

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2006-007

October 12, 2007

ALBERTA INTERNATIONAL INTERGOVERNMENTAL AND ABORIGINAL RELATIONS

Case File Number 3347

Office URL: www.oipc.ab.ca

Summary: The Applicant requested all records in the custody or control of Alberta International and Intergovernmental Relations (the Public Body) relating to the appointment of a senior official.

The Public Body provided a copy of the senior official's contract, but severed information relating to salary, benefits, employment responsibilities and the names of parties to the contract. The Applicant requested review of the Public Body's decision to sever the information.

The Adjudicator ordered the Public Body to disclose the employment contract in its entirety.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 17, 25, 32; *Employment Standards Code* R.S.A. 2000 c. E-9, ss. 3, 4, 35, 39, 56, 57, *Financial Administration Act* R.S.A. 2000 c. F-12, s. 7, *Government Accountability Act* R.S.A. 2000 c. G-7 s. 10, *Legislative Assembly Act* RSA 2000 c. L-9, ss. 33 – 39, *Public Service Act* RSA 2000 c. P-42, s. 28

Authorities Cited: **AB:** Orders 98-014, 98-018, 2000-005, F2001-020, F2003-002, F2003-004, F2003-005, F2004-014, F2004-022, F2004-026, F2005-016, **ON:** MO-1194

Cases Cited: *Bland v. Canada (National Capital Commission)* [1991] FCJ 435, *University of Alberta v. Pylypiuk* (2002), A.J. No. 445 (Alta. Q.B.), *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403

I. BACKGROUND

[para 1] On February 18, 2005, the Applicant made an access request to the Public Body under the *Freedom of Information and Protection of Privacy Act* (the Act). She requested any information, emails, or memos relating to the hiring of a senior official (the Third Party), excluding news releases.

[para 2] The Public Body responded to the Applicant's request on May 20, 2005. The Public Body provided a copy of the Representative's contract of employment with information severed on the basis of sections 17(1) and 25 of the Act.

[para 3] On June 30, 2005, the Applicant requested review by the Information and Privacy Commissioner of the Public Body's decision to sever information

[para 4] Mediation was authorized, but did not resolve the dispute. The matter was set down for a written inquiry. The parties provided initial and rebuttal submissions. The Third Party was provided with notice but did not participate.

II. RECORDS AT ISSUE

[para 5] Specific clauses in the Third Party's contract of employment are at issue.

III. ISSUES

Issue A: Did the Public Body properly apply section 17 (personal information) to the records and information?

Issue B: Did the Public Body properly apply section 25 of the Act (economic interest of a public body) to the records and information?

IV. DISCUSSION OF ISSUES

Issue A: Does section 17 (personal information) apply to the Records and Information?

[para 6] Section 1(1)(n) defines "personal information". It states:

- (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,*
- (v) *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 7] Section 17 (1) requires the head of a public body to refuse to disclose a third party's personal information if the disclosure would be an unreasonable invasion of the third party's personal privacy. However, this provision cannot be read in isolation. Section 17 (2) establishes situations in which disclosure is not an unreasonable invasion of privacy, while section 17(3) and (4) describe the situations in which disclosure of personal information is presumed to be an unreasonable invasion of privacy. Section 17(5) is a non-exhaustive list of criteria for the head of a public to weigh when determining whether disclosure of personal information is an unreasonable invasion of privacy. Section 17 states in part:

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.

(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

- (a) *the third party has, in the prescribed manner, consented to or requested the disclosure...*
- (e) *the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council...*

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

- (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

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny...*
- (e) the third party will be exposed unfairly to financial or other harm,*
- (f) the personal information has been supplied in confidence,*
- (g) the personal information is likely to be inaccurate or unreliable,*
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and*
- (i) the personal information was originally provided by the applicant.*

[para 8] Although the issue is stated in the Notice of Inquiry as “Does section 17 of the Act (personal information) apply to the records and information?”, I note that the parties are in agreement that the record at issue contains personal information. The issue for the parties is whether the Public Body was right to sever personal information on the basis of section 17(1) and (4), or whether the information should be disclosed on the basis of sections 17(2) and (5). I will therefore consider the question: “Does section 17(1) (unreasonable invasion of personal privacy) apply to the records and information?”

[para 9] The Public Body severed information on the basis of sections 17(1) and 25 from clauses 3(a), 3(c), 6(a), 6(e), 6(f), 6(g), 7, 12, 14, and 18(b). The Public Body also severed the signatures of the parties and witnesses to the contract.

