ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2006-006

March 27, 2008

CALGARY AND AREA CHILD AND FAMILY SERVICES AUTHORITY

Case File Number 3541

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (the "Act" or the "*FOIP Act*"), the Applicant made a request to the Calgary and Area Child and Family Services Authority (the "Public Body") for its complete file in relation to his son. The records in the file were created following reports that the Applicant's son may be in need of intervention or protective services, and the file includes information arising out of the reports themselves.

The Public Body disclosed much of the file but withheld information under sections 17 (disclosure harmful to a third party's personal privacy) and 21 (disclosure harmful to intergovernmental relations) of the Act. The Public Body also took the position that section 5 (paramountcy) applied to exclude the application of the Act to information falling within section 126.1(1) of the *Child, Youth and Family Enhancement Act* (the "*Enhancement Act*"). Section 126.1(1) states that the name of a person making a report that a child may be in need of intervention, and information that would identify that person, is privileged information. The *Enhancement Act* further states that this section prevails over the *FOIP Act* if there is any conflict or inconsistency.

The Applicant complained that the Public Body refused access to the original file and did not provide a typed version of handwritten information, which he thought to be illegible. The Adjudicator found that the Public Body properly refused access to the original file, as it risked disclosure of information restricted or prohibited from disclosure. He found

that the handwritten information was legible, so the Public Body was not required to provide a typed version. The Adjudicator concluded that the Public Body met its duty to assist the Applicant, as required by section 10(1) of the Act.

The Adjudicator found that certain persons had made a "report" within the meaning of section 126.1(1) of the *Enhancement Act*, although he found that information conveyed during particular subsequent interviews were not "reports". He found that there was no inconsistency or conflict between section 126.1(1) of the *Enhancement Act* and the *FOIP Act*. Section 126.1(1) states that certain information is privileged information, but it does not specifically address the disclosure or non-disclosure of that privileged information, except with respect to its admissibility in evidence. Moreover, section 27 of the *FOIP Act* protects privileged information. The Adjudicator concluded, in accordance with section 5, that the *FOIP Act* applies to all of the records/information.

The Adjudicator found that the Public Body properly withheld certain information under section 17 of the Act because disclosure would constitute an unreasonable invasion of a third party's personal privacy. In other instances, he found that disclosure would not amount to an unreasonable invasion of privacy, such as in respect of certain personal information of the mother of the child. This information included her name and other personal data where it appeared with the Applicant's data on standard forms, information in contexts where the Applicant and the mother acted or were treated jointly, and information about her that was originally provided by the Applicant.

Under section 84(1)(e) of the Act, the Public Body considered the extent to which the Applicant could exercise his son's right of access to his son's personal information, and disclosed certain information. With a few exceptions, the Adjudicator found that the Public Body properly withheld the son's other personal information, under section 17, because disclosure would unreasonably invade the son's personal privacy.

The Adjudicator found that the Public Body both properly and improperly withheld the Applicant's own personal information, depending on the extent to which it was intertwined with the personal information of third parties and whether disclosure would be an unreasonable invasion of the third parties' personal privacy.

The Adjudicator found that the Public Body did not properly apply section 21(1)(a) of the Act to certain information, as it did not establish a reasonable expectation of harm to intergovernmental relations. However, he found that section 21(1)(b) applied because the information was supplied implicitly in confidence by a local government body. As the Public Body had not obtained consent to disclose the information from the local government body, as required by section 21(3), the Adjudicator ordered the Public Body to refuse access to the information.

Statutes and Regulations Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 1(n)(viii), 1(n)(ix), 4, 5, 6(1), 6(2) 10(1), 11, 17, 17(2), 17(4), 17(4)(a), 17(4)(d), 17(4)(g), 17(5), 17(5)(f), 17(5)(i), 21, 21(1)(a), 21(a)(ii), 21(1)(b), 21(3), 27, 27(1)(a), 27(2), 71(1), 71(2), 72, 72(2)(a), 72(2)(b),

72(2)(c), 72(4), 84 and 84(1)(e); *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12, ss. 1(1)(d), 1(2), 4, 4(1), 5, 6(1)(b), 6(1)(c), 126, 126(1)(b), 126.1, 126.1(1), 126.1(2) and 126.1(3); *Child Welfare Act*, R.S.A. 2000, c. C-12, ss. 1(1)(d), 1(2), 4, 4(1) and 126(4) [formerly 91(4)]; *Interpretation Act*, R.S.A. 2000, c. I-8, ss. 35(1)(b) and 35(1)(c); *Freedom of Information and Protection of Privacy Regulation*, Alta. Reg. 200/95, ss. 3(b) and 15(1)(b). **BC:** *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165.

Authorities Cited: AB: Orders 96-004, 96-019, 97-009, 98-008, 98-017, 99-033, 99-027, 99-028, 2000-019, 2000-028, 2001-001, 2001-037, F2003-004, F2003-012, F2003-014, F2004-014, F2004-018, F2004-026, F2005-007, F2005-029, F2005-030, F2006-008 and F2007-022; External Adjudication Order No. 5 (August 6, 2004); *Edmonton (City) v. Alberta (Human Rights and Citizenship Commission)*, 2002 ABQB 1013. **BC:** Order 04-01, citing *British Columbia Lottery Corp. v. Vancouver (City)*, 1999 BCCA 18. **Other:** *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Markham, Ont.: Butterworths, 2002); Office of the Information and Privacy Commissioner (Alberta), *Practice Note 4* (Edmonton: March 2, 1997).

I. BACKGROUND

[para 1] In a request to access information under the *Freedom of Information and Protection of Privacy Act* (the "Act" or the "*FOIP Act*"), dated June 12, 2005, the Applicant asked the Calgary and Area Child and Family Services Authority (the "Public Body") for a copy of its complete file in relation to his son and also asked to examine the original file.

[para 2] In a letter dated July 4, 2005, the Information and Privacy Office that dealt with the Applicant's request on behalf of the Public Body advised that the Applicant could not examine the original file, as it contained the personal information of third parties to which he was not entitled to have access.

[para 3] By letter dated August 5, 2005, the Information and Privacy Office provided the Applicant with copies of 88 pages of records that were on the requested file. It severed or withheld information on many of those pages, on the basis that disclosure would be an unreasonable invasion of the personal privacy of third parties under section 17 of the Act, and that disclosure could reasonably be expected to harm intergovernmental relations under section 21.

[para 4] By letter dated September 30, 2005, the Applicant asked this Office to review the Public Body's decision to sever and withhold information from the records provided to him. He also complained that handwritten information in the file was illegible. Mediation was authorized but was not successful. The matter was then set down for a written inquiry. At that time, an issue in respect of section 5 of the Act (paramountcy) was identified.

[para 5] The Public Body submitted a brief for the inquiry, but the Applicant did not.

II. RECORDS AT ISSUE

[para 6] The records at issue consist of information severed and withheld from a 94-page file. As the Public Body provided the Applicant with 88 pages, it appears that six pages of the file were withheld altogether. Conversely, some pages provided to the Applicant do not have any severed information. The records in the file were created under the *Child Welfare Act*, which later became the *Child, Youth and Family Enhancement Act* (the "*Enhancement Act*"), in the context of reports and investigations to determine whether the Applicant's son was in need of intervention or protective services from the Public Body.

[para 7] The pages of the complete file that was submitted by the Public Body *in camera* are numbered 0001 to 0094 and I will refer to them as such. In this complete file, the Public Body indicates which section(s) of the Act it applied to each of the items of severed information. It is not entirely clear to me which six pages were withheld from the Applicant altogether. However, as the Public Body indicates a large "X" through them, I believe that the pages that were completely withheld are pages 0036, 0037, 0038, 0057, 0065 and 0066. The Public Body sometimes made the notation "shared" beside information in the file, but I do not know whether this means that certain personal information was "shared" by more than one individual or certain severed information was later "shared" with the Applicant. I therefore intend to ignore those notations.

[para 8] I do not know whether the records that the Public Body provided to the Applicant had page numbers corresponding to the pages of the file submitted by the Public Body *in camera*. I intend to order that, unless page numbers were already provided to the Applicant, the Public Body re-provide him with the records with page numbers. This is to allow the Applicant to follow the page references in this Order.

III. ISSUES

[para 9] The Notice of Inquiry, dated September 7, 2006, set out the following four issues:

A. Did the Public Body meet its duty to assist the Applicant, as provided by section 10(1) of the Act?

B. Does section 5 of the Act (paramountcy of the Act) apply to the records/information?

C. Does section 17 of the Act (disclosure harmful to a third party's personal privacy) apply to the records/information?

D. Does section 21 of the Act (disclosure harmful to intergovernmental relations) apply to the records/information?

IV. DISCUSSION OF ISSUES

A. Did the Public Body meet its duty to assist the Applicant, as provided by section 10(1) of the Act?

[para 10] Section 10(1) of the Act reads as follows:

> *10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.*

[para 11] The Applicant asked this Office to review the Public Body's response to his access request because the records provided to him were incomplete (i.e., information was withheld) and because he found some of the information to be illegible. He also initially requested to see the original records but was refused. As these were the specific concerns of the Applicant, they are the only ones I will address regarding the Public Body's duty to assist him.

