ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2007-021

May 30, 2008

ALBERTA JUSTICE AND ATTORNEY GENERAL

Case File Number 3755

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (the "Act" or "*FOIP Act*"), the Applicant asked Alberta Justice and Attorney General (the "Public Body") for access to all documentation and files about himself held by certain departments within the Public Body.

The Public Body provided access to some of the requested information, but withheld the remaining information under sections 4(1)(a) (information in a court file), 4(1)(d) (record of an officer of the Legislature), 17 (disclosure harmful to a third party's personal privacy), 20(1)(g) (information relating to the exercise of prosecutorial discretion), 24(1)(a) (advice, etc.), 24(1)(b) (consultations or deliberations), 27(1)(c) (privileged information) and 58 (information supplied or record produced during an investigation or inquiry by Commissioner) of the Act.

The Adjudicator found that he had no jurisdiction over certain records, such as transcripts of court proceedings and copies of filed versions of court records, because they are excluded from the application of the Act under section 4(1)(a) (information in a court file). He also found that he had no jurisdiction over copies of letters from the Public Body to the Information and Privacy Commissioner because they are excluded from the application of the Act under section 4(1)(d) (record of an officer of the Legislature). Given the latter conclusion, the Adjudicator found it unnecessary to consider whether disclosure of the letters was precluded under section 58 (information supplied or record produced during an investigation or inquiry by Commissioner).

The Adjudicator found that the Public Body properly exercised its discretion to withhold information in a Crown prosecutor's file, as disclosure could reasonably be expected to reveal information relating to or used in the exercise of prosecutorial discretion, under section 20(1)(g) of the Act.

The Adjudicator found that the Public Body properly exercised its discretion to withhold certain records, such as briefing notes and e-mail correspondence, as disclosure could reasonably be expected to reveal consultations or deliberations involving officers or employees of the Public Body, a member of the Executive Council or the staff of a member of the Executive Council, under section 24(1)(b) of the Act. However, he found that the Public Body improperly applied section 24(1)(b) to other records, as they did not reveal the substance of any consultations or deliberations.

The Adjudicator found that section 17 of the Act did not apply to the information that the Public Body withheld under that section. In one instance, there was no personal information about a third party, as it was the personal information of the Applicant. In the other instances, the Adjudicator found that disclosure of the names in question would not constitute an unreasonable invasion of the personal privacy of third parties, who were acting in their capacities as government employees.

Given the Adjudicator's conclusions regarding other sections of the Act, he found it unnecessary to consider the application of section 24(1)(a) (advice, etc.) or 27(1)(c) (privileged information) to any records.

The Adjudicator ordered the Public Body to give the Applicant access to the information to which it had improperly applied sections 17 (disclosure harmful to a third party's personal privacy) and 24(1)(b) (consultations or deliberations) of the Act.

Statutes and Regulations Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n)(i), 1(m), 1(q), 2(a), 2(c), 4(1), 4(1)(a), 4(1)(d), 10(1), 17, 17(1), 17(4)(g), 17(5), 17(5)(f), 20(1)(g), 24(1), 24(1)(a), 24(1)(b), 27(1), 27(1)(c), 58, 68, 70(a), 71(1), 71(2), 72, 72(2)(a) and 72(2)(b); *Maintenance Enforcement Act*, R.S.A. 2000, c. M-1, s. 15(1); *Freedom of Information and Protection of Privacy Regulation*, Alta. Reg. 200/95, s. 15(1)(g). **BC:** *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, ch. 165, Schedule 1 (definition of "exercise of prosecutorial discretion").

Authorities Cited: AB: Orders 96-006, 97-008, 97-017, 99-013, 2000-021, 2001-009, 2001-011, F2002-019, F2002-024, F2003-016, F2004-021, F2004-026, F2004-030, F2005-007, F2006-005, F2006-008, F2006-030 and F2007-007; *Alberta (Attorney General) v. Krushell*, 2003 ABQB 252. **CAN:** *Krieger v. Law Society of Alberta*, [2002] 3 S.C.R. 372; *R. v. Beare; R. v. Higgins* (1988), 45 C.C.C. (3d) 57 (S.C.C.).

I. BACKGROUND

[para 1] In a letter dated May 15, 2006, the Applicant asked Alberta Justice and Attorney General (the "Public Body") for the following information under the *Freedom of Information and Protection of Privacy Act* (the "Act" or "*FOIP Act*"):

> *I am requesting all documentation, whether it by letter, e-mail, phone, phone log(s), correspondence, associated correspondence, files bearing my name, or file about me/for me with a unique identifier (for instance MEP [file number]) from the following departments within Alberta Justice: Minister of Justice, Maintenance Enforcement, Criminal Law, Legislative Counsel, Court Services and Strategic Business Services.*

[para 2] In his request, the Applicant specifically referred to all documentation held by the Public Body in respect of a previous matter before this Office, and in respect of a file with the Maintenance Enforcement Program.

[para 3] By letter dated June 19, 2006, the Public Body advised the Applicant that it had located 81 pages of records responsive to his request (excluding records held by Court Services and the Maintenance Enforcement Program). It was prepared to provide access to most of the information in the records on payment of a fee for photocopying. The Applicant paid the fee and the Public Body sent him a package, consisting of all or part of 65 pages of records, by letter dated July 4, 2006.

[para 4] In its June 19, 2006 letter and an index attached to it, the Public Body advised the Applicant that it would not provide access to the following records for the following reasons:

- records held by Court Services were excluded from the application of the Act under section 4(1)(a) (information in a court file);
- records prepared in the context of a previous matter before this Office were excluded from the application of the Act under section 4(1)(d) (record of an officer of the Legislature), or alternatively, disclosure was precluded under section 58 (information supplied or record produced during an investigation or inquiry by Commissioner);
- certain records were subject to the discretionary exception to disclosure under section 24(1)(b) (consultations or deliberations) of the Act;
- certain records were subject to the discretionary exception to disclosure under section 27(1)(c) of the Act (privileged information); and
- records held by the Maintenance Enforcement Program were not subject to disclosure under the Act, by virtue of section 15(1) of the *Maintenance Enforcement Act* and s. 15(1)(g) of the *Freedom of Information and Protection of Privacy Regulation* (non-disclosure provision under the *Maintenance Enforcement Act* prevails despite the *FOIP Act*).

[para 5] By letter dated July 3, 2006, the Applicant requested that this Office review the Public Body's failure to release the information that was not disclosed to him, as well as clarify the interpretation of the interaction of the *FOIP Act* and *Maintenance Enforcement Act*. Mediation was authorized.

