ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2008-028

July 16, 2009

ALBERTA EMPLOYMENT AND IMMIGRATION

Case File Number F2872

Office URL: www.oipc.ab.ca

Summary: Under the *Freedom of Information and Protection of Privacy Act* (the "Act"), the Applicant asked Alberta Employment and Immigration (the "Public Body") for information relating to the enactment and implementation of a bill and related regulations. The Public Body refused access to some of the requested information under sections 16 (disclosure harmful to business interests), 17 (disclosure harmful to personal privacy), 21 (disclosure harmful to intergovernmental relations), 22 (Cabinet confidences), 24 (advice, etc.) and 27 (privileged information) of the Act. It also determined that information was excluded from the application of the Act under section 4(1)(q).

The Adjudicator found that he had no jurisdiction over some of the records under section 4(1)(q), as they were created by or for, and sent to, a member of the Executive Council or Member of the Legislative Assembly. However, he found that he had jurisdiction over other records to which the Public Body applied section 4(1)(q), for instance because they were letters from members of the public and were not created by or on behalf of the MLA who forwarded them to the Public Body. As the Public Body alternatively applied sections 17 and 24 to the records to which it incorrectly applied section 4(1)(q), the Adjudicator went on to consider them under those other sections.

The Adjudicator found that disclosure of some of the personal information in the records at issue – such as the names and addresses of members of the public who wrote correspondence regarding the legislation – would be an unreasonable invasion of the

personal privacy of third parties under section 17 of the Act. He found that disclosure of other personal information – such as the names, job titles and signatures of individuals acting in a representative or work-related capacity on behalf of a public body, business or organization – would not be an unreasonable invasion of personal privacy.

The Adjudicator found that section 16 of the Act (disclosure harmful to business interests) did not apply to information in the records at issue, as the information did not meet the three requirements of section 16(1). In particular, a letter from an organization regarding the bill was not supplied, explicitly or implicitly, in confidence under section 16(1)(b), and disclosure could not reasonably be expected to result in any of the four specified types of consequences under section 16(1)(c).

The Adjudicator found that some of the information withheld by the Public Body was subject to the mandatory exception to disclosure under section 22 of the Act, as it revealed the substance of deliberations of Cabinet. However, he found that other information was not subject to the exception, as it did not reveal the substance of deliberations of Cabinet and/or consisted of background facts presented to Cabinet for its consideration in making decisions that had been made public. Those decisions were how to formulate and draft the bill and regulations in a particular form, which were made public when the bill was introduced and the regulations were published. Section 22(2)(c)(i) does not permit background facts relating to such public decisions to be withheld under section 22.

The Adjudicator found that the Public Body properly withheld certain information under section 27(1)(a) of the Act, as it was subject to solicitor-client privilege. He found that other information was properly withheld under section 27(1)(b), as it was prepared for a lawyer of a public body in relation to a matter involving the provision of legal services. He also found that some information was properly withheld under section 27(1)(c), as it was information in correspondence between a lawyer of the Minister of Justice and Attorney General and another person in relation to the provision of advice or other services. However, the Adjudicator found that other information that the Public Body withheld under section 27 did not fall under the section.

The Adjudicator found that the Public Body properly withheld some of the requested information under section 24 of the Act, as it could reasonably be expected to reveal advice, proposals, recommendations, analyses or policy options under section 24(1)(a) and/or consultations or deliberations involving government officials under section 24(1)(b). He found that other information did not fall under either of those two sections, as the Public Body did not establish that disclosure would reveal the substance of any advice, or what any consultations or deliberations were, in relation to an action or decision. The Adjudicator also found that no information fell under section 24(1)(c) (information developed for the purpose of negotiations).

For the most part, the Adjudicator did not find it necessary to consider the application of section 24(1)(e) (draft legislation and regulations) to the records at issue, as he already found that the Public Body properly applied another section of the Act. In those

instances where the application of section 24(1)(e) remained at issue, he found that it was not properly applied, as the information did not actually reveal the contents of draft legislation or regulations.

The Adjudicator did not find it necessary to review the Public Body's application of section 21 of the Act (disclosure harmful to intergovernmental relations) to any information, as the Applicant no longer disputed the decision to withhold the particular information.

Where the records at issue fell within the mandatory exception to disclosure under section 17 or 22 of the Act, or the Public Body properly applied a discretionary exception to disclosure, the Adjudicator confirmed its decision to refuse to give the Applicant access. He ordered the Public Body to disclose the remaining information that it had improperly withheld.

Finally, the Adjudicator found that the Public Body had met its duty to assist the Applicant under section 10(1) of the Act, with respect to the specific concerns raised by the Applicant.

Statutes and Regulations Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(e), 1(n), 1(n)(i), 1(n)(vii), 2(e), 4(1), 4(1)(j), 4(1)(q), 4(1)(q)(i), 4(1)(q)(ii), 4(1)(q)(iii), 10(1), 12, 12(1), 12(1)(a), 12(1)(c)(i), 16, 16(1), 16(1)(a), 16(1)(b), 16(1)(c), 16(1)(c)(ii), 17, 17(1), 17(2), 17(2)(e), 17(4)(d), 17(4)(g), 17(5), 21, 21(1)(a), 21(1)(a)(i), 21(1)(a)(ii), 21(1)(b), 22, 22(1), 22(2)(c), 22(2)(c)(i), 22(2)(c)(iii), 24, 24(1), 24(1)(a), 24(1)(b), 24(1)(c), 24(1)(e), 24(2), 24(2)(e), 27, 27(1)(a), 27(1)(b), 27(1)(b)(iii), 27(1)(c), 27(1)(c)(ii), 30, 57(1), 67(1)(a)(ii), 71(1), 71(2), 72, 72(2)(a), 72(2)(b) and 72(2)(c); *Labour Relations (Regional Health Authorities Restructuring) Amendment Act*, S.A. 2003, c. 6; *Regional Health Authority Collective Bargaining Regulation*, Alta. Reg. 80/2003; *Government Organization Act*, R.S.A. c. G-10, s. 16; *Designation of Transfer of Responsibility Regulation*, Alta. Reg. 38/2008, s. 8. **BC:** *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, s. 13(1). **ON:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 13(1); *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, s. 7(1).

Authorities Cited: AB: Orders 96-006, 96-012, 96-017, 96-019, 96-021, 97-003, 97-007, 97-009, 97-010, 97-011, 98-001, 98-016, 98-017, 99-001, 99-005, 99-013, 99-027, 99-038, 2000-003, 2000-005, 2000-010, 2000-013, 2000-014, 2001-002, 2001-013, 2001-025, F2002-028, F2003-001, F2003-002, F2003-004, F2003-005, F2004-003, F2004-008, F2004-015, F2004-026, F2004-028, F2005-004, F2005-016, F2005-030, F2006-006, F2006-008, F2006-030, F2007-008, F2007-013, F2007-021, F2007-022, F2007-025, F2007-029, F2008-008, F2008-009 and F2008-016; External Adjudication Order No. 4 (2003); Office of the Information and Privacy Commissioner (Alberta), *[FOIP] Practice Note 4, Section 4 – Exclusions from the Act* (Edmonton: March 2, 1997); Office of the Information and Privacy Commissioner (Alberta), *FOIP Practice Note 10, Public Bodies' evidence and arguments for inquiries* (Edmonton:

December 6, 2004). **CAN:** *Solosky v. The Queen* (1979), [1980] 1 S.C.R. 821; *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R 625; *R. v. McClure*, [2001] 1 S.C.R. 445, 2001 SCC 14; *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, [2002] 3 S.C.R. 209, 2002 SCC 61; *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44. **BC:** Orders 00-27 (2000), 03-37 (2003), 04-15 (2004) and F07-17 (2007). **ON:** Orders P-1573 (1998), PO-1690 (1999), PO-2264 (2004) and MO-2337 (2008). **Other:** Ruth Sullivan, *Driedger on the Construction of Statutes*, 3rd ed. (Toronto: Butterworths, 1994).

I. BACKGROUND

[para 1] By letter dated June 2, 2003, the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the "Act") to Alberta Human Resources and Employment, which is now called Alberta Employment and Immigration (the "Public Body"). The Applicant requested the following:

> *All records of any kind whatsoever documenting communications between the Department and any Department of the Government of Alberta, Cabinet Minister, or Minister's staff, concerning the enactment, promulgation and implementation of Bill 27 and the Regulations thereto. This includes communications originating with the Department as well as those received by the Department.*
>
> *All records from the year 2003 of any kind documenting communications between the Department and any employer, employers organization, union, or other stakeholder concerning the enactment, promulgation and implementation of Bill 27 and the Regulations thereto. This includes communications originating with the Department as well as those received by the Department.*

[para 2] The Public Body notified the Applicant that it required additional time to search for responsive records. It subsequently provided a fee estimate in relation to locating the responsive records and preparing them for release. The Public Body notified various third parties to whom the requested information related. It also asked this Office for an extension of time in which to respond to the Applicant's access request, which extension was granted.

[para 3] By letter dated October 6, 2003, the Public Body provided the Applicant with access to some of the requested information. It withheld the remaining information under sections 16 (disclosure harmful to business interests), 17 (disclosure harmful to personal privacy), 21 (disclosure harmful to intergovernmental relations), 22 (Cabinet confidences), 24 (advice, etc.) and 27 (privileged information) of the Act. It also believed that certain information was excluded from the application of the Act under section 4(1)(q) (record created by or for and sent to member of Executive Council or Member of Legislative Assembly).

[para 4] By letter dated November 17, 2003, the Applicant requested a review of the Public Body's decision to refuse access to the information that it withheld. Mediation was authorized but was not successful. The matter was therefore set down for a written inquiry.

[para 5] Following release by this Office of Order F2004-026, dated September 18, 2006, the Public Body reviewed the records that it had withheld and provided the Applicant with additional information, by letter dated December 20, 2006. It did so because Order F2004-026 resulted from an inquiry involving the same Applicant, the same request for information and similar records at issue, although a different public body.

II. RECORDS AT ISSUE

[para 6] The records at issue consist of pages withheld in their entirety and severed parts of other pages, which the Public Body did not release to the Applicant at the time of either of the Public Body's two responses in October 2003 and December 2006. The total number of pages that were either completely or partially withheld is approximately 650.

[para 7] In this Order, I will use the same page references as those set out in the copy of the records that the Public Body submitted *in camera*. (The records go up to page 934, as the *in camera* package does not include pages provided to the Applicant in their entirety.)

[para 8] Page 613 of the records submitted *in camera* appears to have nothing to do with Bill 27, leading me to believe that it was mistakenly included either with the original material on Bill 27 or the copy of the records at issue that was made. The upper half of page 62 (with the exception of the first heading) is also unrelated to Bill 27. As I find that these portions of the records are non-responsive to the Applicant's access request, they do not have to be disclosed.

III. ISSUES

[para 9] The Notice of Inquiry, dated March 13, 2008, set out the following issues, although I have slightly rephrased them and placed them in a different sequence for the purpose of discussion in this Order:

> Are the records excluded from the application of the Act by section 4(1)(q) (record created by or for and sent to member of Executive Council or Member of Legislative Assembly)?
>
> Does section 17 of the Act (disclosure harmful to personal privacy) apply to the records/information?

Does section 16 of the Act (disclosure harmful to business interests) apply to the records/information?

Did the Public Body properly apply section 21 of the Act (disclosure harmful to intergovernmental relations) to the records/information?

Does section 22 of the Act (Cabinet confidences) apply to the records/information?

Did the Public Body properly apply section 27 (privileged information) to the records/information?