[para 12] The Applicant's concern that the records provided to him were incomplete amounts to a concern that the Public Body improperly withheld information from him. As this depends on whether the Public Body properly applied certain sections of the Act, I will address this question in the context of the other issues in this inquiry.

[para 13] In his request for review, the Applicant stated that the records provided to him were unacceptable because certain information contained in them is handwritten. He asked for all of the handwritten information to be typed so that it is legible. Part of a public body's duty under section 10(1) of the Act is to ensure that the information provided to an applicant is legible and, where any of it is not, to provide typed versions to accompany the illegible information (External Adjudication Order No. 5 at para. 33).

[para 14] The Public Body submits that the Information and Privacy Office that processed the Applicant's access request found that the information in the copied file was legible. This suggests that the information was reviewed to ensure that it was legible before being provided to the Applicant. I have examined the handwritten portions of the records and find that, although the information is sometimes difficult to read, it is almost always legible. A few specific words are not legible on their own, but they may be discerned from the surrounding words or context. I therefore conclude that the Public Body is not required to provide a typed version of the handwritten information in the records.

[para 15] Section 3(b) of the *Freedom of Information and Protection of Privacy Regulation* reads as follows:

3 Where a person is given access to a record, the head of the public body may require that the person be given a copy of the record, rather than the opportunity to examine it, if the head is of the opinion that

…

b) providing examination of the record might result in the disclosure of information that is restricted or prohibited from disclosure under section 5 of the Act or Part 1, Division 2 of the Act.

[para 16] The Public Body submits that the records at issue contain a significant amount of information to which the Applicant does not have a right of access, and that allowing him to examine the original records might result in the disclosure of third party or privileged information. I conclude in this Order below that the records contain information that is restricted or prohibited from disclosure. Given the amount of this information, and the fact that properly withheld information is intertwined with other information on the same pages, I find that it was reasonable for the Public Body to conclude that the Applicant's access to the original file might result in the disclosure of information to which he is not entitled.

[para 17] Given the foregoing, I find that the Public Body met its duty to assist the Applicant, as provided by section 10(1) of the Act.

B. Does section 5 of the Act (paramountcy of the Act) apply to the records/information?

[para 18] Section 5 of the *FOIP Act* is a "paramountcy" provision. It determines whether the *FOIP Act* prevails over another enactment (whether a statute or regulation) or a provision of it, or whether the other enactment or a provision of it prevails over the *FOIP Act*. Section 5 reads as follows:

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 19] The test that has been applied by this Office under section 5 was articulated in Order F2005-007 (at paras. 13 and 15). Section 5 requires that I first decide whether 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*. If so, I must then decide whether there is an inconsistency or conflict between a provision of the *FOIP Act* and the other enactment or provision. If there is an inconsistency or conflict, the other enactment or provision 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 20] The Public Body submits that section 126.1(1) of the *Enhancement Act* prevails over the *FOIP Act*. Section 126 and 126.1 of that Act read as follows:

> *126(1) The Minister and any person employed or assisting in the administration of this Act shall preserve confidentiality with respect to personal information that comes to the Minister's or person's attention under this Act and shall not disclose or communicate that information except in accordance with the Freedom of Information and Protection of Privacy Act, in proceedings under this Act, in accordance with Part 2, Division 2 or this Division or as follows:*
>
> > *(a) to any person or organization if the disclosure is necessary to plan or provide services to a child or the child's family or to plan or provide for the day to day care or education of the child;*
> >
> > *(b) to the guardian of the child to whom the information relates or the guardian's lawyer;*
> >
> > *(c) to the child to whom the information relates or the child's lawyer;*
> >
> > *(d) to any person employed in the administration of child protection legislation in another province or territory of Canada;*
> >
> > *(e) to any person with the written consent of the Minister.*
>
> *…*
>
> *126.1(1) Despite section 126(1), the name of a person who makes a report to the director under section 4 or 5 and information that would identify that person is privileged information of the person making the report and is not admissible in evidence in any action or proceeding before any court or an Appeal Panel or before any inquiry without the consent of the person.*
>
> *(2) Despite subsection (1), the Minister may direct the release of information under subsection (1) that would identify the person.*
>
> *(3) If there is a conflict or inconsistency between subsection (1) and the Freedom of Information and Protection of Privacy Act, subsection (1) prevails.*

[para 21] On the basis that section 126.1(1) of the *Enhancement Act* prevails over the *FOIP Act*, the Public Body applied section 5 of the *FOIP Act* to certain information in the records at issue, so as to exclude the application of the *FOIP Act* to that information.

[para 22] I note that an alternative approach to the application of section 5 of the *FOIP Act* was identified in Order F2005-007 (at para. 55). Under that approach, if another enactment or provision expressly provides that the other enactment or a provision of it prevails despite the *FOIP Act*, there is no need for an analysis of whether provisions are inconsistent or in conflict. The *FOIP Act* does not apply and the other enactment or provision applies, according to its own terms. I cannot apply the alternative approach in this inquiry, as section 126.1(3) of the *Enhancement Act* states that section 126.1(1) prevails "if there is a conflict or inconsistency" with the *FOIP Act*. As the *Enhancement Act* requires there to be an inconsistency or conflict, I must determine below whether there is one.

1. Does information in the records at issue fall within a provision of another enactment that expressly prevails despite the *FOIP Act*?

[para 23] Section 126.1(1) of the *Enhancement Act* expressly prevails despite the *FOIP Act* (if there is an inconsistency or conflict). For information to fall under section 126.1(1) of the *Enhancement Act*, it must be in the context of a report to the director under section 4 or 5 of that Act. Section 5 of the *Enhancement Act* is not relevant to this inquiry. The relevant provisions of section 4 of that Act are as follows:

> *4(1) Any person who has reasonable and probable grounds to believe that a child is in need of intervention shall forthwith report the matter to a director.*
> …
>
> *(2) Subsection (1) applies notwithstanding that the information on which the belief is founded is confidential and its disclosure is prohibited under any other Act.*
>
> *(3) This section does not apply to information that is privileged as a result of a solicitor-client relationship.*
> …

[para 24] Whether or not a child is in need of protection, and therefore whether a report should be made under section 4(1) of the *Enhancement Act*, is determined under section 1(2) of that Act. That section enumerates the types of situations where there are reasonable and probable grounds to believe that the survival, security or development of a child is endangered.

a) Effect of legislative amendments

[para 25] On November 1, 2004, the *Child Welfare Act* was renamed the *Child, Youth and Family Enhancement Act*, and amendments were made to sections 1(2) and 4, among others. The previous version of section 4(1) required that a person have reasonable and probable grounds to believe "and believe" that a child is in need of "protective services" (as opposed to "intervention"). The grounds on which a child might be believed to be in need of protective services under section 1(2) of the *Child Welfare*

Act were not significantly different from the grounds on which a child might be believed to be in need of intervention under section 1(2) of the *Enhancement Act*.

[para 26] In this inquiry, possible reports were made both before and after the legislative amendments. A report prior to November 1, 2004 would therefore have been one made under the previous section 4 of the *Child Welfare Act*. Section 35(1)(b) of the *Interpretation Act* states that the repeal of an enactment does not affect anything done under it. This means that, provided that a report before November 1, 2004 was a "report" under the *Child Welfare Act* as it existed at the time, it continues to be a "report" under section 126.1(1) of the *Enhancement Act*. In any event, the legislative differences between the previous and current versions of sections 1(2) and 4 are not significant for the purposes of this inquiry.

[para 27] Also on November 1, 2004, sections 126 and 126.1 of the *Enhancement Act* came into force. Their content differs from the previous version of section 126. Prior to the enactment of the current provisions, section 126(4) of the *Child Welfare Act* stated that "the name of a person who reports to a director pursuant to section 4 or 5 shall not be disclosed or communicated to any person without the consent in writing of the Minister [responsible for the *Child Welfare Act*]". Section 126(4) of the *Child Welfare Act*, which was section 91(4) before that, prevailed despite the *FOIP Act*, pursuant to section 15(1)(b) of the *Freedom of Information and Protection of Privacy Regulation*.

[para 28] The 2004 amendments had the effect of changing the "status" of information that would identify a person making a report about a child in need of intervention, and changing what may or may not happen with respect to disclosure of that information. Whereas consent of the Minister used to be required under section 126(4) of the *Child Welfare Act*, the information is now "privileged" under section 126.1(1) of the *Enhancement Act*, although the Minister may direct its release, despite this, under section 126.1(2).