[para 6] In an e-mail to the Public Body dated July 11, 2006, the Applicant asked, among other things, where a particular Crown prosecutor's file was. By letter dated August 29, 2006, the Public Body advised that it had overlooked the file in its initial search for responsive records, but had subsequently located 681 pages of records in the relevant file. The Public Body enclosed nine pages of the records for the Applicant but withheld the remainder for the following reasons:

- certain records were excluded from the application of the Act under section 4(1)(a) (information in a court file);
- certain records were subject to the discretionary exception to disclosure under section 20(1)(g) of the Act (information relating to the exercise of prosecutorial discretion);
- certain information was subject to the mandatory exception to disclosure under section 17 of the Act (disclosure harmful to a third party's personal privacy);
- certain records were subject to the discretionary exception to disclosure under section 27(1)(c) of the Act (privileged information); and
- certain records were subject to the discretionary exceptions to disclosure under sections 24(1)(a) (advice, etc.) and 24(1)(b) (consultations or deliberations) of the Act.

[para 7] Mediation of this matter was unsuccessful. The Applicant requested an inquiry by letter to this Office dated October 3, 2006, and a written inquiry was set down.

[para 8] In his request for an inquiry, the Applicant indicated that his ongoing concerns were that the Public Body had not provided him with the information held by the Maintenance Enforcement Program, and had not provided him with most of the information in the Crown prosecutor's file. As the Public Body refused the Applicant access to additional records in its June 19, 2006 response to him, this Order will also address whether these other records were properly withheld.

II. RECORDS AT ISSUE

[para 9] As set out in the indexes attached to the Public Body's letters to the Applicant dated June 19 and August 29, 2006 (the "June 19 index" and "August 29 index"), there were a total of 762 pages of records responsive to the Applicant's request, but this does not include records held by Court Services or the Maintenance Enforcement Program. As will be explained later in this Order, records held by these two departments are not subject to this inquiry.

[para 10] The Public Body indicated in its June 19, 2006 letter that all or part of 65 pages would be disclosed to the Applicant and these were subsequently disclosed. It

disclosed another nine pages of records with its August 29, 2006 letter to the Applicant. The remaining records – consisting of 688 full or part pages – are the records at issue. In this Order, I will use the same page references as those set out in the June 19 and August 29 indexes.

III. ISSUES

[para 11] As set out in the Notice of Inquiry dated July 5, 2007, although re-phrased and re-ordered, the issues in this inquiry are as follows:

> Are the records excluded from the application of the Act by sections 4(1)(a) (information in a court file) and 4(1)(d) (record of an officer of the Legislature)?
>
> Did the Public Body properly apply section 58 of the Act (information supplied or record produced during an investigation or inquiry by Commissioner) to the records/information?
>
> Did the Public Body properly apply section 20(1)(g) of the Act (information relating to the exercise of prosecutorial discretion) to the records/information?
>
> Did the Public Body properly apply sections 24(1)(a) (advice, etc.) and 24(1)(b) (consultations or deliberations) of the Act to the records/information?
>
> Did the Public Body properly apply section 27(1)(c) of the Act (privileged information) to the records/information?
>
> Does section 17 of the Act (disclosure harmful to a third party's personal privacy) apply to the records/information?

[para 12] The paramountcy of section 15(1) of the *Maintenance Enforcement Act* over the *FOIP Act* was not included as an issue in this inquiry. By letter dated July 5, 2007, this Office advised the Applicant that the Commissioner would not be dealing with his concerns regarding the Maintenance Enforcement Program, as Order F2005-007 has already established that the Commissioner does not have jurisdiction over disclosures of information falling under the *Maintenance Enforcement Act*. Under section 70(a) of the *FOIP Act*, the Commissioner has the discretion to refuse to conduct an inquiry into a particular issue if the subject-matter has been dealt with in a previous order.

[para 13] In his e-mail to the Public Body dated July 11, 2006, the Applicant expressed a concern that the Public Body did not account for certain electronic records, in addition to the Crown prosecutor's file. The Public Body provided a response about the electronic records in its letter to the Applicant of August 29, 2006, as well as provided him with an index of records for the Crown prosecutor's file. In a further e-mail to the Public Body dated September 12, 2006, the Applicant again expressed concerns regarding the possible failure to locate (and therefore note in the indexes) the electronic records and records that he believed should be in the Crown prosecutor's file.

[para 14] Conducting an adequate search for responsive records is part of a public body's duty to assist an applicant under section 10(1) of the Act. This was not included as an issue in the Notice of Inquiry, presumably because this particular aspect of the Applicant's concerns was not clearly articulated by him in his request for an inquiry dated October 3, 2006. In his submissions, however, the Applicant again indirectly raises the issue of whether or not the Public Body adequately searched for and noted all responsive records in the index in relation to the Crown prosecutor's file. He has done so because he believes that the Crown did not disclose all of the information that it had a duty to disclose during the criminal proceeding.

[para 15] The *FOIP Act* should not be used as a means of revisiting the disclosure obligations of the Crown in a criminal proceeding. In this Office's letter dated July 5, 2007, the Applicant was advised that the right to disclosure in the criminal process is a separate matter from disclosure under the Act, and that the proper forum to address disclosure obligations of the Crown in a criminal proceeding is a court. I therefore do not intend to discuss the Public Body's search for records following the Applicant's access request, to the extent that it relates to its disclosure of information during the criminal proceeding, or otherwise discuss section 10(1) of the Act as an issue in this regard. However, I will discuss, in a later section of this Order, the extent to which the decision not to disclose records in a Crown prosecutor's file, under section 20(1)(g) of the Act, might mean that there has been an improper withholding of information in the context of an access request.

[para 16] With respect to the electronic records that the Applicant believes have been overlooked, the Public Body responded to him in its letter of August 29, 2006. The Applicant did not raise this issue again in his request for this inquiry or his submissions. I therefore do not intend to address it, or otherwise discuss section 10(1) in this regard.

IV. DISCUSSION OF ISSUES

A. Are the records excluded from the application of the Act by sections 4(1)(a) (information in a court file) and 4(1)(d) (record of an officer of the Legislature)?