Did the Public Body properly apply section 24 (advice, etc.) to the records/information?

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

IV. DISCUSSION OF ISSUES

[para 10] Before discussing the issues in this inquiry, I note that the Public Body occasionally makes reference to similar records that were at issue in the inquiries that resulted in Order F2004-026 and Order F2007-013. I understand that those inquiries involved the same Applicant and the same request for information, but two other public bodies. The Public Body sometimes indicates that it severed a particular record in the same fashion that the public body in one of the previous inquiries was ordered to do so. I am aware that there are other records in this inquiry that are the same as or similar to those in the previous two inquiries.

[para 11] Despite the similarities between the records at issue in this inquiry and those discussed in Order F2004-026 and Order F2007-013, my conclusions in this Order will not necessarily be the same. My view as to the application of an exception to disclosure under the Act to a particular record in this inquiry depends on the exceptions to disclosure that were applied by this Public Body (including alternate ones), the applicable burden of proof, and the extent to which the submissions of the parties and/or the records themselves allow the burden to be met.

[para 12] Moreover, even if one public body is entitled to rely on an exception to disclosure to withhold a particular record, it does not necessarily follow that another public body may rely on the same exception to disclosure for that record. For instance, a record might reveal advice sought and obtained from a particular person for the purpose of taking an action or making a decision in one case – and therefore be withheld under section 24 of the Act – but the same record might not reveal or have anything to do with advice when it is in the file of another public body. The record, or part of it, might be for informational purposes only, or reveal background facts that are not sufficiently interwoven with any advice to the other public body so as to be properly withheld.

[para 13] In short, the parties' submissions, surrounding records and other context will influence the way in which the Commissioner or an Adjudicator applies the provisions of the Act to the information in a given case.

A. Are the records excluded from the application of the Act by section 4(1)(q) (record created by or for and sent to member of Executive Council or Member of Legislative Assembly)?

[para 14] Section 4(1)(q) of the Act reads:

> *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:*
>
> *...*
>
> *(q) a record created by or for*
>
> *(i) a member of the Executive Council,*
>
> *(ii) a Member of the Legislative Assembly, or*
>
> *(iii) a chair of a Provincial agency as defined in the Financial Administration Act who is a Member of the Legislative Assembly*
>
> *that has been sent or is to be sent to a member of the Executive Council, a Member of the Legislative Assembly or a chair of a Provincial agency as defined in the Financial Administration Act who is a Member of the Legislative Assembly;*

[para 15] If a record falls under section 4(1)(q), the Act does not apply to the record, and I have no jurisdiction over that record; an applicant cannot obtain access to that record under the Act (Order 2000-013 at para. 11). In order for a record to fall outside the Act by reason of section 4(1)(q), the record must be created by or for any of the persons listed in sections 4(1)(q)(i) to (iii), and must also be sent or intended to be sent to one of those persons (Order 2000-013 at para. 16).

1. Records falling within section 4(1)(q)

[para 16] In this inquiry, I find that the following records at issue fall under section 4(1)(q) of the Act, as they were created by or for the Premier of Alberta, the Minister of the Public Body or other Ministers – all of whom are members of the Executive Council under section 4(1)(q)(i) – or were created by or for a Member of the Legislative Assembly ("MLA") – under section 4(1)(q)(ii) – and the records were sent to a member of the Executive Council or MLA: pages 129, 660, 662, 664-665, 667, 669, 671, 673-674, 686, 688-689, 691, 693-696, 698-699, 702, 704-705, 708, 720-721, 729, 734, 736, 871 and 903.

[para 17] If a record was created by and sent to, or intended to be sent to, an individual who acts on behalf of a person listed in sections 4(1)(q)(i) to (iii), the record will be excluded from the application of the Act if the record indicates that the individual is acting on that person's behalf, or it is evident in some other way (Order 2000-013 at para. 17). I find that pages 658, 706 and 709 of the records fall under section 4(1)(q), as they were created by and sent to staff acting on behalf of a member of the Executive Council or MLA.

[para 18] The Public Body did not apply section 4(1)(q) to pages 432-435, 459, 483, 496-501, 505, 580-582, 611-612, 647, 651-655 or 911 of the records, as it usually applied sections 24(1)(a) and (b) of the Act instead (or section 17 in the case of page 911). However, I find that section 4(1)(q) applies. Even if the Public Body did not apply section 4(1)(q) to particular records at issue, I must apply the section myself, as it addresses whether or not I have jurisdiction over the records (Order F2007-021 at para. 28).

[para 19] I know from surrounding documents – such as the e-mail correspondence on pages 502, 507, 510 and 582 discussed immediately below – or the records themselves that the communications on the foregoing pages and attachments were sent or intended to be sent between persons listed in section 4(1)(q) or individuals acting on their behalf. Although pages 611-612 and 647 are not attached to a communication, their headings indicate that they were intended for the Premier or MLAs. I can tell by the name of the attachment to the e-mail on page 582 that the attached pages 580-581 were intended for MLAs. I point out, however, that other pages with the same content as pages 580-581 do not fall under section 4(1)(q) where it is not clear that they were intended to be sent to MLAs, as the information may be used for other purposes, be equally intended for other outside recipients, or be internally used by the Public Body itself.

[para 20] I considered whether pages 502, 507, 510 and 582 also fell under section 4(1)(q) but found that they did not. These pages appear to reveal discussions about something to be sent to an MLA or MLAs, but are not the records themselves that were sent or intended to be sent. Although the e-mail attachments on page 502 may have been sent to MLAs, their content is not actually revealed. Further, it is not clear on whose behalf the information on pages 502, 507, 510 and 582 were sent and received, in order for me to ascertain whether the senders and recipients were acting on behalf of the Minister of the Public Body, an MLA, or some other person listed in section 4(1)(q). This is in contrast to other pages (e.g., 435, 483, 706 and 709) where the "from" or "to" lines of the e-mails indicate that they were sent or received by someone acting on behalf of a member of the Executive Council or MLA.

[para 21] I find that the substantive parts of the e-mail message on page 511 fall under section 4(1)(q), as the content is intended to be sent on behalf of the Minister of the Public Body to an MLA. However, because I cannot tell whether the e-mail itself was sent outside the Public Body – again, it appears to be a discussion internal to the Public Body about what to send to an MLA – I find that the date and subject line, and the names and business contact information of the sender and recipients of the e-mail, do not fall

under section 4(1)(q). Having said this, I will discuss the Public Body's application of other sections of the Act to this information later in the Order.

[para 22] Finally, a handwritten notation on page 916 appears to have been made by an MLA or an individual acting on his behalf, and to have been sent to an individual acting on behalf of the Minister of the Public Body. While the Public Body applied sections 24(1)(a) and (b) of the Act to this information, I find that I have no jurisdiction over the handwritten notations under section 4(1)(q).

2. Records not falling within section 4(1)(q)

[para 23] I find that other records to which the Public Body applied section 4(1)(q) are not excluded from the Act's application, as they were not created by or for a person listed in section 4(1)(q). In Order 2000-013 (at para. 20), the former Commissioner stated:

> In order for an attachment to fall under [what is now section 4(1)(q)], the attachment must individually fulfill the requirements found in this section. The fact that a Member of the Executive Council attaches a covering letter to a record authored by someone else does not mean that the Member of the Executive Council "created" the record or that the record was created on behalf of that Member of the Executive Council. To find otherwise would enable a Member of the Executive Council to shield any record from the Act simply by attaching it to a covering letter.

[para 24] Because Members of the Legislative Assembly are among the individuals listed in section 4(1)(q), the foregoing principle would also apply to records attached to correspondence from an MLA. Accordingly, the fact that an MLA attaches a covering letter or some other document to a record authored by someone else – such as a constituent or other member of the general public – does not mean that the MLA "created" the record or that the record was created "for" that MLA. In order for section 4(1)(q) to apply, it is not sufficient that the MLA received the attachment from someone else; the word "for" in section 4(1)(q) means "on behalf of" – not "intended to go to" or "destined for" – because that interpretation would allow a record created by anyone in the world to be excluded from the application of the Act (Order 2000-013 at para. 16).

[para 25] The Public Body suggests that section 4(1)(q) should apply to documents attached to correspondence from an MLA because not providing for the same application of the exclusion could have the effect of negating the opportunity for an MLA to identify issues and receive responses to better address the concerns raised by their constituents. However, the application of section 4(1)(q) to attachments authored by someone not acting on behalf of the MLA is not consistent with the foregoing principle.

[para 26] Pages 657, 661, 666, 670, 675-685, 690, 700-701, 711-719, 724-726, 730 and 733 of the records were attached to correspondence from a member of the Executive

Council or MLA, but the records themselves were authored by a constituent, member of the general public, stakeholder or other third party not listed in section 4(1)(q), or the records appear to form part of a package given to the member of the Executive Council or MLA by such persons. As these records were not created by or on behalf of a member of the Executive Council or MLA, I find that – barring minor exceptions – section 4(1)(q) does not apply and I have jurisdiction over the information.

[para 27] The minor exceptions are on pages 677-680, where there are handwritten notes that I believe were added by staff of a member of the Executive Council or MLA and sent to staff of another member of the Executive Council, and therefore fall under section 4(1)(q).

[para 28] Pages 728, 731-732, 737-738, 865-866 and 904 are letters from Ministers or MLAs to members of the public. They therefore do not fall under section 4(1)(q). I considered whether the fact that some of these letters were "cc'd" to another Minister or MLA, or copied to one by way of a covering memorandum, meant that they were "sent" to a person listed under section 4(1)(q). I concluded otherwise. Section 4(1)(q) focuses on the creation of the record and to whom the record is to be sent in the first instance (Order 99-005 at para. 71). I interpret section 4(1)(q) to apply when a person listed in the section is the primary recipient of a record and not merely given a copy. Otherwise, any record could be excluded from the application of the Act simply by copying it to someone listed in section 4(1)(q).

[para 29] Pages 659, 663, 668, 672, 687, 692, 697, 703, 707, 710, 727 and 735 of the records, to which the Public Body applied section 4(1)(q), are "Action Request Approval Sheets". I find that these do not fall under section 4(1)(q) and that I accordingly have jurisdiction over them. Although they may have been created by or for a person listed in that section, there is no indication that they were also sent or intended to be sent to *another* person listed in that section. They appear only to have been distributed internally within the Public Body. It is not sufficient, under section 4(1)(q), for a record to be created by officials or employees and sent to the Minister or Deputy Minister of their own department. The record must be created by or for, and sent or intended to be sent to, two *different* persons listed in section 4(1)(q). Because a great many, if not all, acts of an official or employee of a public body is directly or indirectly on behalf of the Minister responsible for the public body, the contrary conclusion would mean that virtually every record of a public body would fall under section 4(1)(q) – as it is created by one person acting on behalf of the Minister (who is a member of the Executive Council) and sent to another person acting on the same Minister's behalf.

[para 30] The Public Body applied section 4(1)(q) to page 128, which is a memorandum from the Deputy Secretary to Cabinet and sent to a Minister. However, in my view, section 4(1)(q) does not extend to records created or sent by or on behalf of Cabinet. Although Cabinet *is* the Executive Council, and is therefore made up of members of the Executive Council, I do not believe that section 4(1)(q) was intended to apply to records created by or on behalf of, or sent to, the *collectivity* of the Executive Council. I believe so for two reasons.