[para 29] I considered whether section 126(4) of the *Child Welfare Act* applies to a report made prior to November 1, 2004, but concluded otherwise. The Applicant's access request under the *FOIP Act* was made on June 12, 2005, which is after the amendments to the *Enhancement Act* came into force and the previous section 126(4) no longer existed. I believe that section 126.1(1) of the *Enhancement Act* "speaks forward" and now governs the status of any information that would identify a person making a report about a child intervention/protection matter, regardless of when the report was made.

[para 30] I also considered the possible application of section 35(1)(c) of the *Interpretation Act*, which states: "When an enactment is repealed in whole or in part, the repeal does not affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed." However, I do not believe that a person who reported a child intervention/protection matter prior to November 1, 2004, and who has identifying information in the records at issue in this inquiry, has any vested or acquired right with respect to non-disclosure of that information. The right or

privilege regarding disclosure is now the one set out in section 126.1(1) of the *Enhancement Act*.

[para 31] Given the foregoing, I conclude that for a report to be made under section 126.1(1) of the *Enhancement Act*, it must have been a "report" under section 4 of the legislation that was applicable at the time. However, the information identifying a person who makes a report is now governed by section 126.1(1) of the *Enhancement Act*.

b) Reports made

[para 32] In the context of this inquiry, I find that there were "reports" within the meaning of section 4(1) of the *Child Welfare Act* or *Enhancement Act*, as the case may be. For there to be a report under section 4(1), there must be reasonable and probable grounds to believe that a child is in need of intervention, and the person must report the matter to the Public Body. I find that there were "oral or written accounts of an event," which is the meaning of "report" (Order 2001-001 at para. 18). I also find that these events were conveyed to the Public Body. Further, the reports related to "a person under the age of 18 years", which is the meaning of "child" under section 1(1)(d) of both the *Child Welfare Act* and *Enhancement Act*. Finally, there were reasonable and probable grounds to believe that the survival, security or development of the child was endangered within the meaning of section 1(2) of the *Child Welfare Act* or *Enhancement Act*, as the case may be.

[para 33] Because I find that there were reports within the meaning of section 4, as it existed at the relevant time, I find that there are reports within the meaning of section 126.1(1) of the *Enhancement Act*.

c) Subsequent interviews

[para 34] The Public Body also applied section 5 of the *FOIP Act* to records documenting certain of the interviews conducted by the Public Body following reports that a child may be in need of intervention. However, in this inquiry, I do not find that the information conveyed during these subsequent interviews is information falling within section 126.1(1) of the *Enhancement Act*. The interviews, and information repeated from them in other records, do not constitute "reports" within the meaning of section 4 or 5 of the *Enhancement Act*.

[para 35] Rather, I believe that the interviews provided information under section 6(1)(b) of the *Enhancement Act*, which requires a director who receives "information in the form of a report under section 4 or 5" to assess the child's need for intervention. Because section 6(1)(c) requires a director to also assess a child's needs on receipt of "information in the form of any other allegation or evidence that a child is in need of intervention," there must be a difference between a "report" under section 4 or 5 and other information, allegations or evidence that comes to the director's attention. That a subsequent interview appears usually to be part of an assessment or investigation, rather

than an initial report, is also suggested by the Public Body's own policy, which it attached to its submissions (Policy 3.5 - Investigations).

[para 36] Because I find that the subsequent interviews were not "reports" within the meaning of section 126.1(1) of the *Enhancement Act*, section 5 of the *FOIP Act* would not apply to exclude the application of the Act to the information contained in the records of those interviews. Having said this, the information may nonetheless be subject to non-disclosure under section 17 of the *FOIP Act* (disclosure harmful to a third party's personal privacy), as discussed later in this Order.

[para 37] Although I find that no "reports" were made during the subsequent interviews in this inquiry, I do not preclude the possibility, in other cases, of another and separate "report" being made during the investigation of a first "report".

d) Identifying information

[para 38] For information to fall within section 126.1(1) of the *Enhancement Act*, it must reveal the name of a person who made a report or information that would identify that person. I find that this type of information is contained in the records documenting the reports, and in subsequent records referring to them. Names, phone numbers and reference numbers are indicated. There is also contextual information that would tell a reader who made the reports, such as information indicating whether the person witnessed or heard about an incident, the date on which the person witnessed or heard about an incident, and information indicating the extent to which the person may or may not have interacted with the family in question.

[para 39] I have no evidence before me that the persons making the reports consented to the disclosure of their identifying information or waived their privilege, or that the Minister directed disclosure under section 126.1(2) of the *Enhancement Act*. There is accordingly no suggestion that the identifying information of the persons making a report might have fallen outside the scope of section 126.1(1).

[para 40] I conclude that there is information in the records at issue that falls within section 126.1(1) of the *Enhancement Act*, another provision of which expressly provides that section 126.1(1) prevails if there is a conflict or inconsistency with the *FOIP Act*.

2. Is there an inconsistency or conflict between section 126.1(1) of the *Enhancement Act* and the *FOIP Act*?

[para 41] There is an inconsistency or conflict between two enactments or provisions where they cannot stand together, in other words compliance with one would entail a breach of the other (Order F2005-007 at para. 14; Order F2005-029 at para. 19). In certain inquiries, all of the allowable disclosures and prohibitions against disclosure under two enactments have been considered in order to decide whether there is an inconsistency or conflict between disclosure provisions (Order F2005-007 at para. 40).

However, I do not believe that it is always necessary to undertake such an analysis, as doing so can amount to a lengthy hypothetical and abstract exercise.

[para 42] In addressing whether there was a conflict or inconsistency between disclosure provisions of British Columbia's *Freedom of Information and Protection of Privacy Act* and another enactment, a B.C. Order referred to the following approach:

> It is no longer key to this kind of problem to look at one comprehensive scheme, and then to look at the other comprehensive scheme, and to decide which scheme entirely occupies the field to the exclusion of the other. Instead, the correct course is to look at the precise provisions and the way they operate in the precise case, and ask: Can they co-exist in this particular case in their operation? If so, they should be allowed to co-exist, and each should do its own parallel regulation of one aspect of the same activity, or two different aspects of the same activity. [B.C. Order 04-01 at para. 26, citing *British Columbia Lottery Corp. v. Vancouver (City)* at para. 19.]

[para 43] I adopt the above approach in this inquiry. The approach indicates that it is sufficient to ascertain whether there is actual inconsistency or conflict between the disclosure provisions of the *Enhancement Act* and the *FOIP Act* in the circumstances of this particular case.

[para 44] The Public Body cites Orders 99-027 and 2001-001, which previously dealt with whether there was an inconsistency or conflict between the *FOIP Act* and a provision of the former *Child Welfare Act*. However, the content of that provision was replaced by what is now section 126.1 of the *Enhancement Act*. These previous Orders are therefore not on point in addressing the extent to which there is an inconsistency or conflict. I must analyze the wording of section 126.1(1).

[para 45] I interpret section 126.1(1) of the *Enhancement Act* as setting out two separate rules. Its first rule is that "the name of a person who makes a report to the director under section 4 or 5 and information that would identify that person is privileged information of the person making the report." Its second rule is that this same information "is not admissible in evidence in any action or proceeding before any court or an Appeal panel or before any inquiry without the consent of the person."

[para 46] The Public Body states that section 126.1(1) of the *Enhancement Act* "outlines a very narrow circumstance under which disclosure can occur, even with [the person's] consent." However, I do not find this to be the proper interpretation of the provision. Section 126.1(1) does not indicate that information may *only* be disclosed in evidence and, in that narrow circumstance, with consent of the person making the report. Rather, the section indicates that *if* information is to be admitted in evidence, it requires consent of the person who has the privilege. Disclosure in other contexts remains possible, provided that the first rule – under which information is privileged generally – is respected.

[para 47] As the issue of the admissibility of information in evidence has not been squarely raised by the parties to this inquiry, I will not consider whether there is a conflict or inconsistency between the *FOIP Act* and the second rule in section 126.1(1) of the *Enhancement Act*. I will only consider whether there is a conflict or inconsistency between the first rule in section 126.1(1) and the provisions of the *FOIP Act* that govern the Applicant's particular access request.

[para 48] The first rule in section 126.1(1) of the *Enhancement Act* accords a legal privilege to the name and other identifying information of a person making a report regarding a child who may be in need of intervention, which person I shall call a "reporter". Section 27 of the *FOIP Act* also addresses information that is subject to privilege. The relevant provisions read as follows:

> *27(1) The head of a public body may refuse to disclose to an applicant*
>
> *(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege,*
>
> …
>
> *(2) The head of a public body must refuse to disclose information described in subsection (1)(a) that relates to a person other than a public body.*

[para 49] A "legal privilege" under section 27(1)(a) can be a privilege established by a statute (Order F2003-012 at para. 25). The privilege accorded to a person under section 126.1(1) of the *Enhancement Act* therefore also falls within section 27(1)(a) of the *FOIP Act*. I shall refer to this information that falls within both sections as "privileged information". Section 27(2) of the *FOIP Act* states that the head of a public body must refuse to disclose privileged information if it relates to a person other than a public body. If the privileged information relates to a public body, the Public Body has the discretion to withhold it but is not required to do so.