[para 17] Section 4(1) is a provision that limits my jurisdiction because, if a record falls within one of the provisions of section 4(1), the Act does not apply and the Public Body has no obligation to provide access to the record (Order F2002-024 at para. 11). The provisions of section 4(1) that are relevant to this inquiry are as follows:

> *4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*
>
> *(a) information in a court file, a record of a judge of the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta or The Provincial Court of Alberta, a record of a master of the Court of Queen's Bench*

of Alberta, a record of a sitting justice of the peace or a presiding justice of the peace under the Justice of the Peace Act, a judicial administration record or a record relating to support services provided to the judges of any of the courts referred to in this clause;

…

(d) a record that is created by or for or is in the custody or under the control of an officer of the Legislature and relates to the exercise of that officer's functions under an Act of Alberta;

1. Information in a court file

[para 18] The Public Body relied on section 4(1)(a) to exclude the application of the Act to certain pages of information in the Crown prosecutor's file, as set out in the August 29 index. The Public Body also applied section 4(1)(a) to records held by Court Services, on the basis that the information was comprised of court files, as indicated in its June 19, 2006 letter to the Applicant.

[para 19] I do not believe that the Applicant's request for information held by Court Services is subject to this inquiry. The Applicant appears to acknowledge that the Act does not apply to information in a court file, as his concern is not that records in the court file were withheld from him under section 4(1)(a), but that records in the Crown prosecutor's file were withheld from him under that section. The Applicant states in his submissions:

> *In order to determine if the records [in the Crown prosecutor's file] are contained in the court file, the two files MUST be compared. Is it the claim of the Public Body that they compared the files? The claimant's position is that information never made it to the court file and therefore the claimant is allowed to receive them…*

[para 20] As the Complainant's concern is in relation to the records in the Crown prosecutor's file, I will consider the application of section 4(1)(a) to those records only.

[para 21] The extent to which records held by a public body may constitute "information in a court file" has been framed in earlier orders of this Office as follows:

> I find that only those of the records … that were taken or copied from a court file are "information in a court file", and are excluded from the scope of the Act. The remaining records… – any that emanated from the Public Body itself or came into its possession from some source other than the court file (though duplicates of them may also exist in the court file) – are within the scope of the Act. (Order F2004-030 at para. 20.)

and

> In Order F2004-030, the Commissioner held that records, in the custody of a public body, that were taken from or copied from a court file are "information in a court file " and fulfill the requirements of section 4(1)(a). However, those records that emanated from the public body itself would not fall within section 4(1)(a). This was the case even though those records may contain the same information as a court file. For example, records that the public body filed in court would not fall within section 4(1)(a). (Order F2007-007 at para. 25.)

[para 22] The Public Body submitted a copy of the Crown prosecutor's file *in camera*, and its pages are set out in the August 29 index. The records to which the Public Body applied section 4(1)(a) of the Act are a Memorandum of the Crown Respondent (pages 2-10), various transcripts of court proceedings (pages 63-104, 105-130, 131-298, 365-390, 403-421 and 498-574), a Notice of Appeal (pages 299-301), certain parts of a Memorandum from another party (pages 302-314, 391-421 and 453; attachments to this Memorandum include, in turn, affidavits and court transcripts), and an information and endorsement request (pages 454-455; noted in the index as part of a "Summary Conviction Appeal").

[para 23] Copies of transcripts of court proceedings emanate from a court file, as they are prepared by or on behalf of the court and not the Public Body. I find that the court transcripts therefore constitute information in a court file and are excluded from the application of the Act under section 4(1)(a). This is the case whether the transcript appears on its own in the Crown prosecutor's file, or is attached as an exhibit to an affidavit (e.g., pages 365-390). I also find excluded from the application of the Act copies of an informant's Information and Endorsements that are attached to one of the transcripts (pages 134-137), as these court records also emanate from a court file.

[para 24] Orders F2004-030 and F2007-007, excerpted above, indicate that section 4(1)(a) does not apply to records that a public body filed in court, or to a public body's duplicates of records that may also exist in a court file. However, I interpret this as referring to copies of unfiled records that were later filed, and not copies of the records that were filed. Here, the Notice of Appeal and two Memoranda have date stamps indicating that they were filed with a Clerk of the Court. (The two memoranda, each of which includes several attachments, have a "filed" stamp on their respective backer, or last page.)

[para 25] When a party files documents with a court, the party usually takes in several copies, all of which are stamped as "filed" and certain of which are retained by the party for its own use and for service on other parties. A "filed" stamp essentially means that the document was notionally once on the court file and then immediately "taken back" by the party that filed it. To put the point another way, the records are exact versions of the records in the court file. Either way, I find that copies of court-filed documents emanate from a court file and are excluded from the application of the Act under section 4(1)(a).

[para 26] To reconcile my conclusion with Orders F2004-030 and F2007-007, I distinguish copies of the filed versions of records, which I believe fall under section 4(1)(a), from copies of the same records that are not copies of the filed versions, which do not fall under section 4(1)(a). Examples of the latter are drafts of documents (even if the content is the same as the document that was filed) and records that are not attached as exhibits to an affidavit that has been filed (even if it is the same record as the filed exhibit). What makes information fall under section 4(1)(a) is the fact that it is a copy of the *filed* record, rather than a copy of the *unfiled* record. When the previous Orders of this Office state that records "that a public body filed in court" and "duplicates [that] may also exist in the court file" remain within the scope of the Act, I accordingly restrict this to mean an unfiled copy or version of a record filed in court.

[para 27] One of the reasons for excluding information under section 4(1)(a) has been suggested to be that an ongoing alternate system for access is available (*Alberta (Attorney General) v. Krushell* at para. 48). This alternate system for access (i.e., by requesting to view files at the courthouse) is available for copies of filed versions of records, but is not available for unfiled versions of records, even if the content is the same. In other words, I know in this inquiry that the Notice of Appeal and two Memoranda in the Crown prosecutor's file are available at the courthouse because they are stamped "filed". If they were not so stamped, I would not be certain that the versions are the same as the information in the court file.

[para 28] I conclude that a copy of a filed version of a court record is "information in a court file". Besides the records to which the Public Body specifically applied section 4(1)(a), I note copies of other filed versions of court records in the Crown prosecutor's file. While the Public Body did not apply section 4(1)(a) to those records, I must apply the section myself, as it addresses whether or not I have jurisdiction over the records (Order F2002-024 at para. 11).

[para 29] The other records to which section 4(1)(a) applies include the attachments to and backer for the Memorandum of the Crown Respondent (pages 11-62, although the Public Body chose to disclose pages 19-20 to the Applicant). They also include the remaining content of the other filed Memorandum (pages 315-390 and 422-452).