[para 31] First, section 4(1)(q) refers to "a" member of Executive Council in the singular. I therefore believe that, for a record to fall under section 4(1)(q), it must be created by or for, or sent to, one or more members of the Executive Council in their *individual* capacities. Second, in order to give meaning to section 22(1) of the Act (Cabinet confidences), the Legislature must have intended for Cabinet documents to fall under the Act, rather than be excluded from its application. In particular, section 22(1) refers to "advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council". These types of information are very often prepared and submitted to Cabinet by or on behalf of a Minister. It would be odd or unnecessary to clarify that these types of information fall under section 22(1) if one were to conclude, in many cases, that they are excluded from the Act's application under section 4(1)(q), on the basis that they are created on behalf of one member of the Executive Council, as head of a ministry or department, and sent to all other members of the Executive Council, as the collectivity that is Cabinet. Given the foregoing, I find that I have jurisdiction over page 128.

[para 32] I considered whether pages 298-299 and 312-314 fell under section 4(1)(q), as they consist of memoranda between two Deputy Ministers. Although the content of pages 298-299 indicates that one of the Deputy Ministers was acting on instructions of her Minister, it is not clear from pages 298-299 and 312-314 that *both* persons were acting on behalf of their respective Ministers. Section 4(1)(q) requires both the sender and recipient of the record to be acting on behalf of an individual listed in the section. I therefore find that I have jurisdiction over the foregoing pages.

[para 33] As suggested above, there is sometimes information in the records at issue that is identical to that falling within section 4(1)(q), yet I find that it does not similarly fall under the section. Information that I know in a particular context was sent to MLAs does not fall under section 4(1)(q) in instances where the information was not clearly sent or intended to be sent to MLAs. The appearance of the same or very similar information throughout the records suggests to me that certain information was not intended to be sent *only* to MLAs or members of the Executive Council. Rather, the information appears to be for multiple uses, purposes and recipients both inside and outside the Public Body. Section 4(1)(q) applies only where it is known that the particular document or record itself was sent or intended to be sent to an individual listed in the section.

3. The Public Body's alternative application of sections 17 and 24

[para 34] The Public Body submits that, in the event that portions of the records at issue to which it applied section 4(1)(q) of the Act do not actually fall under that section, then section 17 applies (disclosure harmful to personal privacy), or sections 24(1)(a) (advice, etc.) and 24(1)(b) (consultations/deliberations) should be considered. This amounts to an alternative application, on the part of the Public Body, of sections 17, 24(1)(a) and 24(1)(b) to any records that I find do not fall under section 4(1)(q). I will therefore consider the application of these other sections of the Act below.

[para 35] *[FOIP] Practice Note 4* of this Office discusses the application of section 4(1). It indicates that where the Commissioner (or his delegate) finds that a record comes within the Act, the normal practice will be to remit the record in question back to the public body so that it may consider it under the Act and respond to the applicant on the basis of the exceptions to disclosure contained in the Act. As the Public Body in this inquiry has already indicated which exceptions to disclosure it would apply, I may or may not find it necessary to remit records back to it. If I find that sections 17, 24(1)(a) and/or 24(1)(b) apply to the information in certain records, I will send those records back to the Public Body with an order for it not to disclose information subject to the mandatory exception under section 17, and to decide whether it will or will not disclose information subject to the discretionary exception under sections 24(1)(a) and/or (b). Conversely, if I find that none of sections 17, 24(1)(a) and 24(1)(b) apply to information in a record to which the Public Body improperly applied section 4(1)(q), I will order the information it to be disclosed, as the Public Body also improperly applied the alternative sections.

B. Does section 17 of the Act (disclosure harmful to personal privacy) apply to the records/information?

[para 36] I found above that many of the records at issue were excluded from the application of the Act under section 4(1)(q) (record created by or for and sent to member of Executive Council or Member of Legislative Assembly). This included many pages to which the Public Body severed information under section 17, so I will not be discussing those pages in this part of the Order.

[para 37] 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. In its submissions, the Applicant states that it agrees that the Public Body properly applied section 17 to the severed portions of several pages. Not counting two pages (638 and 639) that do not appear in my copy of the records at issue, these are pages 182-184, 186-190, 338, 429, 449, 472, 525, 534, 538, 541-542, 594, 598, 636, 722 and 723. As I consider the Applicant's submission to mean that it no longer disputes the Public Body's decision to withhold the information on these pages, I do not find it necessary to determine whether the Public Body properly applied section 17 to them. I will therefore make no finding or order in relation to the foregoing pages.

[para 38] The Applicant clearly indicated that it was not challenging the Public Body's decision to withhold the information to which the Public Body applied section 17 on the pages listed in the preceding paragraph. However, the Applicant did not list other pages, possibly because it did not realize that section 17 had also been applied to them. As information that the Public Body withheld under section 17 remains at issue, I must go on to address the application of section 17 to several records. I must also consider whether section 17 alternatively applies to any of the records at issue to which the Public Body incorrectly applied section 4(1)(q).

[para 39] The relevant parts of section 17 of the Act read 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.

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

…

(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…[various circumstances]

[para 40] Under section 71(1) of the Act, the Public Body has the burden of proving that the Applicant has no right of access to the information that it has withheld. In the context of section 17, 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. Having said this, section 71(2) states that, if a 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. Because section 17 sets out a mandatory exception to disclosure – and section 2(e) of the Act provides for independent reviews of the decisions of public bodies – I must also independently review the information and determine whether disclosure would or would not be an unreasonable invasion of personal privacy.

1. Is there personal information of third parties?

[para 41] Section 17 applies only to personal information, which is defined in section 1(n) of the Act. I find that pages to which the Public Body applied or alternatively applied section 17 contain the personal information of third parties. This includes the names, home or business addresses and home or business telephone numbers of identifiable individuals, as set out in section 1(n)(i). I also find that there is third party personal information in the form of e-mail addresses and fax numbers. Further, there is occasionally information about the educational or employment history of an identifiable individual, as set out in section 1(n)(vii), such as an educational credential, a job title or position, or the number of years working in a particular capacity. Finally, I find other personal information that falls more generally under section 1(n), as it is "recorded information about an identifiable individual".

[para 42] As section 17 applies only to personal information, I find that the Public Body improperly applied the section to some of the records at issue. Specifically, a salutation on pages 846 and 881, and a date at the top of page 930, are not personal information. I also find that the Public Body improperly applied section 17 to information about a group or collectivity of persons on page 862, as the information does not identify any particular individuals. However, the Public Body may have meant to apply section 16 (disclosure harmful to business interests), a possibility that I discuss later in this Order.

2. Would disclosure be an unreasonable invasion of personal privacy?

[para 43] Section 17(2) of the Act enumerates situations where disclosure of a third party's personal information is *not* an unreasonable invasion of personal privacy. Neither of the parties has argued that section 17(2) applies to information in the records to which the Public Body applied or alternatively applied section 17. However, I find that section 17(2)(e) applies to the job titles or positions of officers, employees or members of the Public Body and other public bodies, or of staff of members of the Executive Council, as their job titles or positions are information about their employment responsibilities (Order F2004-026 at para. 105). This information, which I discuss in more detail below, may therefore not be withheld under section 17.

[para 44] Conversely, with respect to many of the records at issue, I find that there is a presumption of an unreasonable invasion of the personal privacy of third parties under section 17(4)(g) of the Act. The names of the third parties appear with other personal information about them and/or disclosure of their names would reveal personal information about them. In some instances, I also find a presumption of an unreasonable invasion of personal privacy under section 17(4)(d), as the information relates to employment history, such as the number of years working in a particular capacity.

[para 45] Section 17(5) of the Act requires all of the relevant circumstances to be considered in determining whether a disclosure of personal information constitutes an unreasonable invasion of the personal privacy of third parties. Neither the Applicant nor

the Public Body cites any of the various circumstances enumerated under section 17(5), and I do not find that any of them apply. However, the Public Body cites the refusals of two third parties to consent to disclosure, which is a non-enumerated relevant circumstance that I discuss in more detail below. I also discuss below the relevant circumstance that exists where information that identifies an individual merely reveals that he or she acted in a representative or professional capacity, or carried out a work-related function or activity.

a) Information of members of the general public

[para 46] The Public Body applied section 17 of the Act to names, signatures, addresses (including e-mail addresses) and telephone numbers (including fax numbers) on pages 757-768, 772-778, 780-800, 802, 805-809, 814-833, 843-850, 863-864, 867-870, 872-902, 905-910, 912-913, 916-917, 919-927 and 930-933 of the records. These pages consist of letters, e-mails and Action Request Approval Sheets, on which there is personal information of members of the general public who wrote correspondence regarding Bill 27. There is sometimes on the same page the personal information of a person acting in a representative or work-related capacity, such as that of MLAs on pages 900 and 917, which I discuss in the next section of this Order.

[para 47] I find that disclosure of the names, signatures, addresses and telephone numbers of members of the general public on the foregoing pages would be an unreasonable invasion of their personal privacy. I see no relevant circumstances under section 17(5) in favour of disclosure. Combined with the presumption against disclosure under section 17(4)(g) (name plus other personal information), this leads me to conclude that section 17 applies.

[para 48] On several of the foregoing pages, the Public Body also applied section 17 to the name or fax number of a business or hospital, or to the name of a town appearing by itself. These names, numbers and locations do not, in and of themselves, amount to information about an identifiable individual. However, in conjunction with other information in the records, I find that the name or fax number of the business or hospital, or the name of the town, risks identifying the members of the public who wrote the correspondence in question. I conclude that disclosure would be an unreasonable invasion of their personal privacy. I reach a similar conclusion in respect of job titles of members of the general public who wrote correspondence, employment information about such persons acting in their private capacities, and other arguably identifying information that the Public Body withheld under section 17 on the foregoing pages.

[para 49] A third party's refusal to consent to the disclosure of his or her personal information is a factor weighing against disclosure (Order 97-011 at para. 50; Order F2004-028 at para. 32). The Public Body states that, following its notices to third parties under section 30 of the Act, two individuals objected to the disclosure of information relating to them. Notations in the records submitted *in camera* indicate that the Public Body therefore withheld all of pages 843 and 847 on this basis.

[para 50] In withholding all of pages 843 and 847, however, the Public Body applied section 17 to more than just the personal information of the two third parties in question. If the names and addresses of the two individuals are severed from those pages – as the Public Body did in similar records – the remaining information would not identify them. As the remaining information would no longer be about an identifiable individual, there would be no personal information to which section 17 can apply. I accordingly find that the Public Body did not properly apply section 17 to the information on pages 843 and 847, except for the names, mailing addresses and e-mail addresses of the two individuals who wrote the correspondence.

b) Information of individuals acting in a representative capacity or performing work-related activities

[para 51] For the purpose of discussion, I have placed the information of individuals acting in a representative capacity or performing work-related activities into two categories.

(i) Names, job titles and signatures

[para 52] In many of the records at issue, the Public Body applied section 17 of the Act to the names, job titles and/or signatures of individuals who sent or received correspondence, or who acted in some other way, in their capacities as politicians, employees of the Public Body, other government officials, or representatives of other bodies, businesses and organizations. This occurs on pages 328, 343, 345, 448, 450-451, 481, 510-511, 517, 524, 600, 621, 810, 812-813, 834-837, 839, 841-842, 889, 900 and 917, possibly among other places.