[para 50] I find that the first rule in section 126.1(1) of the *Enhancement Act* – according to which the information falling within that section is privileged – does not conflict with the *FOIP Act*. That rule says nothing about the disclosure or non-disclosure of the privileged information. (Again, the second rule in section 126.1(1) addresses the admissibility of such information in evidence, but that is a separate rule that has not been squarely raised in the circumstances of this inquiry.) The first rule in section 126.1(1) does not state more generally that privileged information cannot be disclosed at all, or that it can only be disclosed if the reporter consents. I therefore conclude that the *FOIP Act* applies to the privileged information that is the subject of the access request in this case. Section 27 of the *FOIP Act* would govern whether the Public Body may or must withhold the information.

[para 51] Even if the reference to "privileged information" in section 126.1(1) of the *Enhancement Act* were interpreted to imply that, unless the privilege is waived by the person who has it, such information cannot be disclosed in certain situations or at all

(admissibility of evidence being only one example), I still believe that there would be no inconsistency or conflict with the *FOIP Act*. In the context of an access request by a person other than the person who has the privilege, section 27 of the *FOIP Act* accords full protection to the privileged information of a person other than a public body. It must not be disclosed under section 27(2), although disclosure is permissible if the privilege has been waived (Order 97-009 at paras. 120ff; Order 98-017 at paras. 58ff).

[para 52] With respect to privileged information relating to a public body, section 27 of the *FOIP Act* provides for a discretionary exception to disclosure. The fact that disclosure is discretionary raises no greater or lesser inconsistency or conflict than exists between section 27 and any other "type of legal privilege." If the discretionary exception to disclosure under section 27 of the *FOIP Act* can be interpreted consistently with general principles regarding privilege, then it can be interpreted consistently with the generally stated privilege set out in section 126.1(1) of the *Enhancement Act*.

3. Conclusion under section 5

[para 53] On review of section 126.1(1) of the *Enhancement Act* and the provisions of the *FOIP Act* that govern the Applicant's access request in this inquiry, I find that the provisions can stand together and that compliance with one enactment would not entail a breach of the other. Section 126.1(1) of the *Enhancement Act* does not specifically address the disclosure or non-disclosure of privileged information, except with respect to its admissibility in evidence. Where privileged information is being considered more generally, as in this inquiry, section 27 of the *FOIP Act* protects it.

[para 54] Under section 5 of the *FOIP Act*, I conclude – in the context of the access request by the Applicant in this inquiry – that there is no inconsistency or conflict between section 126.1(1) of the *Enhancement Act* and the *FOIP Act*, and that the *FOIP Act* applies. I accordingly have jurisdiction over all of the information in the records at issue.

4. Application of the Act

[para 55] Although I have concluded that the Public Body improperly excluded the application of the *FOIP Act* to certain information in the records at issue, it could have applied section 27 of the Act to the information that is privileged under section 126.1(1) of the *Enhancement Act*. Having said this, I note that, in addition to applying section 5 of the *FOIP Act* (paramountcy) to certain information, the Public Body applied section 17 (disclosure harmful to a third party's personal privacy) to the same information, as indicated by the notations in the records submitted *in camera*.

[para 56] In an Addendum to this Order, I apply sections 27 and/or 17 of the Act to the information in respect of which the Public Body improperly applied section 5. I am unable to do so in the Order itself, as my discussion may assist in the identification of a person who made a report about a child intervention/protection matter. I will provide the Addendum to the Public Body but not the Applicant. In the event that the Applicant

takes this aspect of my decision to judicial review, I will provide in my return to the Court both this Order and the Addendum, and I will request that the Addendum be sealed. The Court may then make any order that it considers necessary with respect to the further dissemination of my reasons for the purpose of the review.

[para 57] Although I specifically apply sections 27 and/or 17 of the Act to certain information in the records at issue in the Addendum, I will now make some general comments about the application of these provisions.

a) Application of section 27

[para 58] I find that a public body may be a "person" who makes a report about a child intervention matter and may therefore be a "person" who has privileged information within the meaning of section 126.1(1) of the *Enhancement Act*. It has been held that the term "person" may extend to public bodies in some circumstances and that the discussion and judgment on the question of the ambit of "person" is a contextual one [*Edmonton (City) v. Alberta (Human Rights and Citizenship Commission)* at para. 22]. I believe that the protection given to reporters under the *Enhancement Act* extends to public bodies because the objective is to encourage reports without the reporter being concerned that the individual whose conduct is being reported, or whose child is the subject of the report, will react negatively to the reporter. Public bodies, like individuals, may experience negative consequences from reporting.

[para 59] It has been found that the reporting duty under section 4(1) of the *Child Welfare Act*, and therefore also under section 4(1) of the *Enhancement Act*, is imposed on all persons, whether natural or artificial (Order 2001-001 at para. 20). If a public body may be a "person" making a report within the meaning of section 4 of the *Enhancement Act*, a public body must also be a "person" within the meaning of section 126.1(1).

[para 60] Moreover, section 27(2) of the *FOIP Act* refers to the privileged information of "a person other than a public body". This suggests that a public body falls within the more general term "person." It is presumed that the provisions of legislation are meant to work together as parts of a functioning whole to form a rational, internally consistent framework, each contributing something toward accomplishing the intended goal (Order F2005-007 at para. 50, citing *Sullivan and Driedger* at pp. 262-63). An interpretation that a public body is a "person" under both section 27 of the *FOIP Act* and section 126.1(1) of the *Enhancement Act* flows from a presumption that the provisions of those separate Acts are intended to be coherent and internally consistent.

[para 61] When severing or withholding the privileged information of any reporter, I agree with the Public Body's assertion that the public interest in child intervention/protection reporting permits a relatively broad view of what constitutes identifying information and context. Even where information is a view or opinion about the Applicant and therefore his personal information, I find that it may be withheld as privileged information of the reporter because the view or opinion identifies the reporter, and is therefore also his or her intertwined personal information.

b) Application of section 17

[para 62] Although section 27(2) of the Act affords a stronger and more direct protection to the identifying information of a reporter who is an individual – as there is no need to ascertain an unreasonable invasion of privacy – I find that it is not improper to alternatively apply section 17. The information that identifies a reporter who is an individual would constitute personal information (i.e., "recorded information about an identifiable individual") for the purposes of that section. Further, I believe that the disclosure of a reporter's privileged information would constitute an unreasonable invasion of his or her personal privacy.

[para 63] On the other hand, it would not be proper to apply section 17 to the privileged information of a public body. "Personal information" is defined in section 1(n) of the Act as recorded information about an identifiable *individual*, which means a single human being (Order F2003-004 at para. 272). Thus, the information of a public body is not "personal information", as required for section 17 to apply.

c) Improper application of the Act

[para 64] Where a public body improperly applies both section 5 and an exception to disclosure under the Act, it may be ordered to reconsider its decision regarding the disclosure or non-disclosure of the information. This is suggested by Practice Note 4 of this Office (cited in Order 99-033 at para. 56).

[para 65] Practice Note 4 discusses section 4 of the Act, which sets out what records or information is not subject to the Act (exclusions). Like section 4, section 5 resolves a jurisdictional question, so I believe that Practice Note 4 may be adapted to section 5. The Practice Note indicates that where the Commissioner (or his delegate) finds that a record comes within the Act, and that the Public Body was wrong to exclude the application of the Act to that record, the normal practice will be to remit the record in question back to the public body to consider it under the Act and to respond to the applicant on the basis of the exceptions to disclosure contained in the Act. The public body will normally be allowed the time set out in section 11 (which is 30 days) to deal with the record in question. Also, upon remitting the matter back to the public body, the Commissioner (or his delegate) may give a direction as to the exceptions to disclosure that should be considered.

[para 66] Practice Note 4 states that a public body may argue, in the alternative, the applicable exceptions to disclosure in the event that it has not applied the jurisdictional section correctly. (The Public Body did so in this inquiry, by alternatively applying section 17 of the Act to certain information.) However, this will not prejudice a public body nor will it preclude the matter from being remitted to the public body if the jurisdictional argument does not succeed. In this inquiry, I therefore intend to order the Public Body to reconsider its decision regarding the disclosure or non-disclosure of certain information in the records at issue.