[para 30] Given court letterhead, the nature of the document (i.e., a typical court record) and/or a signature by a court official, I also find that the following records constitute information in a court file: a copy of a Report of Criminal Appeal (page 457), copies of a Trial Scheduling Pre-Selection Notice (page 458, 657 and 674), a fax cover sheet from a court (page 459), additional copies of the informant's Information mentioned above (pages 460, 472 and 639; these are also excluded under section 4(1)(a) as a record of a justice of the peace), additional copies of the Endorsements mentioned above (pages 461-463, 473-475 and 618-619), copies of a Conviction Notice (page 464 and 476), a cover letter from a court (page 465), another copy of the Notice of Appeal mentioned above (pages 466-468), a copy of an Order (pages 647-648), and copies of a Subpoena to a Witness (pages 675-678). There may be other documents in the Crown

prosecutor's file that emanate from a court file, but I cannot tell from my own review of the record (e.g., there is no court letterhead or signature of a court official).

[para 31] Despite the Applicant's view, I do not believe that the Public Body (or this Office) is required to actually compare any of the foregoing records to the records in the relevant court files. It is my understanding that transcripts of court proceedings, copies of filed versions of court documents and copies of the court-created records cited above necessarily make their way onto a court file. Conversely, I do not find that the information and endorsement request (pages 454-455) is information in a court file, as it is not clear that the record is a copy of one in a court file. It appears to be a document sent from the Public Body to a court, but there is no stamp or other indication showing that it made its way onto the court file.

[para 32] I conclude that pages 2-18, 21-453, 457-468, 472-476, 498-574, 618-619, 639, 647-648, 657 and 674-678 of the Crown prosecutor's file constitute information in a court file under section 4(1)(a) of the Act. The information is therefore excluded from the application of the Act and I have no jurisdiction over it.

2. Record of an officer of the Legislature

[para 33] The Public Body states that it relied on section 4(1)(d) to exclude the application of the Act to pages 11-12 and 16-19 of the records set out in the June 19 index. These are two letters from the Public Body to this Office in the context of a previous matter.

[para 34] The criteria that must be met for a record to be excluded under section 4(1)(d) are as follows: (i) the item must constitute a record; (ii) the record must be created by or for, or be in the custody of or under the control of, an officer of the Legislature; and (iii) the record must relate to that officer's functions under an Act of Alberta (Order F2004-021 at para. 22, citing Order 97-008 at para. 13). I have added that the record may be created by "or for" an officer of the Legislature, as those words were added to the section in 1999.

[para 35] I find that the six pages in question are "records" within the meaning set out in section 1(q) of the Act. Section 1(q) refers to, among other things, "documents" and "letters".

[para 36] The letters were written to a mediator authorized by the Commissioner to investigate and try to settle a matter under section 68 of the Act. The Information and Privacy Commissioner is an "officer of the Legislature", as defined by section 1(m) of the Act. As the mediator was authorized by the Commissioner and therefore acted on his behalf, and the mediator was investigating and trying to settle a matter in accordance with and as contemplated by the Act, I find that the records relate to the functions of an officer of the Legislature under an Act of Alberta.

[para 37] Finally, I find that the two letters are in the custody or under the control of the Commissioner, as he may be presumed to have the original copies that the Public Body sent to the mediator. Records may be excluded under section 4(1)(d) even though they are copies in the custody or under the control of a public body – as opposed to the officer of the Legislature – as the intent is to exclude a certain type of information, regardless of the form of the record or where it is located (Order 97-008 at paras. 23 and 24; Order 2001-009 at para. 20). It therefore does not matter that the letters in question are the Public Body's file copies, rather than the original copies that were sent to this Office. If an applicant cannot have access to the records in the hands of an officer of the Legislature, it does not make sense that he or she can get the same records from a public body; a party cannot do indirectly that which it cannot do directly (Order 97-008 at para. 25).

[para 38] The Applicant argues that section 4(1)(d) of the Act does not apply to the letters in question because they were not in the custody of the Information and Privacy Commissioner at the time of his original access request. I do not find this to be true. The two letters pre-date the Applicant's access request of May 16, 2006 by two or more months, and it may be presumed that the Commissioner received the letters on or shortly after the dates on them. If the Applicant is referring to an earlier access request to the Public Body that he may have made, this makes no difference. If the letters were not yet written and sent to the Commissioner, they were not yet in existence for the purpose of an earlier access request.

[para 39] I find that the test to exclude records under section 4(1)(d) of the Act is met in this inquiry. The two letters from the Public Body to this Office in the context of a previous matter, being pages 11-12 and 16-19 of the records set out in the June 19 index, are therefore excluded from the Act's application and I have no jurisdiction over them.

[para 40] I note that the Public Body chose to disclose to the Applicant other records in the context of the previous matter before this Office, which was open to the Public Body. Although the Act does not apply to a record that falls within section 4(1), there is nothing in the Act that prohibits a public body from disclosing such a record (Order 97-017 at para. 10).

B. Did the Public Body properly apply section 58 of the Act (information supplied or record produced during an investigation or inquiry by Commissioner) to the records/information?

[para 41] As an alternative argument, the Public Body applied section 58 of the Act to the two letters written by it to this Office, which are discussed in the preceding section of this Order. Section 58 states that anything said, any information supplied or any record produced by a person during an investigation or inquiry by the Commissioner is privileged in the same manner as if it were a proceeding in a court.

[para 42] Because I concluded above that the two letters are excluded from the application of the Act under section 4(1)(d), it is not necessary for me to determine whether section 58 also applies to them.

C. Did the Public Body properly apply section 20(1)(g) of the Act (information relating to the exercise of prosecutorial discretion) to the records/information?

[para 43] The Public Body relied on section 20(1)(g) of the Act to refuse the Applicant access to all of the records in the Crown prosecutor's file that it decided not to disclose, as set out in the August 29 index. (It chose to disclose pages 19-20, 470-471, 589-590, 617 and 620-621.)

[para 44] I concluded above that certain records in the Crown prosecutor's file are excluded from the application of the Act under section 4(1)(a) (information in a court file), so it is not necessary for me to consider those records in the context of section 20(1)(g). The remaining records at issue in the Crown Prosecutor's file are those at pages 1, 454-456, 469, 477-497, 575-588, 591-616, 622-638, 640-646, 649-656, 658-673 and 679-681.