[para 53] I find that section 17 does not apply to the foregoing names, job titles and signatures. First, in the case of government officials and employees (although not individuals associated with other organizations and businesses), section 17(2)(e) indicates that disclosure of their job titles and positions (i.e., employment responsibilities) is expressly not an unreasonable invasion of their personal privacy (Order F2004-026 at para. 105). Second, many previous orders of this Office have made it clear that, as a general rule, disclosure of the names, job titles and signatures of individuals acting in what I shall variably call a "representative", "work-related" or "non-personal" capacity is not an unreasonable invasion of their personal privacy. I note the following principles in particular (with my emphases in italics):

- Disclosure of the names, job titles and/or signatures of individuals is not an unreasonable invasion of personal privacy where they were acting in *formal* or *representative* capacities (Order 2000-005 at para. 116; Order F2003-004 at paras. 264 and 265; Order F2005-016 at paras. 109 and 110; Order F2006-008 at para. 42; Order F2008-009 at para. 89).
- Disclosure of the names, job titles and/or signatures of individuals acting in their *professional* capacities is not an unreasonable invasion of personal privacy

(Order 2001-013 at para. 88; Order F2003-002 at para. 62; Order F2003-004 at paras. 264 and 265).

- The fact that individuals were acting in their *official* capacities, or signed or received documents in their capacities as public officials, weighs in favour of a finding that the disclosure of information would not be an unreasonable invasion of personal privacy (Order F2006-008 at para. 46; Order F2007-013 at para. 53; Order F2007-025 at para. 59; Order F2007-029 at paras. 25 to 27).
- Where third parties were acting in their *employment* capacities, or their personal information exists as a consequence of their activities as *staff performing their duties* or as a *function of their employment*, this is a relevant circumstance weighing in favour of disclosure (Order F2003-005 at para. 96; Order F2004-015 at para. 96; Order F2007-021 at para. 98; Order F2008-016 at para. 93).

[para 54] I further note that the foregoing principles have been applied not only to the information of employees of the particular public body that is a party to the inquiry, but also to that of employees of other public bodies (Order F2004-026 at paras. 100 and 120), representatives of organizations and entities that are not public bodies (Order F2008-009 at para. 89; Order F2008-016 at para. 93), individuals acting on behalf of private third party businesses (Order 2000-005 at para. 115; Order F2003-004 at para. 265), individuals performing services by contract (Order F2004-026 at paras. 100 and 120), and individuals acting in a sole or independent capacity, such as lawyers and commissioners for oaths (Order 2001-013 at paras. 87 and 88; Order F2003-002 at para. 61). In my view, therefore, it does not matter who the particular individual is in order to conclude, generally, that section 17 does not apply to personal information that merely reveals that an individual did something in a formal, representative, professional, official, public or employment capacity.

[para 55] It has also been stated that records of the performance of work responsibilities by an individual is not, generally speaking, personal information about that individual, as there is no personal dimension (Order F2004-026 at para 108; Order F2006-030 at para. 10; Order F2007-021 at para. 97). Absent a personal aspect, there is no reason to treat the records of the acts of individuals conducting the business of government – and by extension other bodies and organizations – as "about them" (Order F2006-030 at para. 12). In other words, although the names of individuals are always their personal information [as it is defined as such in section 1(n)(i) of the Act], the fact that individuals sent or received correspondence – or conducted themselves in some other way in connection with their employment, business, professional or official activities, or as representatives of public bodies, businesses or organizations – is *not* personal information to which section 17 can even apply.

[para 56] The present inquiry provides a useful distinction. I concluded above that disclosure of the names, job titles and other identifying information of members of the general public – who wrote correspondence or otherwise interacted with the Public Body in their *private* or *personal* capacities – would be an unreasonable invasion of their personal privacy. By contrast, when the records at issue merely reveal that individuals acted in their *work-related* or *non-personal* capacities, or did something as

representatives of a public body, business or organization, section 17 does not apply to their names, job titles or signatures.

[para 57] There can be exceptions to the general principle in favour of disclosure of the names, job titles and signatures of individuals acting in their work-related or representative capacities. For example, there may be unusual circumstances or accompanying information in the records at issue that add a personal aspect or dimension, or suggest that disclosure would be an unreasonable invasion of personal privacy. However, I see no such circumstances in this inquiry – with one exception discussed below in relation to pages 851-859 (records to which the Public Body applied both sections 16 and 17) .

[para 58] Apart from the foregoing exception, I find throughout the records at issue that disclosure of the names, job titles and signatures of individuals acting in their work-related or representative capacities would not be an unreasonable invasion of their personal privacy. This includes the individuals who sent and received correspondence as reflected on pages 810, 812-813, 834-837, 839 and 841-842, as they were doing so not in their personal capacities, but as representatives of organizations. It also includes, in multiple instances, the information identifying a communications consultant engaged by the Public Body.

(ii) Business contact information

[para 59] Order F2004-026 (at para. 106) suggested that disclosure of business contact information – which is personal information under section 1(n)(i) – would not be an unreasonable invasion of personal privacy, as such information is routinely disclosed and is publicly available, both of which are relevant circumstances to consider under section 17(5) of the Act. I note other orders of this Office stating that the fact that a third party's personal information is merely business contact information, or of a type normally found on a business card, is a relevant circumstance weighing in favour of disclosure (Order 2001-002 at para. 60; Order F2003-005 at para. 96; Order F2004-015 at para. 96).

[para 60] Given the foregoing, I find that disclosure of many of the telephone numbers, mailing addresses and e-mail addresses that the Public Body withheld would not be an unreasonable invasion of the personal privacy of third parties. This is where I know or it appears that the third party was acting in a representative, work-related or non-personal capacity and the telephone number, mailing address or e-mail address is one that the third party has chosen to use in the context of carrying out those activities. I point out that a home number, cell number or personal e-mail address (i.e., one not assigned by the public body or organization for which an individual works) may also constitute business contact information if an individual uses it in the course of his or her business, professional or representative activities. In this inquiry, where individuals include a cell number at the bottom of a business-related e-mail or other communication (as on pages 510 and 511), or where individuals send or receive business-related e-mails using what may be a personal e-mail address (as on pages 343 and 345, as well as throughout the

records in relation to a communications consultant), I find that disclosure of the telephone number or e-mail address would not be an unreasonable invasion of personal privacy. Section 17 therefore does not apply.

[para 61] There may sometimes be circumstances where disclosure of a home number or personal e-mail address that was used in a business context would be an unreasonable invasion of personal privacy and therefore should not be disclosed. For instance, on page 328, a home number is included along with a business number and cell number, leading me to presume that the home number is being included for the limited purpose of allowing a specific other person to contact the individual at a number other than the usual business or cell number. I therefore find that section 17 applies.

[para 62] The Public Body also applied sections 24(1)(a) (advice, etc.), 24(1)(b) (consultations/deliberations) and/or 24(1)(e) (draft legislation or regulations) of the Act to some of the information that I have discussed in the preceding paragraphs of this Order. Therefore, even though I have found that section 17 does not apply to the names, job titles, signatures and business contact information of individuals acting in a non-personal or work-related capacity, I will consider whether this information may nonetheless be withheld under section 24 further below.

c) Records to which the Public Body incorrectly applied section 4(1)(q) but alternatively applied section 17

[para 63] I found earlier in this Order that pages 659, 663, 668, 672, 687, 692, 697, 703, 707, 710, 727 and 735 of the records do not fall under section 4(1)(q) of the Act and I therefore have jurisdiction over them. These records are "Action Request Approval Sheets", to which the Public Body appears to have applied section 4(1)(q) because they related to correspondence created by or for, or sent to, members of the Executive Council or MLAs. However, I see no indication that these pages were themselves sent, or intended to be sent, outside the Public Body. I will now discuss the application of section 17 to these pages, as the Public Body alternatively applied that section to them.

[para 64] On other Action Request Approval Sheets – to which the Public Body did *not* apply section 4(1)(q) – it severed the names of individuals noted as having written particular correspondence (e.g., in the "correspondent", "subject" or "action requested" line). This identifying information of third parties on other Action Request Approval Sheets is among that I found subject to section 17 above. For the same reasons, I find that section 17 applies to the names of members of the general public who are indicated as correspondents on the Action Request Approval Sheets that the Public Body incorrectly believed were excluded from the application of the Act under section 4(1)(q). This consists of the names of the individuals indicated in the subject line on pages 659, 663, 668, 672, 687 and 703. Disclosure of the identities of the correspondents would be an unreasonable invasion of their personal privacy, given the presumption against disclosure under section 17(4)(g) (name plus other personal information) and no relevant circumstances under section 17(5) in favour of disclosure.

[para 65] However, also for the same reasons set out earlier in this Order, I find that disclosure of the names, job titles, signatures and business contact information of politicians, officers and employees of the Public Body and other government officials found on the Action Request Approval Sheets would not be an unreasonable invasion of their personal privacy, as they were acting in their representative or work-related capacities. This includes the information of the individuals indicated in the "correspondent" line on pages 659, 663, 668, 672, 687, 692, 697, 703, 707, 710, 727 and 735. I note that the Public Body almost always disclosed information in relation to individuals acting in their representative or work-related capacities on other Action Request Approval Sheets.

[para 66] As it is not personal information, I find that the remaining information on the Action Request Approval Sheets is not subject to section 17. However, because the Public Body applied sections 24(1)(a) and (b) in the further alternative to records not falling under section 4(1)(q), I will return to the Action Request Approval Sheets later in this Order.

[para 67] I found earlier that pages 657, 661, 666, 670, 675-685 (except for handwritten notations on pages 677-680), 690, 700-701, 711-719, 724-726, 730 and 733 of the records do not fall under section 4(1)(q) and I therefore have jurisdiction over them. These records may have been sent between members of the Executive Council and MLAs, but they were not created by or on behalf of such persons, as required by section 4(1)(q). Rather, the information on the foregoing pages consists of letters, e-mails and packages of information prepared and sent by members of the public and stakeholder groups. I also found that pages 728, 731-732, 737-738, 865-866 and 904 fell within the purview of the Act, as they were letters sent *to* members of the public.

[para 68] 675-681, 684 and 711-719 are attachments included with correspondence, but the pages themselves contain no personal information to which section 17 can apply. I will discuss the Public Body's alternative application of sections 24(1)(a) and (b) to these pages in the relevant part of this Order below.

[para 69] Pages 657, 661, 666, 670, 685, 690, 700-701, 724-726, 730, 733, 865-866 and 904 contain the personal information of third parties. I find that section 17 applies to the names, signatures, home addresses, business addresses, e-mail addresses, home telephone numbers, business telephone numbers and fax numbers of the individuals who wrote this correspondence – but not such information of the politicians who received the e-mails and letters in their official capacities. In other words, the Public Body may and must withhold only the same type of information that it properly withheld in similar letters and e-mails from or to the general public, to which it did *not* apply section 4(1)(q). The information that must be withheld also includes employment or geographic information of a specific enough nature that it would identify the member of the public who wrote the correspondence on pages 661, 670 and 700-701.

[para 70] Once the foregoing information is removed, I do not believe that the remaining information risks identifying any individuals. Accordingly, disclosure of the remaining information would not be an unreasonable invasion of personal privacy.

[para 71] I considered whether the individual who wrote the correspondence on pages 700-701 did so in her capacity as a representative of an organization. Although she notes her role in the organization, the letter does not suggest that she was writing on behalf of the organization. I therefore find that disclosure of her identifying information would be an unreasonable invasion of her personal privacy.

[para 72] Pages 682-683 consist of a copy of a media release sent by an individual. With the exception of the name of the individual who sent the media release (in the "from" line at the top of page 683), I find that disclosure of the personal information in the media release itself would not be an unreasonable invasion of the personal privacy of third parties. The personal information consists of the names of individuals acting in their work-related rather than personal capacities. Moreover, the media release was presumably publicly available. The fact that personal information is available to the public is a relevant circumstance to consider in determining whether the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy (Order 98-001 at para. 56). If information is in the public domain, this weighs in favour of disclosure (Order 99-027 at para. 164).

