party if disclosure would be an unreasonable invasion of the third party's privacy. Since it is a mandatory provision, previous Orders of my Office have said that my Office will apply the provision, whether or not a public body has considered it. Consequently, I intend to consider the application

of section 17 to the personal information of third parties, in relation to the provisions of section 17 that the Public Body said apply. In this process, the Applicant has a burden of proof under section 71(2) of the Act, which reads:

71(2) Despite subsection (1), if the record or part of the record that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

[para 64] “Personal information” is defined in section 1(n) of the Act to mean recorded information about an identifiable individual. Section 1(n) includes a non-exhaustive list of the kinds of things that are personal information under the Act.

[para 65] I find that the records contain the personal information of the Public Body’s employees and other individuals acting in formal, representative capacities. There is also personal information of complainants, witnesses, victims and individuals who are not acting in formal, representative capacities.

[para 66] For disclosure to be presumed to be an unreasonable invasion of a third party’s personal privacy under section 17(4)(b), the personal information must be an identifiable part of a “law enforcement record”.

[para 67] “Law enforcement” is defined in section 1(h) of the Act as follows:

I In this Act,

...
(h) “law enforcement” means

(i) policing, including criminal intelligence operations,

(ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred,

(iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred;...

[para 68] I have reviewed all the records, most of which concern police investigations under particular statutes containing offences that lead or could lead to a penalty or sanction being imposed by the court: see Order 2001-027. The information concerning police investigations is recorded, and therefore the records are law enforcement records. Other records concern proceedings that lead or could lead to a

penalty or sanction being imposed by the court. The information concerning proceedings is recorded, and therefore those records are also law enforcement records. I further find that the personal information of third parties is an identifiable part of the law enforcement records.

[para 69] Therefore, the requirements of section 17(4)(b) have been met. Disclosure is presumed to be an unreasonable invasion of the third parties' personal privacy.

[para 70] I turn next to section 17(5) of the Act, which reads:

17(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...

[para 71] What follows in section 17(5) is a non-exhaustive list of relevant circumstances to consider.

[para 72] The records contain the personal information of the Public Body's employees and other individuals who are acting in formal, representative capacities. Previous Orders of my Office have found that disclosure of the personal information of individuals acting in formal, representative capacities is not an unreasonable invasion of those individuals' personal privacy: see, for example, Order 2000-005. I find that to be the case here as well. Therefore, section 17(1) does not apply to that personal information. I intend to order that the Public Body disclose to the Applicant the personal information of the Public Body's employees and other individuals acting in formal, representative capacities.

[para 73] The personal information of complainants, witnesses, victims and individuals who are not acting in formal, representative capacities is another matter. I can see nothing on the face of the records that would assist the Applicant in showing that disclosure of those individuals' personal information would not be an unreasonable invasion of their personal privacy. Furthermore, I can find nothing under section 17(5) that would assist the Applicant. Although the Applicant, on behalf of her son, alludes to facts that could invoke section 17(5)(a) (public scrutiny) and section 17(5)(c) (personal information relevant to fair determination of applicant's [the son's] rights), the Applicant has not met the criteria for those provisions and has not convinced me that those provisions apply so as to tip the balance in favour of disclosure of the personal information of those individuals. In any event, what the Applicant has said leads me to conclude that the Applicant wants disclosure of the personal information of the Public Body's employees and other individuals acting in formal, representative capacities. I have already said that I intend to order disclosure of that personal information.

[para 74] Finding nothing under section 17(5) to weigh in favour of disclosure, I find that disclosure of the personal information of the third party complainants, witnesses, victims and individuals who are not acting in formal, representative capacities would be

an unreasonable invasion of those third parties' personal privacy under section 17(1). I intend to order the Public Body not to disclose that personal information to the Applicant.

V. ORDER

[para 75] I make the following Order under section 72 of the Act.

[para 76] The Public Body's file GO#2004-19276 is not responsive to the Applicant's access request. Along with this Order, I will be returning that file to the Public Body.

[para 77] The Public Body's file GO#2002-2359 is not responsive to the Applicant's access request, except for six responsive pages that my Office numbered as pages 188-193. However, the entire file, including pages 188-193, falls within the jurisdiction of the *Young Offenders Act*. Consequently, I find that I do not have jurisdiction over that file. Along with this Order, I will be returning that file to the Public Body.

[para 78] The responsive pages of the records that my Office numbered as pages 133, 137-140 and 144-148 also fall within the jurisdiction of the *Young Offenders Act*. Consequently, I find that I do not have jurisdiction over those pages of the records. Along with this Order, I will be returning those pages of the records to the Public Body.

[para 79] The Applicant's access request under the Act relates to the powers and duties of the Applicant as a guardian under the *Dependent Adults Act*, as provided by section 84(1)(b) of the Act. Therefore, the Applicant has the authority under section 84(1)(b) of the Act to access her son's personal information contained in the records at issue. Consequently, section 17 of the Act does not apply to the Applicant's son's personal information. I order the Public Body to disclose the Applicant's son's personal information to the Applicant.

[para 80] Section 17 of the Act does not apply to the personal information of the Public Body's employees and other individuals acting in formal, representative capacities. I order the Public Body to disclose that personal information to the Applicant.

[para 81] For greater certainty, I order the Public Body to disclose the personal information contained in the following pages of the records and to disclose to the Applicant the following pages of the records in their entirety:

1, 6-8, 13, 18, 22, 25-27, 29-54, 57, 61, 62, 65, 67-77, 81-113, 119-124, 128-132, 134-136, 143, 152, 153, 155, 158, 161, 162, 165-168, 170, 172-187

[para 82] Section 17 of the Act applies to the personal information of the third party complainants, witnesses, victims and individuals who are not acting in formal, representative capacities. I order the Public Body not to disclose that personal information to the Applicant.

[para 83] For greater certainty, I order the Public Body not to disclose the personal information contained in the following pages of the records and not to disclose to the Applicant the following pages of the records in their entirety:

17, 59, 79, 141, 142, 150, 157

[para 84] For greater certainty, I order the Public Body not to disclose the personal information that I have highlighted in the following pages of the records and not to disclose to the Applicant the following pages of the records, except for the personal information of the Public Body's employees, which I order the Public Body to disclose to the Applicant:

3-5, 11, 58, 60, 114-118, 127, 149

[para 85] For greater certainty, I order the Public Body not to disclose the personal information that I have highlighted in the following pages of the records; however, I order the Public Body to disclose to the Applicant the remaining information in those pages of the records:

2, 9, 10, 12, 14-16, 19-21, 23, 24, 28, 55, 56, 63, 64, 66, 78, 80, 125, 126, 151, 154, 156, 159, 160, 163, 164, 169, 171

[para 86] Along with this Order, I have provided the Public Body with a copy of the records, in which I have highlighted the personal information of third party complainants, witnesses, victims and individuals who are not acting in formal, representative capacities. That personal information is not to be disclosed to the Applicant.

[para 87] I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that the Public Body has complied with this Order.

Frank Work, Q.C.
Information and Privacy Commissioner