1. The exercise of prosecutorial discretion

[para 45] Section 20(1)(g) sets out a discretionary exception to disclosure. It reads:

> *20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to*
>
> …
>
> *(g) reveal any information relating to or used in the exercise of prosecutorial discretion,*

[para 46] The meaning of "exercise of prosecutorial discretion" has been framed as follows:

> Significantly, what is common to the various elements of prosecutorial discretion is that they involve the ultimate decisions as to whether a prosecution should be brought, continued or ceased, and what the prosecution ought to be for. Put differently, prosecutorial discretion refers to decisions regarding the nature and extent of the prosecution and the Attorney General's participation in it. (*Krieger v. Law Society of Alberta* at para. 47, cited in Order F2006-005 at para. 11.)

[para 47] I consider the above definition to be quite broad. Apart from larger decisions as to whether a prosecution should be brought, continued or ceased, and what the prosecution ought to be for, there are many smaller decisions regarding the "nature and extent" of a prosecution. For example, there are decisions to request and review

information, conduct particular legal research, or obtain the views of others. Disclosure of these kinds of information may reveal the grounds on which the larger prosecutorial decisions are based.

[para 48] The wording in section 20(1)(g) is also broad, in that it refers to *any* information *relating to* or *used* in the exercise of prosecution. Most or all information in a Crown prosecutor's file generally "relates to" or is "used" in the exercise of prosecutorial decision by directly or indirectly leading to the ultimate decisions as to whether a prosecution should be brought, continued or ceased, and what the prosecution ought to be for. Police investigative notes, information from witnesses and victims, copies of evidence, and letters to or from opposing counsel, all constitute information on which a prosecutor reaches his or her prosecutorial decisions, or information relating to the exercise of prosecutorial discretion.

[para 49] Although it is not defined in Alberta's Act, there is a definition of "exercise of prosecutorial discretion" in B.C.'s *Freedom of Information and Protection of Privacy Act* (Schedule 1), which definition has previously been cited in the context of interpreting section 20(1)(g) of Alberta's Act (Order 2001-011 at para. 13). In addition to referring to prosecutorial decisions such as approving a prosecution, staying a proceeding, taking a position on sentence and initiating an appeal, the B.C. definition also includes broad references to the duty or power to "prepare for a hearing or trial" and "conduct a hearing or trial". A great deal of information in a Crown prosecutor's file relates to preparing for or conducting a hearing or trial, and I agree that it may be viewed as relating to the exercise of prosecutorial discretion. An example in this inquiry is the information and endorsement request (pages 454-455). While I did not find that it constitutes information in a court file under section 4(1)(a) of the Act, I find that it relates to the exercise of prosecutorial discretion under section 20(1)(g).

[para 50] It has been stated that the exercise of prosecutorial discretion is critically important to the justice system (Order 2001-011 at para. 16, citing *R. v. Beare; R. v. Higgins* at p. 76). Due to this importance – as well as the breadth of the meaning of "exercise of prosecutorial discretion" and of section 20(1)(g) generally – I am prepared to give the Public Body latitude in its determination that information relates to or was used in the exercise of prosecutorial discretion.

[para 51] However, I do not accept the Public Body's statements that "any information in a Crown prosecutor's file may reasonably be expected to relate to the exercise of prosecutorial discretion and therefore may be protected from disclosure" and that "the simple presence of records in the file that may contain such information engages the provisions of this exception." To accept these assertions would be to judge information by its location rather than its substance. While it may be the case that most or all information in a Crown prosecutor's file usually falls under section 20(1)(g) of the Act, information must still be reviewed on a record-by-record basis.

[para 52] The present inquiry illustrates the need to review records individually. Some of the documents (pages 622-638) are not ones routinely found in a Crown

prosecutor's file. They are a letter of complaint, internal memoranda about that letter, and a briefing note. On review of the records, I agree with the Public Body that the records fall within the scope of section 20(1)(g) – but this is due to their content and not the fact that they are on the file. I can envisage the possibility of records making their way onto a Crown prosecutor's file but having nothing to do with prosecutorial discretion.

[para 53] In deciding that pages 622-638 of the Crown prosecutor's file fall within section 20(1)(g) of the Act, I have borne in mind the breadth of the section, in that information needs only to "relate to" the exercise of prosecutorial discretion. I have also borne in mind the B.C. definition cited above, which indicates that, in the context of access legislation, the exercise of prosecutorial discretion extends to the duty or power to conduct a hearing or trial.

[para 54] I conclude, in this inquiry, that the information in the Crown prosecutor's file (that has not already been addressed above under section 4(1)(a) or disclosed to the Applicant by the Public Body) is information the disclosure of which could reasonably be expected to reveal information relating to or used in the exercise of prosecutorial discretion. The Public Body therefore had the discretion to refuse to disclose it to the Applicant, under section 20(1)(g) of the Act.

2. The Public Body's exercise of its discretion not to disclose

[para 55] A public body exercising its discretion relative to a particular provision of the Act should consider the Act's general purposes, the purpose of the particular provision on which it is relying, the interests that the provision attempts to balance, and whether withholding the records would meet the purpose of the Act and the provision in the circumstances of the particular case (Order F2004-026 at para. 46). While the Act gives a public body a degree of flexibility in the exercise of discretion, the course of action chosen must be for good reasons and in good faith, and based on the applicable law and relevant facts and circumstances (Order 2000-021 at paras. 49 and 50).

[para 56] In exercising its discretion not to disclose information in the Crown prosecutor's file under section 20(1)(g) of the Act, the Public Body states that it considered the purpose of the Act, set out in section 2(a), according to which an individual has a right to access information subject to limited and specific exceptions. The Public Body also specifically turned its attention to section 2(c), which allows individuals to access their own personal information, and which is a relevant circumstance in this inquiry. The Public Body further submitted that its head took notice of the need to maintain the integrity of the discretion afforded to prosecutors, and ensure that it is not undermined.

[para 57] The Public Body's withholding of information in the Crown prosecutor's file, in order to protect the integrity of prosecutorial discretion, was a course of action chosen for good reasons and in good faith. It has been stated that prosecutorial decisions should not be subjected to interference from parties not as competent to consider the

various factors involved in making such decisions (*Krieger v. Law Society of Alberta* at para. 32, cited in Order F2006-005 at para. 24). It is justifiable for a public body to protect prosecutorial discretion, unless there are factors that should be considered that outweigh the public interest in maintaining the immunity afforded to prosecutorial discretion (Order F2006-005 at para. 27).