C. Does section 17 of the Act (disclosure harmful to a third party's personal privacy) apply to the records/information?

[para 67] Section 17 of the Act requires a public body to withhold personal information if disclosure would be an unreasonable invasion of a third party's personal privacy. The provisions of section 17 that I find primarily relevant to this inquiry are as follows:

> *17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.*
>
> *…*
>
> *(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
>
> *(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,*
>
> *…*
>
> *(d) the personal information relates to employment or educational history,*
>
> *…*
>
> *(g) the personal information consists of the third party's name when*
>
> *(i) it appears with other personal information about the third party, or*
>
> *(ii) the disclosure of the name itself would reveal personal information about the third party,*
>
> *…*
>
> *(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*
>
> *…*
>
> *(f) the personal information has been supplied in confidence,*
>
> *… and*
>
> *(i) the personal information was originally provided by the applicant.*

[para 68] Under section 71(1) of the Act, the Public Body has the burden of proving that the Applicant has no right of access to the information that it has withheld. In the context of section 17, this means that the Public Body must establish that the withheld information is the personal information of a third party and that disclosure would be an unreasonable invasion of the third party's personal privacy. Despite this burden, section 71(2) states that if the record contains personal information about a third party, it is up to the Applicant to prove that disclosure would not be an unreasonable invasion of the third party's personal privacy.

[para 69] The Public Body submits that the Applicant requested only the personal information of himself and his minor son and that any personal information of other individuals falls outside the scope of the request (e.g., page 0057 of the records). I find otherwise. In his request of June 12, 2005, the Applicant asked for the "complete file of [his son]" and "any information … on [his son] or [himself]". The request for information on his son and himself was *in addition* to the request for the complete file, not *a limitation* on the request for the complete file. Furthermore, the Public Body's letters to the Applicant dated July 4 and August 5, 2005 do not indicate that it believed that the Applicant was only requesting his and his son's personal information. The August 5 letter, which attached the records responding to the Applicant's request, makes no reference to non-responsive information, but instead applies sections 17 and 21 of the Act to the information not disclosed.

[para 70] Despite the Public Body's apparent misunderstanding of the Applicant's request, section references that the Public Body has noted next to information in the records submitted *in camera* indicate that it applied section 17 of the Act to most or all of the third party information in any event.

1. Is the severed information the personal information of a third party?

[para 71] The Act defines "personal information" as follows:

> *1(n) "personal information" means recorded information about an identifiable individual, including*
>
> *(i) the individual's name, home or business address or home or business telephone number,*
>
> *(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*
>
> *(iii) the individual's age, sex, marital status or family status,*
>
> *(iv) an identifying number, symbol or other particular assigned to the individual,*

(iv) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,

(vi) information about the individual's health and health care history, including information about a physical or mental disability,

(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,

(viii) anyone else's opinions about the individual, and

(ix) the individual's personal views or opinions, except if they are about someone else;

[para 72] I find that the records at issue contain the personal information of third parties, some of which is expressly included in the definition of "personal information" set out in section 1(n) of the Act. This information consists of names (including signatures), addresses, phone numbers, racial origin, age (including birthdates), sex (including references to "he" or "she"), marital status, family status (including indications of an individual's relationship to another individual), identifying numbers assigned to an individual, and individuals' views or opinions that are not about the Applicant.

[para 73] The types of personal information set out in the definition in the Act are not exhaustive. I find that there is other personal information of third parties in the records at issue, as it is "recorded information about an identifiable individual." This includes languages spoken, occupations, personal activities, statements conveying emotion, and contextual information that would identify an individual.

[para 74] Other information that the Public Body severed under section 17 is not the personal information of third parties, as it is the personal information of the Applicant, which I discuss below. I also later discuss the personal information of the Applicant's son, who may or may not be a third party vis-à-vis the Applicant, depending on the application of section 84(1)(e) of the Act.

[para 75] The Public Body withheld information under section 17 of the Act that is not anyone's personal information. This includes information relating to another public body. A public body is not an identifiable "individual" within the meaning of "personal information" set out in section 1(n) of the Act. Other severed information that is not personal information is the headings on standard forms, discussed in greater detail below. Further, the Public Body appears to have withheld the dates of certain interviews, as the entire page appears to have been withheld (pages 0057, 0065 and 0066 of the records), but I do not find that these dates are anyone's personal information. I intend to order the disclosure of non-personal information, unless it is excepted from disclosure under another provision of the Act.

2. Would disclosure be an unreasonable invasion of a third party's personal privacy?

[para 76] The Public Body indicates that it considered section 17(2) of the Act, which sets out situations where disclosure is *not* an unreasonable invasion of personal privacy, and found that none of the situations apply to the information in the records at issue. I agree.

[para 77] The Public Body cites all of section 17(4) of the Act, which sets out situations where disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. It submits that the third party personal information contained in the records meets several of the sub-provisions of the section. However, it goes on to say that "even the identification as to what those provisions are may, in fact, be an unreasonable invasion of those individuals' privacy, given the context in which the record was created, and the manner in which the information is intertwined."

[para 78] Although the Public Body felt unable to indicate in its open submissions which specific provisions of section 17(4) led it to believe that there was a presumption of an unreasonable invasion of privacy in respect of specific information, it could have requested to make submissions *in camera*. I realize that the Public Body submitted an affidavit *in camera*, but it does not address the presumptions set out in section 17(4). Although a clearer application of section 17(4) by the Public Body would have assisted, I remain able to review its consideration of other relevant circumstances. I also discuss, below, the presumptions that I find applicable.

[para 79] In reviewing the records and severing information, it appears that the Public Body paid more attention to the form or type of information rather than the actual content or the context in which it appeared. The Public Body appears to have gone through the file and simply severed the names of all third parties, as well as pronouns referring to them, without considering whether disclosure was actually excepted under the Act on the basis of an unreasonable invasion of their personal privacy. At other times, the Public Body disclosed information that, in my view, would identify a third party or improperly convey his or her personal information, even though the words did not contain a name or other obvious clue. I remind the Public Body that it is often the context of disclosure that must be considered. A failure to consider context results in severing that is both over- and under-inclusive.

a) Personal information of the mother

[para 80] At the start of this inquiry, this Office considered whether the mother of the Applicant's son should be added as an affected party so that she would be entitled to make submissions. However, the Public Body did not have a current address for her. A separate search was conducted by this Office in order to locate the mother, but that search was unsuccessful.

[para 81] In reaching my conclusions below, I am mindful of the fact that the mother did not make submissions in this inquiry, which submissions might have suggested the extent to which her personal privacy would be unreasonably invaded if her personal information were disclosed to the Applicant. Although I intend to order the disclosure of some of her personal information, it is limited to certain basic information on standard forms, information that treats the Applicant and the mother jointly as the parents of the child in question, and information that was provided by the Applicant himself. I believe that I have erred toward the non-disclosure of the mother's personal information where her personal privacy might be jeopardized. I accordingly believe that her inability to make submissions has not resulted in unfairness to her.

[para 82] I also acknowledge that, in some instances, there is a presumption of an unreasonable invasion of the personal privacy of the mother, for instance where her name appears with other personal information about her or disclosure of her name itself would reveal personal information about her [section 17(4)(g) of the Act]. However, where I intend to order disclosure, I have found that other relevant circumstances outweigh the presumption. Section 17(5) permits the factors listed in that section, and all other relevant circumstances, to be considered in determining whether a disclosure constitutes an unreasonable invasion of a third party's personal privacy – which includes where there is a presumption under section 17(4) (Order F2006-008 at para. 13; Order F2004-026 at para. 106).

[para 83] I find that disclosure of certain information in the records at issue would not be an unreasonable invasion of the personal privacy of the mother, who was/is the spouse of the Applicant. This particular information is her name, address, phone number, marital status, racial origin, spoken language, "person role", "affiliation role" and relationship to others. Disclosure of this personal data does not unreasonably invade her personal privacy, as it appears in records containing the same information of the Applicant, the two of them are being treated jointly or collectively as the parents of the child to whom the file relates, and this general or basic information would not normally be withheld between spouses. I find that these factors outweigh any concerns regarding privacy in this particular case. For instance, I believe that there is no unreasonable invasion of privacy if the Applicant knows the mother's marital status or spoken language, or that she is the mother of the child in question.

[para 84] I wish to emphasize, however, that there will be factors in other inquiries that suggest that even very general information about one's spouse or the co-parent of a child should not be disclosed. The crucial circumstance here, in my view, is that the file relates to the child of two individuals who are being treated jointly as his parents. The file is not about only one of two spouses with the other wishing to gain access. Further, I have no evidence in this inquiry that circumstances have changed between the parents so that the information I find should be disclosed should not be. Again, the information I believe should be disclosed is basic and general.

[para 85] By contrast, I cannot necessarily conclude that disclosure of the mother's birthdate or identification numbers would not be an unreasonable invasion of her personal

privacy. I do not believe that such information is consistently known between spouses, even in the context of a "joint" file in respect of their family. In the absence of submissions from either the Applicant or the mother as third party, I conclude that disclosure of the mother's birthdate and identification numbers would be an unreasonable invasion of her personal privacy – or at least shifts the burden to the Applicant to prove otherwise.