[para 10] The Public Body argues that the information severed from the employment contract is personal information of a third party under the Act and that the third party does not consent to disclosure of this information. Because the third party has not consented to disclosure of personal information, the Public Body argues that disclosure would be an unreasonable invasion of his privacy. The Public Body also argues that the onus is on the Applicant to establish that disclosing the severed information would not be an unreasonable invasion of the third party's privacy. Finally,

the Public Body argues that applying section 17(2)(e) to the Third Party's salary and benefits information would effectively "override" section 17(4).

[para 11] Counsel for the Public Body argues that the Public Body considered several factors when deciding to sever information in the Third Party's contract:

With this in mind, IIR acted on the side of protection, and severed only that personal information that clearly fell within protection of section 17(4) of the Act and did not clearly fall within the scope of section 17(2) of the Act. This led to the disclosure of employment related personal information including "boiler plate" provisions common to many or most senior official contracts; and personal information that was otherwise available to the public such as information disclosed in the ministry annual report, pursuant to the *Government Accountability Act*.

However, the affidavit evidence provided by the Public Body indicates that the Public Body did not consider sections 17(2) or 17(4), but determined that disclosing financial information would be, in and of itself, an unreasonable invasion of the Third Party's personal privacy and could reasonably be expected to result in financial loss to, or prejudice the competitive position of, the Government of Alberta, as contemplated by section 25 of the Act..

[para 12] The Applicant argues that the severed information relates to salary, bonus performance plan, vacation entitlement, benefits entitlement, rental of accommodation, payment upon termination of employment, and termination allowance. While the Applicant agrees that this information is personal information, it argues that it falls under section 17(2)(e). As a result, disclosure of this information would not be an unreasonable invasion of the Third Party's privacy. The Applicant relies on *Bland (supra)* and Orders 98-014, 98-018, F2001-020 and F2003-02 in support of this position. In addition, the Applicant argues the Public Body must weigh the factors listed in section 17(5) before withholding information under section 17. The Applicant argues that 17(5)(e) and (h) do not apply.

[para 13] In Order 2001-020, the former Commissioner said that one of the purposes of what is now section 17(2)(e) is to permit the disclosure of information about the employment benefits and responsibilities of public employees, allowing a degree of transparency in relation to the compensation and benefits provided to public employees. Therefore, the first consideration in determining whether personal financial or employment information should be disclosed is whether section 17(2)(e) applies. If it applies, disclosure of the Third Party's personal information is not an unreasonable invasion of the Third Party's personal privacy.

[para 14] The Commissioner also considered the meaning of "discretionary benefits" for the purposes of section 17(2)(e) in Order 2001-020. He said:

I turn now to the use of the phrase "discretionary benefit" in the context of section 16(2)(e) of the Act. One of the purposes of section 16(2)(e) is to allow the release of information about the employment benefits and responsibilities of public employees, allowing a degree of transparency in relation to the compensation and benefits provided to public employees. The general reference to "benefits" rather than to specific identified benefits in section 16(2)(e) indicates that the

legislative intention was to capture a range of discretionary benefits that flow from the employment relationship.

[para 15] In order 2005-016, the Commissioner said:

In deciding what constitutes “discretionary benefits”, previous Orders of this Office have defined “benefit” to mean, among other things, a favourable or helpful factor or circumstance, or an advantage: see Orders 98-014, 2001-020 and F2003-002. “Discretionary” means that a decision-maker must have a choice as to whether, or how, to grant the benefit: see Orders 98-018, 2001-020 and F2003-002.

In Order 2001-020, the former Commissioner said that the general reference to “benefits”, rather than to specific identified benefits in what is now section 17(2)(e), indicates that the legislative intention was to capture a range of discretionary benefits that flow from the employment relationship. Furthermore, the precise sums and details of the particular discretionary benefit in that case (a severance package) could be disclosed under what is now section 17(2)(e). The fact that the public body exercised its discretion to negotiate mutually acceptable compensation with the third party in that case created the necessary element of a degree of discretion.

[para 16] In contrast, section 17(4) creates a presumption that disclosure of personal information relating to employment history is an unreasonable invasion of privacy. In order F2004-026, the Commissioner adopted the following interpretation of the phrase “employment history,” as set out in Order F2003-005:

In my view the term ‘employment history’ describes a complete or partial chronology of a person's working life such as might appear in a resume or personnel file. Particular incidents that occur in a workplace may become the subject of entries in a personnel file, and such entries may properly be viewed as part of ‘employment history’. However, the mere fact there is a written reference to or account of a workplace event does not make such a document part of the ‘employment history’ of those involved. Many workplace incidents of which there is some written record will not be important enough to merit an entry in a personnel file.