[para 58] In this inquiry, I do not find that the Public Body improperly exercised its discretion not to disclose information in the Crown prosecutor's file, or overlooked any relevant facts, factors or circumstances in this particular case. Its decision to disclose some of the information in the file (albeit a very small amount) demonstrates to me that it considered the Applicant's general right of access under the Act, but believed that disclosure of the rest of the information would undermine prosecutorial discretion. Section 20(1)(g) of the Act seeks to balance an individual's right to access information with the objective of protecting prosecutorial discretion, and I believe that the Public Body sought to balance those interests.

[para 59] The Applicant indicates that he wishes to have access to the Crown prosecutor's file because he believes that information should have been disclosed to the defence during the criminal proceeding, but was not. As stated earlier in this Order, an access request should not be used as a means of revisiting the disclosure obligations of the Crown in the context of a criminal process.

[para 60] Having said this, there may be cases in which a public body's decision to refuse access under section 20(1)(g) of the Act amounts to an improper exercise of the discretion not to disclose, on the basis that the refusal to grant access was for an unauthorized purpose or in bad faith (Order 2000-021 at para. 51). In determining whether information has been properly withheld under section 20(1)(g), there may be factors that outweigh the interest in protecting prosecutorial discretion, such as where there has been flagrant impropriety (Order F2006-005 at paras. 25 and 27). An example of an unauthorized purpose, bad faith or flagrant impropriety might be where it is evident that a public body, in the context of an access request, is attempting to cover up a failure to provide full disclosure in the context of a criminal proceeding.

[para 61] In this inquiry, however, I have insufficient reason to believe that the Public Body's discretion not to disclose information in the Crown prosecutor's files was exercised for an unauthorized purpose, in bad faith or through any impropriety.

[para 62] In his submissions, the Applicant correctly points out that the Public Body has the burden, under section 71(1) of the Act, of proving that he has no right of access to a record or part of it (Order 96-006, postscript). I find that the Public Body has discharged its burden in relation to section 20(1)(g), by establishing that the information in the Crown prosecutor's file relates to or was used in the exercise of prosecutorial discretion, and that its discretion not to disclose was properly exercised.

D. Did the Public Body properly apply sections 24(1)(a) (advice, etc.) and 24(1)(b) (consultations or deliberations) of the Act to the records/information?

[para 63] Sections 24(1)(a) and (b) of the Act set out discretionary exceptions to disclosure as follows:

> *24(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal*
>
> *(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council,*
>
> *(b) consultations or deliberations involving*
>
> *(i) officers or employees of a public body,*
>
> *(ii) a member of the Executive Council, or*
>
> *(iii) the staff of a member of the Executive Council,*

[para 64] The August 29 index indicates that the Public Body applied sections 24(1)(a) and (b) of the Act to a record at pages 627-630 of the Crown prosecutor's file. Because I found above that this record falls under section 20(1)(g) of the Act (information relating to the exercise of prosecutorial discretion), and that the Public Body properly exercised its discretion not to disclose it to the Applicant, it is not necessary for me to determine whether the record was also properly withheld under sections 24(1)(a) or (b). Moreover, according to the indexes, this was the only record to which the Public Body applied section 24(1)(a). It therefore only remains for me to consider the Public Body's application of section 24(1)(b) to any records.

[para 65] The Public Body applied section 24(1)(b) of the Act to pages 41-43, 49, 53, 58-60, 69 and 75 of the records set out in the June 19 index. As indicated on a copy of the records submitted by the Public Body *in camera*, it also applied section 24(1)(b) to part of the record found at page 65 (the remainder was disclosed to the Applicant).

1. Consultations or deliberations

[para 66] Section 24(1)(b) of the Act gives a public body the discretion to withhold information that could reasonably be expected to reveal consultations or deliberations involving officers or employees of a public body, a member of the Executive Council, or the staff of a member of the Executive Council. A "consultation" occurs when the views of one or more officers or employees are sought as to the appropriateness of particular proposals or suggested actions; a "deliberation" is a discussion or consideration, by

persons described in section 24(1)(b), of the reasons for and/or against an action (Order 96-006 at p. 10 or para. 48; Order 99-013 at para. 48).

[para 67] To fall within section 24(1)(b), the consultations or deliberations must be (i) sought or expected, or be part of the responsibility of a person, by virtue of that person's position, (ii) directed toward taking an action, and (iii) made to someone who can take or implement the action (Order 99-013 at para. 48; Order F2004-026 at para. 57). The Public Body suggests that this three-part test is not applicable under section 24(1)(b), saying that it only applies under section 24(1)(a) (advice, etc.). However, the purpose of section 24(1)(b) is to shield consultations or deliberations that occurred during the decision-making process (Order F2003-016 at para. 20). In my view, the three-part test is to ensure that the consultations or deliberations were in connection with a decision-making process.

[para 68] Pages 41-43 and pages 58-59 of the records set out in the June 19 index are two briefing notes. Page 60 is a duplicate copy of a page from one of those briefing notes, with handwritten notations on it.

[para 69] I find that the information on all of these pages could reasonably be expected to reveal consultations or deliberations involving officers or employees of the Public Body, a member of the Executive Council, or the latter's staff. The briefing notes are addressed to the Minister of Justice and Attorney General, who is a member of the Executive Council. In the briefing notes, officers or employees of the Public Body make recommendations in relation to particular matters, which recommendations were sought or expected by virtue of their positions or were given as part of their responsibilities. The briefing notes contain the reasons for a proposed action, and the recommendation is made to the Minister, who can take the action. I conclude that the test under section 24(1)(b) of the Act is generally met, although I discuss below whether the section applies to all, or only part, of the information in the briefing notes.

[para 70] Page 49 of the records set out in the June 19 index contains e-mail correspondence between and on behalf of officers and employees of the Public Body, and staff of the Minister of Justice and Attorney General, in relation to another matter. The e-mails reveal a recommendation of an officer or employee and the extent to which a member of the Minister's staff agrees – which I presume to be on behalf of the Minister, who can take or approve the proposed action. I find, generally, that the test under section 24(1)(b) is met, for the same reasons set out in the preceding paragraph.

[para 71] The question remains as to whether part of the information in the briefing notes, and in the e-mail correspondence, falls outside the scope of section 24(1)(b) and therefore may not be withheld under it. It has been stated that section 24(1) of the Act does not generally apply to parts of records that in themselves reveal *only* that consultations or deliberations took place, that particular persons were involved in consultations or deliberations, that consultations or deliberations on a particular topic took place, or that consultations or deliberations took place at a particular time (Order F2004-026 at para. 71).