[para 86] Even where a third party's personal information (or privileged information under section 27 of the Act) is excepted from disclosure, a public body should not sever or withhold the headings on a standard form that are above or beside that information – unless the heading or the nature of the standard form itself would disclose personal information or be an improper identification. In this inquiry, the headings on various standard forms (e.g., pages 0087 and 0092 of the records) are not anyone's personal information, so the Public Body should not have withheld them under section 17 of the Act. By leaving in the headings (such as "Birthdate" and "Person I.D.") and severing only the added information, the Applicant would at least have known the nature of the information to which he was found not to be entitled. The same may be said where the Public Body appears to have refused to disclose the content of entire pages – that is pages 0057, 0065 and 0066 – when it should have given the Applicant access to the standard form headings of these "Contact Notes". I intend to order disclosure of the standard form headings that were withheld in the records at issue.

[para 87] The Public Body severed the mother's name, the word "Mom" and pronouns or abbreviations referring to the mother in several records. In some instances, this was appropriate to prevent an unreasonable invasion of her personal privacy, such as where disclosure would improperly identify her or provide information about her. In other instances, given the context, it would not have been an unreasonable invasion of personal privacy to leave these items of information in the records that were provided to the Applicant. This is so (such as on pages 0044, 0052 and 0053) where the records treat the Applicant and his son's mother collectively or disclose information conveyed by both of them during a joint meeting or information arising out of a joint meeting (such as information relating to the signing of an agreement).

[para 88] There are times where the personal information of the mother and other third parties was originally provided by the Applicant during interviews with him. This is a relevant circumstance under section 17(5)(i) of the Act, suggesting that it would not be an unreasonable invasion of a third party's personal privacy to disclose the information. At the same time, I note that certain of the information provided by the Applicant is educational and employment information of the mother, possibly falling under section 17(4)(d) and giving rise to a presumption of an unreasonable invasion of privacy. However, as it is not particularly sensitive, I find that even this information may be disclosed on the basis that the Applicant originally provided it.

[para 89] The Public Body failed to properly consider section 17(5)(i) of the Act. As I find that there would be no unreasonable invasion of personal privacy, I intend to order the disclosure of the personal information of the mother and other third parties that

was originally provided by the Applicant (as on pages 0071 and 0072 of the records, and in one sentence on page 0046). I make an exception in the next section of this Order, regarding the personal information of a third party other than the mother.

[para 90] In certain instances – such as where there was a joint meeting or telephone call with both the Applicant and his son's mother (as on pages 0079 to 0083) – I find that it is unclear whether certain information was specifically provided by the Applicant. In such instances, I do not intend to order disclosure. I will also not order disclosure where the interviewer, during a meeting attended by both the Applicant and the mother, has conveyed a view or opinion about the mother, as that is personal information of the mother that the Applicant did not provide.

[para 91] For the sake of clarity, I point to a distinction between the personal information of third parties that was originally provided by the Applicant and information of which the Applicant may already have been aware – even if it is the same information but in different records. The information may be disclosed where the Applicant originally provided it, but not where it was provided by somebody else. Whether an applicant knows a third party's personal information is not a relevant consideration for disclosing that personal information (Order 99-027 at para. 175).

b) Personal information of other adult third parties

[para 92] At the start of this inquiry, it was determined that other adult third parties were not affected parties, presumably because their personal information appears very rarely. As discussed below, I intend to order the disclosure of very little of the personal information of these other adult third parties in any event. Therefore, I do not believe that their inability to make submissions has resulted in any unfairness to them.

[para 93] Given the sensitivity of child intervention/protection matters and the need to obtain candid and frank information from third parties, I believe that the disclosure of names, phone numbers, occupations and other information that would identify certain third parties in the records at issue would be an unreasonable invasion of their personal privacy. Third parties are to be encouraged to provide information about the possible needs of a child without concern that the guardians will find out their identity.

[para 94] Although the third parties do not have the legal privilege set out in section 126.1(1) of the *Enhancement Act* unless they were also a reporter, the existence and desirability of confidentiality is nonetheless a factor to consider under section 17(5)(f) of the *FOIP Act*. I find that this factor weighs heavily against the disclosure of the personal information of third parties who provide information in the context of a child intervention/protection matter. Having said this, disclosure of the identity of third parties may sometimes not unreasonably invade their personal privacy. The answer depends on the circumstances, such as the nature of the interview and what was discussed.

[para 95] In this inquiry, I conclude that disclosure of the names, occupations and other identifying information of the third parties that were contacted by the Public Body during its assessments of the child's needs would be an unreasonable invasion of their personal privacy.

[para 96] The Public Body appears to have withheld the initials or signatures of third parties on pages 0057, 0065 and 0066 of the records (as these pages appear to have been withheld in their entirety). However, these third parties are employees of the Public Body. Disclosure of the names and signatures of employees, acting in their formal representative capacities, is generally not an unreasonable invasion of their personal privacy (Order F2005-030 at para. 44; Order F2006-008 at paras. 42 and 46). As I find that there would be no unreasonable invasion of personal privacy, I intend to order disclosure of the employee initials and signatures that were withheld in the records at issue.

[para 97] As discussed earlier, I intend to order the disclosure of the personal information of the mother and other third parties that was originally provided by the Applicant. One exception is where the personal information of a third party is personal information relating to a medical condition (on page 0071). This gives rise to a presumption that disclosure would be an unreasonable invasion of personal privacy under section 17(4)(a) of the Act, which I find is not outweighed under section 17(5)(i) by the fact that the Applicant provided the information.

c) Personal information of the Applicant's son

[para 98] The Public Body found that the Applicant was the father of the child whose information he requested, that he appeared to be a custodial parent of his son, and that there was no known guardianship order in favour of someone else. The Public Body therefore concluded, and I agree, that the Applicant is the guardian of his minor son and that section 84(1)(e) of the Act may apply. That provision reads as follows:

> *84(1) Any right or power conferred on an individual by this Act may be exercised*
>
> …
>
> *(e) if the individual is a minor, by a guardian of the minor in circumstances where, in the opinion of the head of the public body concerned, the exercise of the right or power by the guardian would not constitute an unreasonable invasion of the personal privacy of the minor...*

[para 99] One may note that section 126(1)(b) of the *Enhancement Act*, reproduced earlier in this Order, allows information that comes to the Minister's or another person's attention under that Act to be disclosed to the guardian of the child to whom the information relates. However, section 126(1)(b) of the *Enhancement Act* does not

require disclosure to a guardian. Even if it did, the *FOIP Act* would prevail, in accordance with section 5 of the Act.

[para 100] Although section 84(1)(e) does not expressly refer to section 17 of the Act, I agree with the Public Body that guidance may be obtained from section 17 when determining whether a guardian's right of access to certain information would not constitute an unreasonable invasion of the personal privacy of the minor for the purposes of section 84(1)(e). Section 17 sets out when the disclosure of information is not, is or is presumed to be an unreasonable invasion of another's personal privacy, and includes factors to consider. Section 84 refers to "any" and "the" right (i.e., in the singular), and section 6(2) of the Act grants a right of access to "a" record (i.e., in the singular), so I do not believe that a guardian's right of access to information under section 84(1)(e) is "all or nothing." The ability of a guardian to exercise a right of access on behalf of a minor may be determined on a record-by-record basis.

[para 101] I note the appearance of conflict between sections 17 and 84(1)(e) of the Act. Section 17 sets out a *mandatory* exception to disclosure where disclosure would unreasonably invade a third party's personal privacy. Section 84(1)(e) has the effect of giving a public body the *discretion* to disclose a minor's personal information to his or her guardian if, in the opinion of the head, disclosure would not constitute an unreasonable invasion of the minor's personal privacy. To reconcile the two provisions, it may be characterized that where a guardian has properly been found by a public body to be able to exercise the right of a minor under section 84(1)(e), the minor is no longer a third party vis-à-vis the guardian, as the guardian is acting on behalf of the minor. Section 17 therefore does not apply (although guidance may be taken from it).

[para 102] Conversely, where a public body decides *not* to allow a guardian access under section 84(1)(e), the minor remains a third party and section 17 of the Act should be considered in its usual way. In other words, if the Public Body in this inquiry has withheld the son's personal information from the Applicant, it has done so under section 17, not section 84(1)(e). Section 84(1)(e) only has the effect of permitting discretionary *disclosure*, not the *withholding* of information. Accordingly, if I find that the Public Body improperly withheld the son's personal information from the Applicant, I may order disclosure on the basis that there would be no unreasonable invasion of personal privacy under section 17.

[para 103] In deciding whether to allow the Applicant to exercise his son's right of access to his son's personal information, the Public Body states that it sought guidance, in particular, from section 17(5)(f) of the Act. That section states that, if personal information is supplied in confidence, it is a relevant circumstance in determining whether disclosure would constitute an unreasonable invasion of a third party's personal privacy.