[para 73] I concluded earlier in this Order that I have jurisdiction over page 128, which is a record from a representative of the Executive Council as a whole, rather than members of the Executive Council in their individual capacities. I find that section 17 does not apply, as the individuals whose personal information appears were acting in their work-related capacities. Having said this, I will later consider page 128 under section 22 of the Act below.

d) Records to which the Public Body applied both sections 16 and 17

[para 74] Notations in the records submitted *in camera* indicate that the Public Body applied both sections 16 (disclosure harmful to business interests) and 17 (disclosure harmful to personal privacy) of the Act to pages 851 to 859. I will discuss the application of section 17 here.

[para 75] I find that section 17 does not apply to the information on page 860, which consists of a letter from an organization. The business address at the top of the letter is not anyone's personal information. Although all of the individuals that form the membership of the organization would be identifiable as a result of the organization's name, they were collectively acting as representatives of that organization in what I consider to be a non-personal way. Therefore, even if the individuals are identifiable, disclosure is not an unreasonable invasion of their personal privacy. I distinguish this from a situation where members of the public have written letters in their individual capacities. Even if they identify themselves as belonging to a particular organization, the

letters are not written on behalf of those organizations, and therefore such individuals are acting in their personal rather than work-related or representative capacities.

[para 76] However, I distinguish my conclusion in respect of page 860, which is a letter from the organization as a collectivity, from my conclusion in respect of pages 851-859, where individual members of that organization are identified. The individuals on pages 851-859 appear to be a subset of the organization's membership, and in specifically identifying themselves, they are acting in a more personal way – as well as including their home addresses and home phone numbers. In other words, there is something extra that adds a personal aspect or dimension to the identifying information, and therefore gives rise to an unreasonable invasion of personal privacy if the information were disclosed.

[para 77] However, I find that section 17 does not apply to the headings on pages 851 to 859. Even where a third party's personal information is excepted from disclosure, a public body should not sever or withhold headings – unless the headings would disclose personal information or be an improper identification – as an applicant should at least know the nature of the information to which it is found not to be entitled (Order F2006-006 at para. 86).

[para 78] While I find that section 17 does not apply to the headings on pages 851 to 859, and to any of the information on page 860, I will consider the Public Body's alternative application of section 16 in the next part of this Order. I will also consider the application of section 16 to the severed information about an organization on page 862, to which the Public Body only applied section 17 but clearly meant also to apply section 16. The information on page 862 is comparable to that on pages 851 to 860, and the Public Body mentions page 862 in the context of its submissions on section 16. The failure to note section 16 on page 862 of the copy of the records that the Public Body submitted *in camera* therefore appears to be an oversight. I do not wish to prejudice the Public Body for the oversight, as disclosure of the withheld information on page 862 would defeat part of the objective of withholding information on the other pages. Moreover, section 16 sets out a mandatory exception to disclosure that must be considered where it possibly applies.

3. Conclusions under section 17

[para 79] Some of the information in the records at issue, to which the Public Body applied section 17 of the Act, is not personal information, such as dates and headings. As section 17 does not apply to non-personal information, I conclude that the Public Body had no authority to withhold it under that section.

[para 80] Given that there is a presumption of an unreasonable invasion of the personal privacy of third parties under section 17(4)(g) (name plus other personal information) and in some instances section 17(4)(d) (employment history), and no relevant circumstances in favour of disclosure under section 17(5), I conclude that section 17 applies to other information that the Public Body withheld under that section.

This is primarily the names and other identifying information of members of the general public who wrote correspondence regarding Bill 27. I find that once the identifying information of members of the general public is removed from the e-mails and letters written by them, the remaining information is no longer recorded information about identifiable individuals. Section 17 therefore does not apply to the remaining information.

[para 81] Because disclosure of the names, job titles, signatures and business contact information of individuals acting in their representative or work-related capacities would not be an unreasonable invasion of their personal privacy, I conclude that section 17 does not apply to this information. This follows general principles that have been articulated in several previous orders of this Office, and which principles I can readily apply to the records at issue while I independently review the information. For this reason, I also found it unnecessary to name, as affected parties in this inquiry, any of the individuals acting in a representative or work-related capacity. It was not my opinion that they were affected by the Applicant's request for review within the meaning of section 67(1)(a)(ii) of the Act. This was due to the lack of an arguable possibility that section 17 applies, and my belief that disclosure of merely the names, job titles, signatures and business contact information would not adversely affect these individuals or create serious consequences for them.

[para 82] With respect to the records to which the Public Body incorrectly applied section 4(1)(q) of the Act, but alternatively applied section 17, I conclude that section 17 applies to the names of the members of the general public on the Action Request Approval Sheets, as disclosure would unreasonably invade their personal privacy. Similarly, I conclude that section 17 applies to the names, addresses and other identifying information in the letters and e-mails that they wrote. I conclude that section 17 does not apply to the remaining information on these Action Request Approval Sheets, letters and e-mails.

C. Does section 16 of the Act (disclosure harmful to business interests) apply to the records/information?

[para 83] The relevant parts of section 16 of the Act read as follows:

> *16(1) The head of a public body must refuse to disclose to an applicant information*
>
> *(a) that would reveal*
>
> *(i) trade secrets of a third party, or*
>
> *(ii) commercial, financial, labour relations, scientific or technical information of a third party,*
>
> *(b) that is supplied, explicitly or implicitly, in confidence, and*

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person or organization, or

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

[para 84] The Public Body has the burden, under section 71(1) of the Act, of proving that the Applicant has no right of access to the information that it withheld under section 16.

[para 85] In order for information to be subject to non-disclosure under section 16(1), the information must meet each of the three requirements of that section. Specifically, the information must reveal trade secrets of a third party, or commercial, financial, labour relations, scientific or technical information of a third party under section 16(1)(a); the information must be supplied, explicitly or implicitly, in confidence under section 16(1)(b); and disclosure of the information must reasonably be expected to bring about one of the outcomes set out in section 16(1)(c) (Order 2000-010 at para. 12).

[para 86] The Public Body applied section 16 to pages 851 to 860 of the records. I concluded above that much of this information was properly withheld under section 17 (disclosure harmful to personal privacy). The remaining information at issue consists of the headings on pages 851 to 859, and all of the information on page 860. I also indicated earlier that I would consider the application of section 16 to the severed information about an organization on page 862.

[para 87] I find that section 16 does not apply to the headings on pages 851-859, as the headings alone disclose no information falling under section 16(1)(a), they reveal nothing supplied in confidence under section 16(1)(b), and disclosure would result in none of the consequences set out under section 16(1)(c).

[para 88] I also find that section 16 does not apply to the withheld information on page 862. The information is only the name of an organization, which, by itself in this particular context, is none of the types of information set out under section 16(1)(a). For the same reasons set out in the paragraphs below, I also find that the organization did not supply its name in confidence under section 16(1)(b), and disclosure of the name of the organization would not result in any of the four consequences set out in section 16(1)(c).

[para 89] The letter from the organization on page 860 is an unsolicited letter received by the Public Body regarding Bill 27. As with letters obtained from individual members of the public, it expresses views about Bill 27 that are intended to persuade the Public Body to act in a certain way. There is no express indication of confidentiality in the letter, and I do not see how the general views of a stakeholder – whether an individual or a collectivity – can be considered to be provided implicitly in confidence. In order for information to fall under section 16(1)(b), the third party must, from an objective point of view, have a reasonable expectation of confidentiality in regard to the information that was supplied (Order 2000-010 at para. 14). When individuals or groups write to government to encourage it to act in a certain way, their very purpose is to make those views known so that the suggested action will be taken. The foregoing is to say that, even if – as submitted by the Public Body – some of the information on page 860 arguably constitutes labour relations information under section 16(1)(a), I find that it was not supplied, explicitly or implicitly, in confidence under section 16(1)(b).

[para 90] Finally, I see no arguable possibility that one of the four consequences set out in section 16(1)(c) could reasonably be expected if the information on page 860 or 862 were disclosed. I see no competitive position that the organization on page 860 or 862 may be protecting. While the letter from the organization refers to negotiations, I do not see how disclosure would interfere with the organization's negotiating position, let alone interfere "significantly". Disclosure will not result in similar information no longer being supplied to the Public Body, as it is the organization itself that has an interest in expressing its views about legislation. I see no possibility of undue financial loss or gain to a person or organization if the information were disclosed. Finally, the letter reveals no information in connection with a person appointed to resolve or inquire into a labour relations dispute.

[para 91] The Public Body specifically argues that disclosure of the information on page 860 could result in similar information no longer being supplied under section 16(1)(c)(ii), when it is in the public interest that similar information be supplied to the Minister who would inquire into a labour relations dispute. I still find that section 16(1)(c)(ii) does not apply, as it is in the interest of the organization itself to provide information that would resolve a labour relations dispute, or permit the Minister to inquire into it. I see no reasonable expectation of it failing to supply information that itself has an interest to provide.

[para 92] As I find that the requirements of at least one, if not all three, of paragraphs 16(1)(a), (b) and (c) of the Act are not met with respect to the headings on pages 851 to 859, all of the information on page 860, and the severed information about an organization on page 862, I conclude that section 16 does not apply and the Public Body therefore had no authority to withhold the information under that section. As I also found earlier that section 17 does not apply, I intend to order disclosure of the information.

[para 93] Because section 16 sets out a mandatory exception to disclosure, I considered whether it applied to any information on pages 675-684 and 711-719, over

which I found earlier that I had jurisdiction. The information on those pages – like that on page 860 – consists of input and commentary about Bill 27 from particular organizations. For all of the same reasons set out above in relation to page 860, I find that the requirements of at least one, if not all three, of paragraphs 16(1)(a), (b) and (c) are not met in relation to pages 675-684 and 711-719. The information on them is therefore not subject to non-disclosure under section 16.

[para 94] Because I found that there is no arguable possibility that paragraphs 16(1)(a), (b) and/or (c) apply to the information from and about the organizations on pages 675-684, 711-719, 860 and 862, I did not consider them to be affected parties in this inquiry. In my view, if the records themselves and existing submissions are enough to establish that requested information does not fall within the mandatory exception to disclosure under section 16, a third party is not affected in such a way as to require notice under section 67(1)(a)(ii) of the Act, as there is no arguable possibility that the information of the third party must be withheld.

D. Did the Public Body properly apply section 21 of the Act (disclosure harmful to intergovernmental relations) to the records/information?

[para 95] The relevant parts of section 21 of the Act read as follows:

> *21(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to*
>
> *(a) harm relations between the Government of Alberta or its agencies and any of the following or their agencies:*
>
> *(i) the Government of Canada or a province or territory of Canada,*
>
> *(ii) a local government body,*
>
> *…*
>
> *or*
>
> *(b) reveal information supplied, explicitly or implicitly, in confidence by a government, local government body or an organization listed in clause (a) or its agencies.*

[para 96] The Public Body states that it applied section 21(1)(a) to pages 537 and 539 of the records, and further submits that it could also have applied section 21(1)(b). Pages 537 and 539 are draft summaries of Bill 27 sent to the Public Body from what was then Human Resources Development Canada (HRDC). The Public Body argues that its relationship with HRDC is a critical one, and that disclosure of the draft summaries risks compromising and eroding that relationship.