[para 72] However, there may also be instances where some of the foregoing items reveal the content of the information conveyed during the consultations or deliberations (Order F2004-026 at para. 71). It is possible to imagine a situation in which the name of the person involved in the consultations or deliberations could reveal the substance of the information conveyed (Order F2004-026 at para. 74). With respect to section 24(1)(b), "reveal consultations or deliberations" means "reveal what the consultations or deliberations were" (Order F2004-026 at para. 75).

[para 73] On consideration of the foregoing principles, I find that all of the information in the briefing notes and e-mail correspondence falls under section 24(1)(b) of the Act. This is because the Applicant's knowledge of who was consulted, when the discussions took place, or the topic, may permit him to know the substance of what was conveyed during the consultations and deliberations. In other words, I believe that disclosure of even the dates, names and topics in the briefing notes and e-mail correspondence could reasonably be expected to reveal what the consultations or deliberations were.

[para 74] Page 65 of the records set out in the June 19 index was partially disclosed to the Applicant, but the Public Body severed information under section 24(1)(b). I agree that the severed information could reasonably be expected to reveal consultations and deliberations that occurred during a decision-making process. Although the information does not directly disclose the substance of the consultations or deliberations, the Applicant could reasonably infer the substance if the severed information were disclosed.

[para 75] Page 53 of the records set out in the June 19 index is a cover sheet in relation to a matter involving the Maintenance Enforcement Program. Although it was not raised by the parties in relation to this particular record, section 15(1) of the *Maintenance Enforcement Act* states: "Information received by the Director under this Act may be used only for the purpose of enforcing a maintenance order and is otherwise confidential." This provision prevails despite the *FOIP Act*, under section 15(1)(g) of the *Freedom of Information and Protection of Privacy Regulation*. As a result, I first considered whether I have jurisdiction over the information on page 53.

[para 76] I find that I do have jurisdiction. Page 53 is not a record received by the Director of the Maintenance Enforcement Program, and I do not believe that it reveals the substance of any information received by the Director. I therefore conclude that section 15(1) of the *Maintenance Enforcement Act* does not apply. If section 15(1) of that Act does not apply, it cannot prevail over the *FOIP Act*.

[para 77] I do not find that the information on page 53 constitutes consultations or deliberations under section 24(1)(b) of the *FOIP Act*. It does not reveal views as to the appropriateness of particular proposals or suggested actions, and does not set out reasons for or against an action. Although page 53 indicates that something took place internally within the Maintenance Enforcement Program, and it includes the first names of persons who may be officials or employees of the Public Body, it discloses nothing further. As I

see no information that would reveal the substance of any consultations or deliberations, the Public Body has not established that the information on page 53 falls within section 24(1)(b).

[para 78] Page 69 and 75 are duplicate copies of a "Note Report". It reveals background information and action taken by particular individuals. However, I do not find that it reveals any consultations or deliberations on which that action was based. The bare recitation of facts or summaries, without anything further, does not constitute consultations or deliberations under section 24(1)(b) of the Act (Order 96-006 at p. 10 or para. 50; Order F2002-019 at para. 68). The Public Body has the burden of proving that the information falls within section 24(1)(b), and this is particularly so where the record, in and of itself, does not reveal the substance of any consultations or deliberations.

[para 79] I conclude that the Public Body has shown, in accordance with its burden under section 71(1) of the Act, that the information on pages 41-43, 49, 58-60 and 65 of the records set out in the June 19 index could reasonably be expected to reveal consultations or deliberations under section 24(1)(b). The Public Body therefore had the discretion to refuse to disclose this information to the Applicant. Conversely, I conclude that the information on pages 53, 69 and 75 does not fall under section 24(1)(b). The Public Body therefore did not have the discretion to refuse to disclose this information under that section.

[para 80] I note that, in its submissions, the Public Body alternatively cites section 27(1) of the Act (privileged information) as a basis for withholding information in certain records to which it also applied section 24(1)(b). Its reason is that the information constitutes "legal advice" but it states that "it did not rely on section 27(1)… in the interest of keeping argument distinct." As the Public Body has not more clearly raised section 27(1) in relation to pages 53, 69 and 75 – and I do not find that the information on those particular pages is legal advice in any event – I do not intend to discuss section 27(1) any further in this context.

2. The Public Body's exercise of its discretion not to disclose

[para 81] Principles regarding the proper exercise of discretion under the Act are set out in paragraph 55 of this Order. With respect to section 24(1)(b), the Public Body states that its head considered that the records subject to this section ought to be shielded from disclosure in order for the business of government to be conducted with candour. The Public Body indicates that it considered the Applicant's right of access under sections 2(a) and (c) of the Act, including in respect of his own personal information. It further noted that exceptions to access are limited and specific.

[para 82] In exercising its discretion not to disclose information under section 24(1)(b), I believe that the Public Body considered the Act's general purposes (e.g., an applicant's right of access), the purpose of the specific section (e.g., to permit candour during consultations or deliberations), and the circumstances of this particular case. I am satisfied that the Public Body properly exercised its discretion in withholding

the information on pages 41-43, 49, 58-60 and 65 of the records set out in the June 19 index. As concluded above, the Public Body had no discretion to withhold the information on pages 53, 69 or 75.

E. Did the Public Body properly apply section 27(1)(c) of the Act (privileged information) to the records/information?

[para 83] Section 27(1)(c) of the Act gives a public body the discretion to refuse to disclose to an applicant information in correspondence between persons in relation to a matter involving the provision of advice or services by the Minister of Justice and Attorney General, his or her agent or lawyer, or an agent or lawyer of a public body.

[para 84] The June 19 index indicates that the Public Body applied section 27(1)(c) of the Act to page 49. Because I concluded above that this record was properly withheld under section 24(1)(b) (consultations or deliberations), it is not necessary for me to determine whether it was also properly withheld under section 27(1)(c).

[para 85] The Public Body applied section 27(1)(c) of the Act to nine pages of the Crown prosecutor's file, as set out in the August 29 index (pages 315, 456, 469, 612, 614, 665 and 679-81). Because I concluded above that these records were properly withheld under section 20(1)(g) (information relating to the exercise of prosecutorial discretion), it is not necessary for me to determine whether they were also properly withheld under section 27(1)(c).

[para 86] As a result of the foregoing, there are no records in respect of which I need to consider the application of section 27(1)(c) of the Act.