[para 104] Much of the personal information of the Applicant's son appears in records that document the Public Body's interviews with him. The Public Body submits that the environment for an interview with a child who may be in need of intervention or

protective services should be one that creates a safe place for the child to talk freely and to be open about what is happening in his or her life without fear of reprisal. It argues that the nature of the interview demonstrates that the information provided by a child is in confidence. The Public Body's "default position" is therefore that disclosure of what is conveyed in a child interview is an unreasonable invasion of the child's personal privacy – although it states that it reviews records on a case-by-case basis to determine whether disclosure in a particular matter would not constitute such an invasion so that information may be disclosed.

[para 105] In an affidavit submitted *in camera*, the Public Body identifies another factor that it believes to be relevant to determining whether disclosure of the personal information of the Applicant's son (and possibly other third parties) would be an unreasonable invasion of personal privacy. The factor was indicated *in camera* because the Public Body believed that disclosure of the factor and other information in the affidavit might have the effect of unreasonably invading personal privacy. I accept this position. In fairness to the Applicant, however, I attach greater weight to factors that were presented in the Public Body's open submissions, particularly the confidential nature of the interview with the child. I also considered, like the Public Body, that the Applicant is/was a custodial parent of his son, which is a factor weighing in favour of disclosure.

[para 106] Depending on the particular case, the context in which third party personal information is given during an investigation can make it reasonable to conclude that such information was supplied in confidence, which is a relevant consideration that weighs in favour of non-disclosure (Order F2003-014 at para. 18). In this inquiry, given the sensitive and confidential nature of the interviews with the Applicant's son, and my review of the information conveyed by him, I find that disclosure of the son's personal information that was withheld in the records of these interviews would be an unreasonable invasion of his personal privacy under section 17 of the Act.

[para 107] Despite the foregoing conclusion, the Public Body is authorized to withhold information in the context of an interview with the son only where the information is the personal information of the son (or another third party). The Public Body is not authorized to withhold the personal information of the Applicant (e.g., the child's views or opinions about him), except to the extent that I discuss later in this Order regarding intertwined personal information.

[para 108] I also find that it would be an unreasonable invasion of the son's personal privacy to disclose certain personal information about him that was conveyed to the Public Body by other third parties during interviews with them. In particular, this is information that discloses the son's views or opinions about his home life and sensitive family dynamics, and his statements about his parents or their parenting styles that would identify him. The information is comparable to the information disclosed by the son himself during interviews with him. Although the information is conveyed "second hand", disclosure would nonetheless be an unreasonable invasion of the son's personal privacy.

[para 109] I agree with the Public Body that it would *not* be an unreasonable invasion of the son's personal privacy to disclose information about him that is conveyed by other third parties where the information relates to "non-sensitive" matters such as his schooling. The Public Body did not withhold this type of information. Further, the Public Body usually did not sever the name and other personal data of the child where it appeared very generally, as on standard forms, which was appropriate disclosure.

[para 110] In three instances, however, I find that the Public Body did not properly apply section 17 of the Act because it appears to have withheld the son's personal information at the top of "Contact Notes" on pages 0057, 0065 and 0066 of the records (as those pages appear to have been withheld in their entirety). As I do not find that disclosure of this general information would be an unreasonable invasion of the son's personal privacy, I intend to order disclosure.

d) Personal information of the Applicant

[para 111] The Public Body acknowledges that it withheld some of the personal information of the Applicant. It says that it did so because the information was too intertwined with the personal information of third parties and therefore could not reasonably be severed under section 6(2) of the Act. Sections 6(1) and (2) read as follows:

> *6(1) An applicant has a 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 applicant.*
>
> *(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.*

[para 112] In some cases, the fact that third party information is intertwined with an applicant's personal information means that a public body ultimately has to make an "all or nothing" decision regarding access (Order 98-008 at para. 35; Order 99-027 at para. 134). This dilemma, and the way in which it should be approached, was explained in Order 2000-019 (at para. 76):

> [T]he Applicant's personal information, including opinions about the Applicant, is intertwined with the personal information of other third parties. The third parties' personal information consists of a number of those kinds of personal information listed in section 1(n) [and] contextual information that identifies third parties… Consequently, it becomes necessary to decide whether some or none of the Applicant's personal information can be disclosed in situations in which the disclosure of a third party's personal information would be an unreasonable invasion of a third party's personal privacy and must not be disclosed.

[para 113] In the present inquiry, statements about the Applicant are likewise intertwined with contextual information that identifies the third parties that gave them. For instance, because the identities of the son and the mother are easily associated with the statements made by them during interviews, there is personal information about them as a result of that identification. If a third party can be identified through recorded information, then there is a third party's personal information (Order 98-008 at para. 35). Where events, facts, observations and circumstances contained in a record would identify a third party, there is personal information about that third party (Order 96-019 at para. 43; Order 2000-028 at para. 18).

[para 114] Under section 1(n)(ix) of the Act, "personal information" includes "the individual's personal views or opinions, except if they are about someone else." Some of the views and opinions severed from the records at issue are only the personal information of third parties, such as where an identifiable individual has expressed a view or opinion about a general situation or circumstance, or about a person other than the Applicant. Other severed information is a personal view or opinion about the Applicant. Such views or opinions are the personal information of the Applicant under section 1(n)(viii) ("anyone else's opinions about the individual").

[para 115] A third party's personal views or opinions about the Applicant – *by that reason alone* – are expressly not their personal information under section 1(n)(ix). However, the identification of the person providing the view or opinion may nonetheless result in there being personal information about him or her. Section 1(n)(ix) of the Act does not preclude this conclusion, as that section only means that the content of a view or opinion is not personal information where it is about someone else. In other words, the *substance* of the view or opinion of a third party about the Applicant is not third party personal information, but the *identity* of the person who provided it is third party personal information.

[para 116] Often, a public body will be in a position to and should simply sever the names of third parties so that they are not linked to their views and opinions (Order F2007-022 at para. 15). However, that may not always be possible due to context. Here, the Applicant can easily identify when the mother or the son is the individual providing the view or opinion. As a result, I find that the Public Body is often unable to sever third party personal information (identification) from the Applicant's personal information (the view or opinion expressed). It therefore becomes necessary to determine whether the Applicant's own personal information may be disclosed without unreasonably invading the personal privacy of the third parties.

[para 117] I find, in most instances, that the Public Body properly withheld the personal information of the Applicant because the fact, observation, view or opinion about him could not reasonably be severed from the identity of the third party who provided it, and disclosure of the identity would be an unreasonable invasion of the third party's personal privacy. This is primarily due to the sensitivity of family dynamics in matters involving child intervention or protection. In addition, there are times where the information about the Applicant is simultaneously a substantive comment about a third

party, or the statement about the Applicant discloses an emotional state of a third party. In these types of instances, I also find that the Applicant's personal information cannot reasonably be severed from third party information and disclosed without unreasonably invading the personal privacy of the third party.

[para 118] In other instances, the Public Body severed the personal information of the Applicant where I find that disclosure would not amount to an unreasonable invasion of a third party's personal privacy. I refer to certain statements about the Applicant (as on pages 0056 and 0064 of the records) where the information is of a more "general" or "non-sensitive" nature – including in the context of interviews with the Applicant's son. I intend to order the Public Body to disclose this information.

3. Conclusions under section 17

[para 119] In some instances, I find that the Public Body considered all of the relevant circumstances and correctly decided that disclosure of a third party's personal information, or the Applicant's intertwined personal information, would be an unreasonable invasion of the third party's personal privacy under section 17 of the Act. In accordance with section 71(2), it is up to the Applicant to prove that disclosure of this third party information would not be an unreasonable invasion of personal privacy, so that it may be released. As the Applicant made no submissions in this inquiry, he has failed to persuade me that the information may be disclosed. I therefore intend to confirm the Public Body's decision to withhold this personal information of third parties.

[para 120] In other instances, I find that the Public Body did not consider all of the relevant circumstances and did not correctly decide that disclosure of a third party's personal information, or the Applicant's intertwined personal information, would be an unreasonable invasion of the third party's personal privacy under section 17 of the Act. I therefore intend to order the disclosure of this personal information of third parties.

D. Does section 21 of the Act (disclosure harmful to intergovernmental relations) apply to the records/information?

[para 121] Section 21 of the Act gives a public body the discretion to refuse to disclose information on the basis of harm to intergovernmental relations. The provisions that are relevant to this inquiry are as follows:

> *21(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to*
>
> *(a) harm relations between the Government of Alberta or its agencies and any of the following or their agencies:*
>
> *…*
>
> *(ii) a local government body,*

or

(b) reveal information supplied, explicitly or implicitly, in confidence by a government, local government body or an organization listed in clause (a) or its agencies.