[para 97] The Applicant indicates that it was initially told that pages 537 and 539 were being withheld under section 21(1)(a)(ii), leading it to believe that disclosure would allegedly harm the Public Body's relations with a local government body, as opposed to the Government of Canada under section 21(1)(a)(i). Following the clarification in the Public Body's submissions that the other body in question was HRDC, the Applicant responded that it would accept that pages 537 and 539 were properly withheld if they have been accurately described by the Public Body as draft summaries of Bill 27 created by HRDC.

[para 98] Pages 537 and 539 have been accurately described. As I consider the Applicant's submission to mean that it no longer disputes the Public Body's decision to withhold these two pages, I do not find it necessary to determine whether the Public Body properly applied section 21 of the Act to them. I will therefore make no finding or order in relation to pages 537 and 539.

E. Does section 22 of the Act (Cabinet confidences) apply to the records/information?

[para 99] Section 22 of the Act reads, in part, as follows:

> *22(1) The head of a public body must refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees or of the Treasury Board or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees or to the Treasury Board or any of its committees.*
>
> *(2) Subsection (1) does not apply to*
>
> *...*
>
> *(c) information in a record the purpose of which is to present background facts to the Executive Council or any of its committees or to the Treasury Board or any of its committees for consideration in making a decision if*
>
> *(i) the decision has been made public,*
>
> *(ii) the decision has been implemented, or*
>
> *(iii) 5 years or more have passed since the decision was made or considered.*

[para 100] The Public Body has the burden, under section 71(1) of the Act, of proving that the Applicant has no right of access to the information that it withheld under

section 22. As section 22(1) is a mandatory exception to disclosure, there is no need for the Public Body to show that it properly exercised any discretion.

[para 101] The Public Body applied section 22(1) to pages 651-652 and 655 of the records, but I concluded earlier that I have no jurisdiction over these pages, as they are excluded from the application of the Act under section 4(1)(q) (record created by or for and sent to member of Executive Council or Member of Legislative Assembly). The remaining records to which the Public Body applied section 22(1), either in whole or in part, are pages 1-8, 13-16, 18-24, 26-32, 61-62, 72, 131-149, 191, 194-199, 201, 214-225, 270-273, 329, 397-398, 571 and 607-608.

1. Relevant provisions, tests and principles

[para 102] Where the Public Body applied section 22 to records requested by the Applicant, it did so because it believed that the information would reveal the substance of deliberations of the Executive Council - i.e., Cabinet. To fall within section 22(1) on this basis, a record must be generated for or received by Cabinet members or officials while taking part in the collective process of making government decisions or formulating government policy (Order 97-010 at para. 52).

[para 103] The Public Body states that it "consulted with Executive Council on the records [to which it applied section 22(1)] and confirmed that the records at issue were provided to Cabinet". I am prepared to accept this assertion, even where the record itself does not indicate that members of Cabinet or its officials were the recipients of it, or that the record was prepared for them. For example, some documents appear to have been prepared for, or to have arisen out of, meetings of a caucus. Although Cabinet members are members of the government caucus, they are not the only members. A caucus is not a committee of the Executive Council. The reason that I nonetheless accept the Public Body's assertion that the records in question were sent to or prepared for Cabinet is that it is possible for documents prepared by or for, or given to, the government caucus to have also been provided to Cabinet for its information or consideration.

[para 104] Even where a record was submitted to Cabinet, section 22(1) only permits the withholding of information that would reveal the substance of deliberations by it. The term "substance" has its normal dictionary meaning of the essence, the material or essential art of a thing; "deliberation" means the act of weighing and examining the reasons for and/or against a contemplated action or course of conduct, or a choice of acts or means (Order 97-010 at para. 28). Section 22(1) does not extend to the withholding of information such as the names of persons who prepared the material, or the dates, or the topics of the deliberations, unless this information would in itself reveal the substance of the deliberations (Order F2004-026 at para. 33). I would add to this business contact information, as it does not normally reveal any substantive content.

[para 105] The Applicant raises the possibility that section 22(2)(c)(iii) of the Act applies, so as to make section 22(1) inapplicable to some of the information in the records at issue. Section 22(2)(c)(iii) states that section 22(1) does not apply to information in a

record the purpose of which is to present background facts to Cabinet for consideration in making a decision if five years or more have passed since the decision was made or considered.

[para 106] I thought about the possibility that section 22(2)(c)(iii) is not relevant in this inquiry because, at the time of the Public Body's response to the Applicant's access request in October 2003, five years had not yet passed since a relevant decision of Cabinet (as the decisions also date from 2003). I do not find that I have to address this, as the alternate section 22(2)(c)(i) applies in any event. Under section 22(2)(c)(i), section 22(1) does not apply to information the purpose of which is to present background facts to Cabinet for consideration in making a decision if the decision has been made public. At the time of the Applicant's access request, relevant decisions of Cabinet had already been made public.

[para 107] In this inquiry, the relevant decisions of Cabinet to which section 22(2)(c)(i) applies are the decisions to formulate, draft and present Bill 27 and its related regulations in a set form with set content on behalf of the government. Bill 27 was made public when it was tabled as the *Labour Relations (Regional Health Authorities Restructuring) Amendment Act* and received first reading in the Legislature on March 11, 2003. A regulation in relation to Bill 27 was the *Regional Health Authority Collective Bargaining Regulation*, which was made public when it was published in the issue of the *Alberta Gazette* dated April 15, 2003. The content of Bill 27 and its related regulations were a reflection of Cabinet's decisions regarding their formulation and drafting, and these decisions were the ones being deliberated when the background facts were presented.

[para 108] Section 22(2)(c) promotes more accountability for the decisions actually taken by Cabinet, by exposing the background facts on which they were based; this exception for background facts is considered crucial in opening up the information which forms the general basis on which Cabinet acted without exposing its deliberations (Order 97-010 at para. 39). Accordingly, any information that constitutes background facts presented for Cabinet's consideration in the formulation and drafting of either Bill 27 or its related regulations may not be subject to the exception to disclosure under section 22(1). The Public Body submits that none of the records at issue constitute background facts, but I disagree in some instances, as noted below.

2. Records to which the Public Body applied section 22

[para 109] For the purpose of discussion, I have categorized the records to which the Public Body applied section 22 of the Act.

(a) Three-column documents, legislation templates and draft regulations

[para 110] Under section 22, the Public Body withheld pages 1-8, 18-24, 26-32 and 131-139, with the exception of the main headings on some of them. These records are

what are commonly called "three-column documents". The first column summarizes particular provisions of an existing statute or regulation, or where there is no existing legislation, summarizes some other current state of affairs. The second column sets out proposed changes, and the third column explains the rationale for those changes.

[para 111] For the most part, I find that the information in the first column of the foregoing records constitutes background facts relating to the formulation and drafting of Bill 27 and its related regulations. There is one exception in that the first column on page 139 happens to set out proposals rather than background facts. As Bill 27 and the regulations were made public, the background facts in the other first columns fall under section 22(2)(c)(i), meaning that they cannot be withheld under section 22(1).

[para 112] I do not extend the application of section 22(2)(c)(i) to the second and third columns (in addition to the first column on page 139), as the information in them does not consist of background facts. They set out the proposed changes that were considered by Cabinet, explain why the changes were proposed and therefore considered, and indirectly indicate whether Cabinet accepted, rejected or modified the proposals (i.e., if one were to compare the proposed changes to what inevitably found its way into Bill 27 or its related regulations. I also find that section 22(1) applies to an additional fourth column appearing on pages 1-8, as the information in that column also sets out proposed changes and the rationale for them.

[para 113] I accordingly conclude that the Public Body properly withheld, under section 22, the first column of page 139, the second and third columns of pages 18-24, 26-32 and 131-139, and the second, third and fourth columns of pages 1-8. Having said this, I find that section 22(1) does not apply to the headings of any of the columns, or the overall headings of any of the documents, as these do not reveal the substance of deliberations.

[para 114] Apart from the first column on page 139, I considered the possibility that other first columns of the three-column documents might reveal the substance of deliberations by disclosing the topic of what was discussed by Cabinet. However, I find that the background facts in the first columns do not reveal what the deliberations actually were, and that the facts are not interwoven with the information in the second and third columns so as to reveal the content of the latter.

[para 115] Pages 214-215 and 270-271 are "Legislation Templates" for what became Bill 27, and the documents themselves indicate that they were for Cabinet's information. As these records set out the intent of the proposed legislation and its expected impact, I find that most of the information on them reveals the substance of deliberations of Cabinet and must therefore be withheld under section 22(1). The parts that do not fall under section 22(1) are the main headings, dates and name of the department at the top of pages 215 and 271, and the individual's name and business contact information at the bottom of those pages, as I find that these do not reveal the substance of any deliberations. The parts that do not fall under section 22(1) also include the information

under "Description" and "Recent Legislative History" on pages 215 and 271, as this consists of background facts under section 22(2)(c)(i).

[para 116] The Public Body also applied section 24 of the Act to pages 215 and 271, which I will discuss in the relevant part of this Order below. I will do the same in respect of the information that I found above did not fall under section 22(1) on pages 1-8, 18-24, 26-32 and 131-139.

[para 117] The Public Body applied section 22(1) of the Act to most of pages 140-148, which consist of a draft version of the *Regional Health Authority Collective Bargaining Regulation*. It did not withhold the heading on page 148, presumably because it properly found that this information did not reveal the substance of deliberations of Cabinet.

[para 118] As the Public Body submits that all of the records to which it applied section 22(1) were given to Cabinet, I find that section 22(1) applies to the information that it withheld on pages 140-148. Draft regulations submitted to Cabinet are specifically included under section 22(1) as one of the types of information that might reveal the substance of deliberations of Cabinet. Here, I find that the whole of the draft regulation reveals such deliberations of Cabinet, as it is an entirely new regulation. In other words, no part of the draft regulation contains what might be construed as background facts – such as the wording of an existing provision – under section 22(2)(c)(i).

(b) Memoranda and a Minister's Report

[para 119] Pages 191, 194-197 and 329 are copies of memoranda from Cabinet staff (acting on Cabinet's behalf) to the Minister of the Public Body. These records set out recommendations of a standing policy committee to Cabinet. Pages 13-14, 198-199, 216-225, 262-269, 272-273 and 397-398 are copies of a "Minister's Report" and in some cases attachments, which the Public Body indicates were sent to Cabinet.

[para 120] I find that section 22(1) generally applies to the foregoing information (exceptions noted below), as the memoranda and Minister's Report set out proposals, implications and recommendations to be considered, or that had been considered, by Cabinet. I include as falling under section 22(1) the attachments at pages 262-269. Even though the Public Body did not apply section 22 – it instead applied section 24 – I must apply section 22(1), as it is mandatory. The records at pages 262-269 are referenced in the Minister's Report as attachments that were sent to Cabinet and I find that they reveal the substance of deliberations by it. I do not reach the same conclusion, however, with respect to the pages numbered ahead of page 262. These are not referenced as attachments to the Minister's Report. (Pages 270-271 are also not referenced as attachments, but I already discussed the application of section 22 to them above.)

[para 121] I considered whether there were any background facts falling under section 22(2)(c)(i) in the memoranda, Minister's Report or attachments, in which case section 22(1) cannot apply. I found that there were none. Although there is a section

entitled "Background" in the Minister's Report, it summarizes proposed changes and reform.