[para 17] Personal information relating to employment history under section 17(4) is subject to a presumption that disclosure is an unreasonable invasion of privacy. The presumption may be rebutted, or the privacy interest may be outweighed by other factors in section 17(5). In contrast, section 17(2)(e) does not refer to employment history, but to specific information regarding classification, responsibilities and remuneration of employees of public bodies. Disclosure of information falling under 17(2)(e) is not an unreasonable invasion of privacy. Once 17(2)(e) is found to apply, no further weighing is required. The information must be disclosed. Sections 17(2)(e) and 17(4) apply to different information and there is no conflict between them. Under the Public Body's interpretation, section 17(2)(e) would be meaningless, as all employment related information would be subject to the presumption under 17(4).

[para 18] I will consider each piece of severed information, clause by clause, and determine which provisions of section 17 apply, and whether disclosing the information would amount to an unreasonable invasion of the third party's privacy under section 17 of the Act.

Clause 3

[para 19] Clause 3(a) of the contract contains information regarding the Third Party's salary, and not a "salary range" as contemplated by section 17(2)(e). The Public body severed the salary amount on the basis of section 17(1). However, the mere fact that the information is actual salary information does not mean that it cannot be disclosed. I will consider the Third Party's actual salary under section 17(4) and (5) in deciding whether disclosure of personal information would be an unreasonable invasion of the Third Party's personal privacy under section 17(1).

[para 20] Employing the definition of "employment history" adopted by the Commissioner in Order F2004-026, the amount of a salary is not an event and would not form part of a chronology of a person's working life. Even if I were to find that a salary amount relates to employment history, section 17(4) creates a presumption only. Section 17(5) contains relevant circumstances that a Public Body must consider when determining whether disclosing personal information amounts to an unreasonable invasion of privacy under sections (1) to (4). In other words, even if a Public Body finds that personal information falls under a provision of section 17(4), it must still consider the factors in section 17(5) when deciding whether disclosure of the personal information would be an unreasonable invasion of privacy.

[para 21] The Applicant argues that 17(5)(e) and (h) do not apply as disclosure of the salary would not expose the third party unfairly to financial harm or unfairly damage his reputation.

[para 22] I note that in clause 15(3)(b) of the contract, which was disclosed to the Applicant, the Third Party agreed to comply with the following conditions:

...all other applicable Codes of Conduct or Directives relating to financial disclosure or conflict of interest established by the Employer or the Government of Alberta including those set out in the memorandum of February 3, 1993 sent by then Minister of Justice to Deputy Ministers and Senior Officials...

[para 23] Section 7 of the *Financial Administration Act* enables the Treasury Board to issue Directives. Treasury Board Directive 03/2004, which was in force at the time the contract was signed, requires the salaries, benefits, and non-cash benefits of Deputy Ministers and senior officials to be included in the financial statements of a ministry's annual report, a public document which each ministry must prepare under section 10 of the *Government Accountability Act*.

[para 24] Directive 03/2004 requires senior officials' base salary, cash benefits including bonuses, vacation payouts, overtime and lump sum payments to be disclosed. In addition, non-cash benefits including government's share of employee benefits and contributions or payments made on behalf of employees, including pension, health care, dental coverage, group life insurance, short and long term disability plans, professional membership and any tuition fees must be disclosed. I note that the Third Party's salary

and benefits information was disclosed in the Public Body's annual reports for the 2004/5 and 2005/6 fiscal years in accordance with this directive.

[para 25] Clearly, the Government of Alberta considers that disclosure of senior officials' salary and benefits information to public scrutiny is important to ensure accountability, and has passed legislation and issued directives to achieve this purpose.

[para 26] The Applicant notes that the appointment of the Third Party as a representative of Alberta in Washington is a matter of public interest and has caused discussion among citizens of Alberta. The Applicant argues that it is therefore important to disclose this information in order to subject the activities of government to public scrutiny. This argument is supported by the fact that the Public Body issued news releases regarding the appointment of the Third Party and his projected earnings in the position. In addition, the appointment of the Third Party was discussed in the media.

[para 27] In *Pylypiuk (supra)* Gallant J. stated that the reference to public scrutiny of government or public body activities under what is now section 17(5)(a) requires some public component, such as public accountability, public interest and public fairness.