…

(3) The head of a public body may disclose information referred to in subsection (1)(b) only with the consent of the government, local government body or organization that supplies the information, or its agency.

(4) This section does not apply to information that has been in existence in a record for 15 years or more.

[para 122] Under section 71(1) of the Act, the Public Body has the burden of proving that the Applicant has no right of access to the information that it refused to disclose under section 21. The Public Body applied section 21 to all of the information on pages 0036, 0037 and 0038 of the records, which information was supplied by a local government body.

[para 123] The Public Body submits that it withheld the information because its relationship with the local government body in question "is a critical one, as there are a number of investigation and enforcement activities that often require collaboration if not collateral processes." The Public Body states that information from the local government body is "often vital to establishing the grounds for any protection issues" and that "it is important that the [local government body] have a say in how the information that [it] provide[s] is managed." The Public Body concludes that disclosure of the information at issue "risks compromising and eventually eroding the relationship that currently exists" between it and the local government body. These submissions suggest that the Public Body specifically applied section 21(1)(a)(ii) of the Act to the information on pages 0036, 0037 and 0038 of the records.

[para 124] However, I do not find that the Public Body has established that disclosure of the information on pages 0036, 0037 and 0038 "could reasonably be expected to harm relations," as required by section 21(1)(a) of the Act. The fact that the Public Body's relationship with the local government body is critical, and that the latter provides vital information, may establish the importance of the intergovernmental relationship, but it does not establish a reasonable expectation of harm to that relationship if information were disclosed. Under other sections of the Act, the "harm" test requires a clear cause and effect relationship between the disclosure and the alleged harm, the disclosure must cause harm and not simply interference or inconvenience, and the likelihood of harm must be genuine and conceivable (Order F2004-014 at para. 42). The Public Body has not satisfied this test.

[para 125] Information may alternatively be withheld under section 21(1)(b) of the Act (information supplied in confidence). There are four criteria that must be met (Order

2001-037 at para. 35; Order F2004-018 at para. 34). First, the information must be supplied by a government, local government body or an organization listed in clause (a) or its agencies. Second, the information must be supplied explicitly or implicitly in confidence. Third, the disclosure of the information must reasonably be expected to reveal the information. Fourth, the information must have been in existence in a record for less than 15 years.

[para 126] Although the Public Body did not make specific submissions regarding section 21(1)(b) of the Act, I find that the information on pages 0036, 0037 and 0038 of the records at issue falls under that section. The information was supplied by a local government body and has been in existence for less than 15 years. I find that the information was supplied implicitly in confidence, as the nature and context of information may show that it was supplied in confidence (Order 99-028 at para. 30). Finally, disclosure could reasonably be expected to reveal the information.

[para 127] I am unable to explain my conclusions under section 21(1)(b) in greater detail in this Order, as the Applicant's knowledge of my explanation would betray the confidences of the local government body. Instead, I will include my explanation in an Addendum to this Order, which I will provide to the Public Body but not the Applicant. In the event that the Applicant takes this aspect of my decision to judicial review, I will provide in my return to the Court both this Order and the Addendum, and I will request that the Addendum be sealed. The Court may then make any order that it considers necessary with respect to the further dissemination of my reasons for the purpose of the review.

[para 128] A public body has the discretion to disclose information under section 21(1)(b) of the Act, provided that it has the consent of the government, local government body or organization that supplied the information, as required by section 21(3). If consent has not been obtained, section 21(3) precludes disclosure (Order 96-004 at p. 4 or para. 18). In this inquiry, I have no evidence that the local government body in question has consented to disclosure of the information that I have found was provided by it implicitly in confidence. The Public Body's submissions suggest to me that consent has not been obtained.

[para 129] As I find that disclosure of the information on pages 0036, 0037 and 0038 of the records would reveal information supplied implicitly in confidence by a local government body under section 21(1)(b) of the Act, and that consent has not been obtained from the local government body under section 21(3), the Public Body is not authorized to give the Applicant access to the information. I therefore intend to order the Public Body to refuse access to the information on pages 0036, 0037 and 0038. [While the result may be the same, I do not confirm the Public Body's decision to withhold the information, as it improperly applied section 21(1)(a) rather than section 21(1)(b).]

[para 130] Although I must order the Public Body to refuse access, given the facts currently before me, the Public Body is not precluded from considering the disclosure of the information on pages 0036, 0037 and 0038 if it later obtains the consent of the local

government body. According to the Public Body's submissions, the local government body is apparently open to consultation regarding disclosure.

V. ORDER

[para 131] I make this Order under section 72 of the Act.

[para 132] I find that the Public Body met its duty to assist the Applicant, as required by section 10(1) of the Act.

[para 133] I find that, in accordance with section 5 of the Act, the Act applies to all of the information in the records at issue and I have jurisdiction to decide whether the Applicant has a right of access to the information under the Act.

[para 134] Except as set out in the paragraphs that follow, I find that section 17 of the Act (disclosure harmful to a third party's personal privacy) applies to the information withheld in the records at issue and that the Public Body properly determined that disclosure of the information would constitute an unreasonable invasion of the personal privacy of a third party and therefore must not be disclosed to the Applicant. In certain instances, the Public Body could also have applied section 27 (privileged information). Under section 72(2)(b) of the Act, I confirm the decision of the Public Body to refuse the Applicant access to the information.

[para 135] I find that section 17 of the Act (disclosure harmful to a third party's personal privacy) does not apply to certain information withheld in the records at issue and that the Public Body improperly determined that disclosure of the information would constitute an unreasonable invasion of the personal privacy of a third party. Under section 72(2)(a) of the Act, I order the Public Body to give the Applicant access to the following information on the following pages of the records:

> 0003 (all severed items), 0009 (the severed standard form headings), 0012 (the severed standard form headings), 0020 (the severed standard form headings), 0031 (the first severed item), 0032 (the first severed item), 0033 (the fifth severed name near the centre of the page, which is between "Office interview" and "Supervisor", and the severed name in the first line of the paragraph before "RECOMMENDATIONS"), 0039 (the first severed item), 0041 (the severed block at the bottom of the page except the birthdate and person ID), 0042 (the severed block at the bottom of the page except the birthdate and person ID), 0044 (all severed items), 0046 (the severed name in the first line of the paragraph after "PARENTAL CAPACITY TO RESPOND TO NEEDS" and the first eight words in the block of severed text in the third paragraph after that heading), 0047 (of a total of 14 severed items, the second, tenth and eleventh items, which are one word each), 0052 (all severed items), 0053 (all severed items), 0056 (the sixth line of severed text), 0057 (the standard form headings, the two handwritten words at the top of the page, the date at the left side of the page, and the initials at the bottom of the page), 0060 (the severed word in the middle of the page, which is in

a circle), 0064 (the third, fourth, fifth and sixth lines of information in the severed block), 0065 (the standard form headings, the two handwritten words at the top of the page, the date at the left side of the page, and the signature at the bottom of the page), 0066 (the standard form headings, the two handwritten words at the top of the page, the date at the left side of the page, and the signature at the bottom of the page), 0071 (all severed items except the two severed words in the fifth line of handwritten information), 0072 (all severed items), 0079 (the first severed item), 0080 (the second two severed items, which are one word each), 0081 (the first, third and fourth severed items of a total of five), 0082 (the last three severed items of a total of eight), 0083 (the only severed item), 0087 (all severed items except the birthdate and person ID), 0088 (the severed name but not placement ID), 0091 (all severed items except the ID number) and 0092 (all severed items except the birthdate and person ID).

[para 136] I find that the Public Body improperly applied section 5 (paramountcy) to information in the records at issue, and – in respect of certain of that information – did not properly apply a different section of the Act in the alternative. Under section 72(2)(b) of the Act, I order the head of the Public Body to consider whether or not to disclose to the Applicant the following information on the following pages and, in doing so, I direct it to specifically consider section 27 (privileged information):

0039 (the severed item after “Referral Source”), 0040 (all severed items), 0041 (the first two severed items), 0042 (the first two severed items) and 0047 (the first severed item).

[para 137] I find that section 21 of the Act (disclosure harmful to intergovernmental relations) applies to pages 0036, 0037 and 0038 of the records at issue. In particular, I find that section 21(1)(b) applies (information supplied implicitly in confidence). As the Public Body has not obtained the consent of the local government body that supplied the information, as required by section 21(3) in order to disclose it, I order the head of the Public Body, under section 72(2)(c), to refuse the Applicant access to the information.

[para 138] I further order the Public Body to notify me, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order.

[para 139] Finally, so that the Applicant is able to understand the page references in this Order, I specify, under section 72(4) of the Act, that – whether or not the Public Body complies with the other parts of this Order and unless it has already done so – it re-provide the Applicant with a copy of the records with page numbers corresponding to those indicated in the records submitted by the Public Body *in camera*.

Wade Riordan Raaflaub
Adjudicator