[para 122] However, in the absence of more specific submissions from the Public Body, I find that main headings (those at the top of pages 14, 199, 217, 223, 225, 263, 269, 273 and 398), subject/topic lines (those on pages 14, 199, 225, 273 and 398, as well as the four subject headings numbered from 1 to 4 among pages 218-223 and 264-269), dates, names of individuals, signatures, job titles and business contact information in the memoranda, Minister's Report and attachments do not reveal the substance of any deliberations. I therefore only find that the remaining substantive content falls under section 22(1). As the Public Body applied only section 22 to the memoranda at pages 191, 194-197 and 329, I intend to order disclosure of the non-substantive information in them. I will discuss the Public Body's alternative application of section 24 to the Minister's report and attachments in the relevant section of this Order below.

[para 123] Pages 15-16 of the records are near a Minister's Report but are not referenced as an attachment to it. However, because the Public Body stated that it confirmed that all records to which it applied section 22(1) had been given to Cabinet, I presume that to be the case here. I find that the information on pages 15-16 falls within the provision – again with the exception of the main heading of the document– as the information other than the heading reveals the substance of deliberations. This includes, here, the background information because it is intertwined with the substance of the deliberations, rather than being discrete background facts falling under section 22(2)(c)(i).

[para 124] I note that sometimes the same information that the Public Body says was given to Cabinet appears elsewhere in the package of records submitted by it, but the Public Body did not apply section 22 to these other versions or copies. As suggested earlier in this Order, information and documents may be used for more than one purpose and considered by more than one set of persons. For instance, the same information may be distributed within the Public Body for the purpose of its internal decisions, or may be given to legislative drafters for their information and use. The information is subject to section 22 only where it is known or evident that the particular copy of the record was given to Cabinet for its consideration – or disclosure of a record not given to Cabinet would indirectly reveals its deliberations. In this inquiry, it is not necessary for me to determine whether disclosure of the same information elsewhere in the records would indirectly reveal deliberations by Cabinet under section 22(1), as I conclude later in this Order that the information may be withheld under section 24(1) in any event.

[para 125] I concluded earlier that I have jurisdiction over page 128, which is a record from a representative of Cabinet as a whole, rather than members of Executive Council acting in their individual capacities. The Public Body did not apply section 22 to this record. However, because section 22(1) sets out a mandatory exception to disclosure, I must apply it to the parts of page 128 that reveal the substance of deliberations of Cabinet. I find that this is everything on the page except the headings, dates, subject lines, and names of the senders and recipients.

(c) Other records

[para 126] Pages 61 and the heading and lower half of page 62 (the remaining upper half is non-responsive to the Applicant's access request) contain summaries of what a standing policy committee recommended, first, to the government caucus and, second, to Cabinet. I find that the withheld information would directly or indirectly reveal the substance of deliberations of Cabinet – with the exception of the full name of the committee at the top of page 62 (it appears that only part of the name was disclosed) and the subject/topic line halfway down that page.

[para 127] Conversely, I find that pages 72 and 201, which are versions of a document entitled "Advice to Caucus", and pages 607-608, which were likewise intended for the government caucus, do not reveal the substance of deliberations of Cabinet. As explained earlier, the government caucus is neither Cabinet nor a committee of it. I am unable to conclude that these pages reveal the substance of deliberations by Cabinet, even if Cabinet received them. Cabinet does necessarily deliberate over everything that is given to it; a public body's submissions or the record itself must establish that Cabinet actually deliberated. Section 22(1) therefore does not apply to the foregoing pages, although I will consider the Public Body's alternative application of section 24 of the Act in a later part of this Order.

[para 128] Page 149 is a copy of an e-mail that attaches draft regulations and a three-column document, but the content of the attachments does not appear. I do not see how the e-mail alone reveals the substance of any deliberations. It reveals an exchange between government staff regarding what appear to be only administrative matters. In the absence of more specific submissions from the Public Body, I find that section 22(1) does not apply.

[para 129] I contrast this with page 571, which sets out another e-mail between government staff. I find that this e-mail reveals the substance of deliberations by Cabinet, as it made a request to an official acting on behalf of Cabinet, who presumably conveyed that request to Cabinet and/or made a decision on Cabinet's behalf. I accordingly conclude that section 22(1) applies to the substantive content of page 571. I find that it does not apply to the upper portion of the page, as it contains only dates, subject lines and the names, job titles and business contact information of the senders and recipients of the e-mails. Having said this, I will consider the Public Body's alternative application of sections 24 and 27 of the Act to the foregoing information in the relevant parts of this Order below.

3. Conclusions under section 22

[para 130] I conclude that some of the information to which the Public Body applied section 22 of the Act reveals the substance of deliberations of Cabinet and is therefore subject to the exception to disclosure under that section. As the exception is mandatory, I also conclude that section 22(1) applies to the substantive parts of a few other pages, even though the Public Body did not apply the section itself.

[para 131] I conclude that other information does not fall under section 22(1), as it does not reveal the substance of deliberations of Cabinet and/or consists of background facts presented to Cabinet for its consideration in making decisions that have been made public under section 22(2)(c)(i). The decisions in this case are those to formulate and draft Bill 27 and its related regulations, with particular content and in a particular form, for presentation to the Legislature and the public.

[para 132] Where the Public Body alternatively applied section 24 or 27 to the foregoing records at issue, I will consider whether it properly did so in the relevant parts of this Order below. Where the Public Body has not established – whether through its submissions in this inquiry or on the face of the record itself – that information falls under section 22(1), and it did not alternatively apply another section of the Act, I intend to order disclosure of the information.

F. Did the Public Body properly apply section 27 (privileged information) to the records/information?

[para 133] The relevant parts of section 27 of the Act read as follows:

> *27(1) The head of a public body may refuse to disclose to an applicant*
>
> *(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege,*
>
> *(b) information prepared by or for*
>
> *(i) the Minister of Justice and Attorney General,*
>
> *(ii) an agent or lawyer of the Minister of Justice and Attorney General, or*
>
> *(iii) an agent or lawyer of a public body,*
>
> *in relation to a matter involving the provision of legal services, or*
>
> *(c) information in correspondence between*
>
> *(i) the Minister of Justice and Attorney General,*
>
> *(ii) an agent or lawyer of the Minister of Justice and Attorney General, or*
>
> *(iii) an agent or lawyer of a public body,*

> *and any other person in relation to a matter involving the provision of advice or other services by the Minister of Justice and Attorney General or by the agent or lawyer.*

[para 134] Under section 71(1) of the Act, it is up to the Public Body to prove that the Applicant has no right of access to the information that it withheld under section 27.

1. Information subject to legal privilege

[para 135] The Public Body's submissions regarding the application of section 27 of the Act are very general. It states:

> *The Public Body considers the records at issue to be confidential and subject to legal privilege under sections 27(1)(a)(b)(c). The records relate to legal advice and correspondence between a lawyer of the Minister of Justice and Attorney General and the public body.*
>
> *The Public Body submits that the "client" is the Crown and the departments are part of the Crown therefore legal advice is given to the client. The legal advice in relation to the records at issue would not be confined to telling the client the law but includes advice as to what should be done in the relevant legal context.*
>
> *The information in the records is in respect to advice relating to draft legislation and contains legal consideration.*

[para 136] One of the types of legal privilege on the basis of which a public body may refuse to disclose information, under section 27(1)(a), is solicitor-client privilege. The Public Body does not expressly refer to solicitor-client privilege in its submissions, but it indirectly refers to this type of privilege, in that it submits that the records relate to legal advice between a lawyer and client.

[para 137] To correctly apply section 27(1)(a) in respect of solicitor-client privilege, a public body must meet the criteria for that privilege set out in *Solosky v. The Queen* (1979), [1980] 1 S.C.R. 821 at p. 837, in that the record must (i) be a communication between a solicitor and client; (ii) entail the seeking or giving of legal advice; and (iii) be intended to be confidential by the parties (Order 96-017 at para. 22; Order F2007-013 at para. 72).

[para 138] The following points should be borne in mind when considering whether the foregoing three-part test is met: Solicitor-client privilege does not attach to advice provided by someone who is not a lawyer; the advice must be sought from a professional legal advisor in his or her capacity as such (Order F2007-022 at paras. 72 and 73). Solicitor-client privilege does not extend to documents that merely give or request information, rather than give or seek legal advice (Order 97-003 at para. 221). Legal advice means a legal opinion about a legal issue, and a recommended course of action,

based on legal considerations, regarding a matter with legal implications (Order 96-017 at para. 23; Order F2007-013 at para. 73). The test for legal advice is satisfied where the person seeking advice has a reasonable concern that a particular decision or course of action may have legal implications, and turns to their legal advisor to determine what those legal implications might be; legal advice may be about what action to take in one's dealings with someone who is or may in future be on the other side of a legal dispute (Order F2004-003 at para. 30). There may be an express statement of an intention of confidentiality on the record, or confidentiality may be implicit from the nature of the documents themselves (Order F2007-008 at para. 14), or from the circumstances under and purposes for which the legal advice was being sought or given (Order F2004-003 at para. 30).

[para 139] The Public Body applied section 27(1)(a) to pages 651-655 of the records, but I concluded earlier that I have no jurisdiction over these pages, as they are excluded from the application of the Act under section 4(1)(q) (record created by or for and sent to member of Executive Council or Member of Legislative Assembly). The remaining records to which the Public Body applied section 27(1)(a) are all or part of pages 207-213, 298-299, 305-311, 321-325, 347-373, 375-383, 388-389, 391, 395, 400-406, 571 and 656. For some of these records, the Public Body also applied sections 27(1)(b) and/or (c), which I will discuss below to the extent necessary.

[para 140] On review of the records themselves, and bearing in mind the tests and principles above regarding solicitor-client privilege, I find that the information on pages 207-212, 321-324, 347-350, 353 (upper third only, above the solid line), 354, 355 (lower half only, below the second solid line), 356-371, 375-383, 391, 395 (lower half only, below the dotted line) and 400-406 are subject to solicitor-client privilege, and therefore fall under section 27(1)(a). In instances where the sender and recipient of the communication were not indicated on the document, I was able to ascertain that the communication came from a solicitor by virtue of its content (draft legislation on pages 375-373) or by locating the sender on a different page of the records (page 207, which is an attachment to a lawyer's e-mail on page 371).

[para 141] Some of the foregoing (e.g., pages 208-211) consists of attachments passed between a solicitor and client, which I find are also subject to solicitor-client privilege. Privilege also applies to information passing between a lawyer and his or her client that is provided for the purpose of giving the advice, as part of the continuum of solicitor-client communications; a particular document need not on its face evince the seeking or giving of legal advice, but to attract the privilege, it must be shown to be part of a continuum in which this is actually being done (Order F2003-005 at para. 39). I find that the aforementioned attachments are part of the continuum of solicitor-client communications in this case.

[para 142] I find that other records are not subject to solicitor-client privilege, as they were not sent between a solicitor and client. For instance, pages 305-311 consist of a communication between a government lawyer and an outside solicitor. Page 213 is a memorandum between a Deputy Minister and Minister's office. In other instances, I find

that the information does not entail the seeking or giving of legal advice, as in the e-mail on the upper half of page 395, which merely conveys information of an administrative nature.

[para 143] In the absence of more specific submissions from the Public Body in relation to pages 298-299, 351-352, 353 (lower two thirds), 355 (upper half), 372-373, 388-389 and the part of page 571 (the upper portion) that I did not already find falls within section 22(1) (Cabinet confidences), I am likewise unable to find that the information on them falls within section 27(1)(a). These pages do not clearly involve a communication between a client, on one hand, and a person acting as a solicitor, on the other – and/or they do not appear to entail the seeking or giving of legal advice. In instances where a communication appears to be between two individuals who are clients or between two individuals who are lawyers, I considered whether the record could be traced to information subject to solicitor-client privilege appearing elsewhere in the records, or the record was part of a continuum of legal advice, but I concluded otherwise.