In my opinion, the reference to public scrutiny of government or public body activities in s. 16(5)(a) speaks to the requirement of public accountability, public interest, and public fairness.

[para 28] Laforest J. noted in *Dagg, (supra)*:

The overarching purpose of access to information legislation is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and that politicians and bureaucrats remain accountable to the citizenry.

[para 29] In Order F2005-016, the Commissioner said:

Following on the *University of Alberta v. Pylypiuk* case, I agree with the Applicant that public accountability is at the heart of the terms under which the Public Body hires and expends public funds for a chief of police, who occupies a significant position of public trust.

[para 30] I find that public accountability and public interest is similarly at the heart of the terms in which public bodies hire senior officials. In this particular case, the Third Party was appointed to represent the interests of the province. Section 17(5)(a) applies and is a relevant circumstance that weighs heavily in favour of disclosing the Third Party's personal information.

[para 31] In addition, as the Third Party agreed to disclose his salary publicly in accordance with Treasury Board directives, as a condition of employment, I do not find that he had any reasonable expectation that his salary would be kept in confidence for the purposes of section 17(5)(f) of the Act.

[para 32] For these reasons, I find that disclosure of the Third Party's salary amount in the employment contract would not be an unreasonable invasion of the Third Party's personal privacy.

Clause 4

[para 33] Clause 4 refers to the Third Party's employment responsibilities. I find that this information can be classified as "employment responsibilities as an employee of a public body" under section 17(2)(e) and therefore disclosure would not be an unreasonable invasion of the Third Party's personal privacy.

Clause 6

[para 34] Clause 6(a) of the contract addresses the amount of vacation and vacation pay the Third Party was to receive. While the *Employment Standards Code* (the Code) makes it mandatory for an employer to provide vacation and vacation pay, I note that the amounts of vacation and vacation pay negotiated in the agreement are greater than the minimum standards established in the Code. While section 4 of the Code does not permit an employer to negotiate less vacation and vacation pay than required by sections 35 and 39, an employer always has the discretion to negotiate vacation in excess of statutory minimums under section 3. I find that vacation is a discretionary benefit flowing from the employment relationship, and that the Public Body exercised its discretion when it negotiated the amount of vacation and vacation pay. I therefore find that the severed information in Clause 6(a) falls under section 17(2)(e) and disclosure would not be an unreasonable invasion of the Third Party's personal privacy.

[para 35] Clauses 6(e) and (f) relate to the Third Party's choice of insurance benefits plans and the employer's agreement to pay portions of the contributions. The Public Body had discretion to negotiate this benefit. I therefore find that the severed information falls under section 17(2)(e) and disclosure would not be an unreasonable invasion of the Third Party's personal privacy.

[para 36] Clause 6(g) contains pension options. Participation in a pension plan is a benefit flowing from the employment relationship. The Public Body had discretion to negotiate this benefit. I therefore find that the severed information falls under section 17(2)(e) and disclosure would not be an unreasonable invasion of the Third Party's personal privacy.

Clause 7

[para 37] Clause 7 relates to disability income plans. Participation in a disability plan is a benefit flowing from the employment relationship and would not be offered to the Third Party if he were not an employee. The Public Body had discretion to negotiate this benefit. I therefore find that the severed information is a discretionary benefit under section 17(2)(e) and disclosure would not be an unreasonable invasion of the Third Party's personal privacy.

Clause 12

[para 38] Clause 12 relates to provision of membership fees necessary for the performance of employment duties. The contract clearly contemplates that the Public Body will pay for memberships for the purposes of the Third Party's employment. The Public Body had discretion to negotiate this benefit. I therefore find that the severed information is a discretionary benefit falling under section 17(2)(e) and disclosure would not be an unreasonable invasion of the Third Party's personal privacy.

Clause 14

[para 39] Clause 14(b) and (d) establish the amount of termination notice and termination pay the Public Body was to provide in the event of termination of the employment relationship. As with vacation, the Code establishes minimum standards of termination notice and pay. As established by sections 3 and 4 of the Code, an employer has the discretion to negotiate termination notice and pay in excess of the Code's minimum standards, but may not negotiate less termination notice or pay than required by the Code. As the contracted amounts exceed minimum standards, I find that the Public Body exercised discretion when it agreed to the amount of termination notice and pay. I therefore find that the severed information falls under section 17(2)(e) as a discretionary benefit and disclosure would not be an unreasonable invasion of the Third Party's personal privacy.