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

[para 87] Section 17(1) 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.

[para 88] As indicated earlier in this Order, the Public Body has the burden of proving, under section 71(1) of the Act, that the Applicant has no right of access to the information that it has withheld. In the context of section 17, the Public Body must establish that the severed information is the personal information of a third party, and may show how disclosure would be an unreasonable invasion of the third party's personal privacy. 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. However, because section 17 is a mandatory exception to disclosure, I must also independently review the information, and determine whether disclosure would or would not be an unreasonable invasion of personal privacy.

[para 89] The Public Body applied section 17 of the Act to information on several pages of the Crown prosecutor's file, as set out in the August 29 index. Because I found above that these records were either excluded from the Application of the Act under section 4(1)(a) (information in a court file), or were properly withheld under section 20(1)(g) (information relating to the exercise of prosecutorial discretion), it is not necessary for me to determine whether parts of the records should also have been withheld under section 17.

[para 90] The Public Body also relied on section 17 of the Act to withhold information appearing on pages 51, 54, 61, 70 and 73 of the records set out in the June 19 index. It submitted two sets of these pages *in camera* – one without severing and a copy of the severed versions provided to the Applicant. Although the June 19 index also indicates that pages 52 and 74 were only partly disclosed, the Public Body indicates in its submissions that, on later review, these pages were determined not to contain information that should be severed. It appears that the Applicant received the complete pages, as nothing is severed from page 52 or 74 in the copy of the package that the Public Body provided to the Applicant.

[para 91] The Public Body cites several of the provisions of section 17 of the Act in its submissions. However, many of them are relevant only to information in the Crown prosecutor's file, which does not need to be addressed any further in this Order, as explained above.

[para 92] The provisions of section 17 that remain relevant in considering pages 51, 54, 61, 70 and 73 of the records set out in the June 19 index 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*
>
> *...*
>
> *(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,

[para 93] For section 17 to apply, there must be personal information about a third party. I find that there is no personal information about a third party on page 51, as an e-mail on page 73 indicates that it is the personal information of the Applicant. The Public Body might have thought that it should withhold the information because it was marked "confidential", and therefore supplied in confidence, which is a relevant circumstance to consider under section 17(5)(f). When severing the information, the Public Body may not have noted that it was actually the personal information of the Applicant (who was the individual who did not want the information divulged, according to the e-mail on page 73).

[para 94] As the information withheld on page 51 is not personal information about a third party, the Public Body was not required or authorized to withhold it under section 17 of the Act.

[para 95] I find that there is personal information about third parties on pages 54, 61, 70 and 73, as the names of third parties were withheld – and names are expressly "personal information" under section 1(n)(i) of the Act.

[para 96] The withheld names are those of individuals who received particular e-mails, or were addressed within them, in their capacity as government employees or an employee in a constituency office. The fact that the third parties were acting in their formal representative capacities is a relevant circumstance under section 17(5) of the Act that weighs in favour of disclosing their names (Order F2006-008 at paras. 42 and 46). Neither the submissions of the Public Body, nor the e-mail content itself, suggests to me that there is another relevant circumstance weighing against disclosure.

[para 97] I considered whether the presumption against disclosure under section 17(4)(g) applies (name plus personal information). While the names of the employees are their personal information, the fact that they acted in their representative capacities, or carried out particular functions, is not (Order F2006-030 at para. 12). This latter information – the fact that the employees received or were addressed in e-mails – is the only other information in relation to them that is apparent from pages 54, 61, 70 and 73. As there is no personal dimension to the fact that they were conducting government or constituency business, the information other than the names of the employees is not personal information at all (Order F2006-030 at para. 12). As the names appear with no other personal information, and disclosure of the names themselves would reveal no personal information, the presumption under section 17(4)(g) does not apply.

[para 98] Because there is no presumption against disclosure, and the third parties were carrying out government business in their employment capacities, which is a factor weighing in favour of disclosure, I find that disclosure of the names of the third parties withheld on pages 54, 61, 70 and 73 of the records set out in the June 19 index would not be an unreasonable invasion of their personal privacy under section 17 of the Act. The Public Body therefore had no authority to withhold this information from the Applicant.

V. ORDER

[para 99] I make this Order under section 72 of the Act.

[para 100] As the information on them is excluded from the application of the Act under section 4(1)(a) (information in a court file), I find that I have no jurisdiction over pages 2-18, 21-453, 457-468, 472-476, 498-574, 618-619, 639, 647-648, 657 and 674-678 of the Crown prosecutor's file, which records at issue are set out in the August 29 index. I can make no order in relation to those records.

[para 101] I find that the Public Body properly applied section 20(1)(g) of the Act to the remainder of the records at issue in the Crown prosecutor's file, on the basis that disclosure could reasonably be expected to reveal information relating to or used in the exercise of prosecutorial discretion. Under section 72(2)(b) of the Act, I confirm the Public Body's decision to refuse access.

[para 102] As the information on them is excluded from the application of the Act under section 4(1)(d) (record of an officer of the Legislature), I find that I have no jurisdiction over pages 11-12 and 16-19 of the records at issue set out in the June 19 index. I can make no order in relation to those records.

[para 103] I find that the Public Body properly applied section 24(1)(b) of the Act to the information on pages 41-43, 49, 58-60 and 65 of the records at issue set out in the June 19 index, on the basis that disclosure could reasonably be expected to reveal consultations or deliberations involving officers or employees of the Public Body, a member of the Executive Council, or the staff of a member of the Executive Council. Under section 72(2)(b) of the Act, I confirm the Public Body's decision to refuse access.

[para 104] I find that the Public Body did not properly apply section 24(1)(b) of the Act (consultations or deliberations) to the information on pages 53, 69 and 75 of the records at issue set out in the June 19 index. Under section 72(2)(a) of the Act, I order the Public Body to give the Applicant access to this information.

[para 105] I find that section 17 of the Act does not apply to the information that the Public Body withheld on pages 51, 54, 61, 70 and 73 of the records set out in the June 19 index, as the Public Body improperly determined that there was personal information of a third party, or that disclosure of personal information would constitute an unreasonable invasion of the personal privacy of third parties. Under section 72(2)(a) of the Act, I order the Public Body to give the Applicant access to the severed information.

[para 106] I further order the Public Body to notify me, in writing and within 50 days of receiving a copy of this Order, that it has complied with the Order.

Wade Riordan Raaflaub
Adjudicator