[para 40] Section 14(g) refers to a benefit that does not flow from the employment relationship, but rather from the Applicant's standing as a member of the legislative assembly (MLA). None of the exceptions in section 17(2) or the presumptions under section 17(4) apply to that personal information. I will therefore consider whether the information should be withheld or disclosed by considering the factors in section 17(5).

[para 41] Compensation for MLAs is authorized by the *Legislative Assembly Act* and prescribed by the Members' Services Committee. I note that the formulas for calculating MLA allowances and remuneration are fixed and published in the Members Guide and on the Assembly website.

[para 42] I find that disclosure of clause 14(g) of the contract would not reveal personal information that is not already publicly available. In addition, I find that disclosure of MLA remuneration and allowances is desirable for the purpose of subjecting the activities of the Government of Alberta to public scrutiny under section 17(5)(a), as it promotes the accountability of MLAs to the public.

Clause 18

[para 43] Clause 18(g) is a condition of employment. It creates responsibilities for the Third Party in a particular situation. I find that this clause meets the definition of employment responsibilities for the purposes of section 17(2)(e) and that disclosure of this personal information would not be an unreasonable invasion of the Third Party's privacy.

Signatures

[para 44] The signatures of third parties appear without any other personal information relating to them. Therefore, none of the presumptions under section 17(4) apply to that personal information. In keeping with Orders 2000-005, F2003-004, F2004-022, and F2005-016, I will consider whether this information should be disclosed or withheld by reviewing the factors in section 17(5).

[para 45] Section 17(5) is inclusive and does not provide an exhaustive list of factors to be considered when determining whether disclosure of personal information is or is not an invasion of privacy. In Orders 2000-005, F2003-004, F2004-022, and F2005-016 a relevant circumstance under section 17(5) that weighed in favour of disclosing personal information consisting of names and signatures, was whether individuals were acting in formal representative capacities. In those cases, disclosure of the names and signatures of individuals was found to not be an unreasonable invasion of those third parties' personal privacy under section 17(1).

[para 46] Ontario adopts a different approach, as set out in Order MO-1194:

This office has considered handwriting and signatures which appear on records in a number of different contexts.

In cases where the signature is contained on records created in a professional or official government context, it is generally not "about the individual" in a personal sense, and would not normally fall within the scope of the definition. (See, for example, Order P-773, [1994] O.I.P.C. No. 328, which dealt with the identities of job competition interviewers, and Order P-194 where handwritten comments from trainers were found not to qualify as their personal information.)

In situations where identity is an issue, handwriting style has been found to qualify as personal information. (See, for example, Order P-940, [1995] O.I.P.C. No. 234, which found that even when personal identifiers of candidates in a job competition were severed, their handwriting could identify them, thereby bringing the records within the scope of the definition of personal information)...

In my view, whether or not a signature or handwriting style is personal information is dependent on context and circumstances.

In other words, one must decide whether the signature is "about the individual" for the purposes of section 1(1)(n) of the Act, or is about the office held by the individual. In situations where a record is signed as part of employment responsibilities as an office holder, the signature is not personal information. When a record is signed in one's capacity as an individual, the signature becomes recorded information about an individual and subject to section 17.

[para 47] I find that the parties, other than the Third Party in this case, were acting as representatives of the public body and government when they signed the contract. The contract would not have been binding on the Public Body had its representatives signed in their personal capacities.

[para 48] If I were to apply the reasoning in Ontario Order MO-1194, I would find that the signatures of the parties, other than that of the Third Party, are not “about an individual” as required by section 1(1)(n) and therefore, section 17 would not apply to the signatures of the parties.

[para 49] However, in keeping with previous decisions of this office, I find that signatures are personal information and that the fact that the third parties signed in their official capacities weighs in favor of disclosing their signatures under section 17(5).

[para 50] I find that the Third Party’s signature is his personal information, but that he did not sign in a capacity as a public official, as signing the contract changed his personal legal status from that of prospective employee to employee.

[para 51] The final issue is therefore whether the signature of the Third Party should be withheld or disclosed. As noted above, there is legislation in place to ensure that senior officials’ salary and benefits information is subject to public scrutiny. In addition, public officials must comply with section 28 of the *Public Service Act* and the regulations and directives made under its authority when negotiating contracts for salary and benefits. By disclosing the signatures, the public may determine whether government officials are accountable when carrying out their responsibilities, in this case, negotiating salaries and benefits of senior officials. The signature of the Third Party is important to make the document meaningful for the purposes of public accountability. Without the signature, it would be unclear whether the contract had been signed and was legally binding.

[para 52] Had the contract indicated the names of the signatories, and the fact that the contract had been signed, it may have been unnecessary to disclose the signatures for the purpose of subjecting the contract to public scrutiny. However, in the present case, the signatures themselves are the only indication of the signatories to the contract, and whether the legislation and directives have been complied with. As a result, in this case, disclosure of all the signatures, including that of the Third Party, is supported by section 17(5)(a) and is not an unreasonable invasion of personal privacy.

Issue B: Did the Public Body properly apply section 25 of the Act (economic interest of a public body) to the records and information?

[para 53] The Public Body cited section 25 as an additional basis for severing the information it withheld under section 17 from the record.

[para 54] Section 25(1) of the Act creates a discretionary exception for information that could reasonably be expected to harm the economic interests of a public body. It states:

25(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the economic

interest of a public body or the Government of Alberta or the ability of the Government to manage the economy, including the following information:

- (a) trade secrets of a public body or the Government of Alberta;*
- (b) financial, commercial, scientific, technical or other information in which a public body or the Government of Alberta has a proprietary interest or a right of use and that has, or is reasonably likely to have, monetary value;*
- (c) information the disclosure of which could reasonably be expected to
 - (i) result in financial loss to,*
 - (ii) prejudice the competitive position of, or*
 - (iii) interfere with contractual or other negotiations of, the Government of Alberta or a public body;**
- (d) information obtained through research by an employee of a public body, the disclosure of which could reasonably be expected to deprive the employee or the public body of priority of publication.*

[para 55] The Public Body argues that disclosure of the severed information would harm the Public Body's and the Government of Alberta's negotiating position in regard to future negotiations. In addition, the Public Body argues that an incumbent or an applicant may request contracts of senior officials prior to entering contract negotiations. Finally, the Public Body argues that disclosure of the contract would lead to a standardized set of employment terms and would reduce the number of choices available to recruiting officers. The Public Body provided affidavit evidence in support of this position.

[para 56] The Applicant argues that the contract in question is simply one contract within government and that disclosure could not result in the harm foreseen by the Public Body. The Applicant notes that anyone contracting with the Government of Alberta should be aware that contracts may be made public.

[para 57] In Order 96-016, the former Commissioner considered the interpretation of section 25(1) (formerly section 24(1)). He stated:

The public body claims that section 24(1) should be interpreted so that the harm to a public body does not have to result directly from disclosing the specific information, but can be "harm at large" or "indirect harm" (my interpretation of the public body's claim). The essence of the public body's argument is this: The information in the record was produced under a contract between a division of a public body and an organization independent of government. There was a confidentiality clause in that contract, which restricts publication of the information. Releasing this information under the Act, contrary to the confidentiality clause, will affect AEC's and, consequently, ARC's contracts with this and other organizations, thereby causing harm to both AEC and ARC. Harm will result from cancelled contracts, and from other organizations bypassing AEC and ARC, knowing they are subject to the Act. That harm is quantifiable.

However reasonable the public body's argument sounds, I do not think that section 24(1) can or should be interpreted as the public body claims. Section 24(1) focuses on the harm resulting from

the disclosure of *that specific information* (emphasis in original). The wording of section 24(1) implies that it is the specific information itself that must be capable of causing the harm, if that information is disclosed. When I look at the kinds of information listed in section 24(1)(a)-(d), two things are clear to me: (i) the legislature had very specific kinds of information in mind when it was contemplating what information had the potential to cause harm if disclosed; and (ii) there must be a direct link between disclosure of that specific information and the harm resulting from disclosure; in other words, there must be something in the information itself capable of causing the harm.

[para 58] I find that the harm that the Public Body projects does not relate to the disclosure of the specific information at issue. Instead, the projected harm appears to be related to disclosure of contracts and contractual provisions in general.

[para 59] As discussed above, the *Government Accountability Act* and Treasury Board Directive 03/2004 require the public disclosure of the information the Public Body seeks to withhold. Any incumbent or candidate seeking to find out the salary and benefits amounts of other government officials could review Ministry annual reports to develop a negotiating strategy. As a result, I find that disclosure of the specific contract information and the disclosure of contracts in general would not result in the harm projected by the Public Body and the argument is without merit.

[para 60] I find that the Public Body has not established that section 25 applies to the information it seeks to withhold. As a result, I find that it did not properly apply section 25 to the records and information.

V. ORDER

[para 61] I make this Order under section 72 of the Act.

[para 62] I order the Public Body to disclose the Third Party's contract of employment to the Applicant in its entirety.

[para 63] 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.

Teresa Cunningham
Adjudicator