[para 144] As the Public Body also applied section 27(1)(b) and/or (c) to most of the foregoing pages, I will return to them below. The Public Body alternatively applied only section 24 to page 213, so I will discuss it in that part of this Order below.

[para 145] Page 325 is a letter to a government lawyer from an outside party, who would not appear to be that lawyer's client. The lawyer is instead the lawyer for another public body. As the letter is not between a solicitor and client, and does not entail the giving or seeking of legal advice – it provides information only – I find that section 27(1)(a) does not apply. A public body may fail to establish that solicitor-client privilege applies if it does not explain how documents were implicated in the seeking or giving of legal advice (Order F2003-005 at para. 45), or it is unclear whether communications were sent for the purpose of seeking legal advice, as opposed to being provided merely for information (Order F2007-013 at para. 76). As the Public Body did not apply any other sections of the Act to page 325, I intend to order its disclosure.

[para 146] Page 656 is not a communication between a solicitor and a client. It is a document of an administrative nature typically generated by the Public Body. I considered whether the subject line might contain information subject to solicitor-client privilege, but in the absence of more specific submissions from the Public Body, I find that it does not. As section 27(1)(a) is the only section that the Public Body applied to page 656, I intend to order its disclosure.

[para 147] I considered whether, by referring to "legal advice" in its submissions, the Public Body was also referring to litigation privilege, which is another type of legal privilege under section 27(1)(a). To correctly apply section 27(1)(a) in respect of litigation privilege, a public body must show that (i) there is a third party communication; (ii) the maker of the document or the person under whose authority the document was made intended the document to be confidential; and (iii) the dominant purpose for which the document was prepared was to submit information to a legal advisor and use in

litigation, whether existing or contemplated (Order 97-009 at para. 103; Order F2007-013 at para. 78).

[para 148] Because the Public Body did not make any submissions regarding the foregoing test – or even expressly mention litigation at all – I find that it has not established that any of the records at issue may be withheld under section 27(1)(a) on the basis of litigation privilege. Moreover, litigation privilege ends with the litigation for which the communications were prepared (Order 98-017 at para. 52; Order 2001-025 at para. 61). Here, the Public Body has not drawn my attention to any specific litigation that was contemplated or existing at the time of a particular communication – and that is still ongoing. I am not able to determine these things without submissions from the parties on point.

[para 149] While I have noted, on my own, references to contemplated litigation in the records at issue, most of them are among the records that I have found to be subject to solicitor-client privilege in any event. In those instances where I have found that solicitor-client privilege does not apply (as on page 325), I am unable to find that litigation privilege applies – again because the Public Body did not refer at all to litigation privilege in its submissions, apply the test for withholding the information on that basis, or point to litigation that is still ongoing. The exception to disclosure based on litigation privilege relating to a public body is a discretionary exception to disclosure, and I simply cannot apply the exception on the Public Body's behalf.

[para 150] In reaching my conclusions in this part of the Order, I relied primarily on the content of the records themselves and the surrounding pages. It would have been helpful if the Public Body had made submissions (*in camera* if necessary) in respect of each record, for instance to explain how the document relates to the seeking or giving of legal advice. It would have also been helpful if the Public Body had identified the roles of the persons sending and receiving e-mail correspondence, so that I could more easily determine whether they were solicitors or clients. Sometimes I was able to ascertain that an individual was a lawyer with Alberta Justice because of the word "Justice" next to his or her name. In other cases, I had no idea who a particular individual was. It is incumbent upon the Public Body to provide evidence that information falls under section 27 of the Act.

[para 151] The Applicant indicates that, in a different access request to the Public Body, it asked for records relating to the engagement of outside (non-government) legal counsel and/or law firms by the Public Body with respect to legal advice concerning Bill 27. It states that the Public Body took the position that the role of a particular outside individual during the review of the legislation was technical rather than legal. As the role of this individual was not considered by the Public Body to be legal, the Applicant argues, in the context of this inquiry, that the Public Body should not be entitled to withhold any information relating to the services of this individual under section 27.

[para 152] There are references to the particular individual in the records at issue in this inquiry, but I did not see any communications to or from him. The references to the individual are among the information that I have found may be withheld under section 27(1)(a). However, this has nothing to do with the nature of the role of the individual; the information may be withheld because it is found within a communication entailing the seeking or giving of legal advice between a client and a *different person* who is a solicitor.

2. Information prepared in relation to legal services

[para 153] The information that remains at issue, to which Public Body applied or alternatively applied section 27(1)(b) of the Act, appears on pages 298-299, 305-311, 351-352, 353 (lower two thirds), 355 (upper half) and 373.

[para 154] Section 27(1)(b) gives a public body the discretion to refuse to disclose to an applicant information prepared by or for certain persons in relation to a matter involving the provision of legal services. Those persons are the Minister of Justice and Attorney General, his or her agent or lawyer, or an agent or lawyer of a public body. The term "legal services" includes any law-related service performed by a person licensed to practice law (Order 96-017 at para. 37; Order F2007-013 at para. 67).

[para 155] Pages 298 and 299 are memoranda that refer to proposals, recommendations and options for government. In the absence of more specific submissions from the Public Body, I find that the information is not in relation to a matter involving the provision of legal services. There is no evidence, on the face of pages 298 and 299, that the information on them relates to a law-related service performed by a person licensed to practice law. While one of the pages refers to amendments, these are stated as being proposed by a public body, rather than being prepared by a lawyer. Legislative amendments can also be proposed from a policy – rather than legal – perspective. Although the reference in section 27(1)(b) to information "in relation to" legal services has been recognized as quite broad (Order 96-017 at para. 38), a public body must provide evidence that the information in the particular record is indeed in relation to legal services. I discuss the Public Body's alternative application of section 24(1) of the Act to pages 298 and 299 later in this Order.

[para 156] I find that the substantive information on pages 305-311 was prepared for a lawyer of a public body in relation to a matter involving the provision of legal services, and therefore falls within section 27(1)(b)(iii). However, this is not because the information was *sent* to a solicitor, as the fact that information was destined to go to someone does not necessarily mean that it was prepared by or for that person. Under other sections of the Act, it has been concluded that, for a record or information to be created "by or for" a person, the record or information must be created "by or on behalf of" that person [Order 97-007 at para. 15, discussing what is now section 4(1)(q) of the Act; Order 2000-003 at para. 66, discussing what is now section 4(1)(j); Order 2008-008 at para. 41, discussing section 24(1)(a)]. Here, I find that the substantive content of pages 305-311 was prepared "for" the lawyer who received the information because the

covering letter indicates that the sender of the information was specifically asked to provide input.

[para 157] However, to fall under section 27(1)(b), there must be "information prepared" as those words are commonly understood (Order 99-027 at para. 110). I therefore do not extend the application of section 27(1)(b) to the dates, letterhead, and names and business contact information of the sender and recipient of the information on pages 305-311. These are not items of information that were "prepared". In keeping with principles articulated in respect of sections 22 and 24 of the Act, section 27(1)(b) does not extend to non-substantive information, such as dates and identifying information about senders and recipients, unless this reveals the substantive content elsewhere. However, in the context of section 27(1)(b) – which applies more broadly to information that was *prepared* rather that the *substance* of deliberations or advice under sections 22 and 24 – I find that the heading on page 309 reveals the information that was prepared in the rest of the document.

[para 158] Pages 351-352, 353 (lower two thirds), 355 (upper half) and 373 consist of e-mail exchanges. I find that the content of these e-mails may not be withheld under section 27(1)(b). With the exception of the last five lines of page 352 and the top half of page 351, I do not consider the information to be "prepared". In my view, the word "prepared" implies that there must be a greater degree of substantive content, rather than simply a communication of an administrative nature (e.g., distributing documents, arranging meetings) or a communication referring to or briefly discussing information that has been prepared elsewhere. There is presumably substantive content in the attachments to some of the e-mails, but that content is not actually revealed in the e-mails. I also find that the last five lines of page 352 and the top half of page 351 do not fall under section 27(1)(b) because, although the information is substantive, it is not in relation to legal services. The content expressly refers to "policy" objectives.

3. Information in correspondence to or from lawyers or agents

[para 159] The information that remains at issue, to which the Public Body applied or alternatively applied section 27(1)(c) of the Act, appears on pages 351-352, 353 (lower two thirds), 355 (upper half), 372-373, 388-389, 395 (upper e-mail) and 571 (upper portion that I found above cannot be withheld under section 22).

[para 160] For information to fall under section 27(1)(c), the record must be correspondence between an agent or lawyer of the Minister of Justice and Attorney General or a public body and any other person, and the information in the correspondence must be in relation to a matter involving the provision of advice or other services by the agent or lawyer (Order 98-016 at para. 17; Order F2007-013 at para. 61). It has been stated that section 27(1)(c) "permits non-disclosure of information in any correspondence between a lawyer of a public body (which would include all Alberta Justice lawyers), or an agent of a public body (which would extend to non-legal staff of Alberta Justice) on the one hand, and anyone else" [External Adjudication Order No. 4 (2003) at para. 12]. It has also been stated that the Legislature has cast a wide net in terms of what is not subject

to disclosure under section 27(1)(c), "especially as it relates to documents originating from, or being sent to, Alberta Justice" [External Adjudication Order No. 4 (2003) at para. 24].

[para 161] Even if the sender or recipient of correspondence is not a lawyer, section 27(1)(c) permits the withholding of information sent to or from an "agent". In my view, the reference to "agent" is not intended to include *everyone* employed by or otherwise acting on behalf of the Minister of Justice and Attorney General or another public body. If that were the case, section 27(1)(c) would shield a great many records of a public body from disclosure under the Act, given that a great many records consist of correspondence from employees in relation to the advice or other services that they provide. The Legislature may have cast a wide net in section 27(1)(c), but it could not have intended to cast such a wide net. If it had so intended, it would have used the word "employee" – as done elsewhere in the Act – rather than the word "agent".

[para 162] A basic rule of interpretation is that it is presumed that Parliament or a Legislature uses language carefully and consistently, and that within a statute, the same words are taken to have the same meaning and different words have different meanings [*Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R 625 at para. 133, citing Ruth Sullivan, *Driedger on the Construction of Statutes*, 3rd ed. (Toronto: Butterworths, 1994) at pp. 163 to 65]. Given this rule of interpretation, the fact that the word "agent" is used in section 27(1)(c) – as well as 27(1)(b) – shows that the Legislature intended for the term "agent" to mean something different than the broader term "employee". ("Employee" is already defined in section 1(e) of the Act to include a person who performs a service for the public body under a contract or agency relationship, so use of the term "employee" would not have excluded outside legal and non-legal agents).

[para 163] As cited above, External Adjudication Order No. 4 stated that section 27(1)(c) would extend to correspondence sent to or received by non-legal staff of Alberta Justice. However, that Order did not say *all* non-legal staff of Alberta Justice (or other public bodies). There may be times where a non-legal staff member has acted as the agent of the Minister of Justice and Attorney General or another public body, such as for the purpose of acts done under particular legislation, or in the course of a specific matter or proceeding. However, the fact that the individual was an "agent" should be demonstrated in each case.

[para 164] In this inquiry, the Public Body has not explained the roles of the individuals who sent or received correspondence, in order for me to ascertain whether and why they are "agents" of the Minister of Justice and Attorney General or another public body. I therefore find that some of the information at issue does not fall under section 27(1)(c) – specifically that on pages 351, 352 (lower half), 353 (middle third), 355 (upper half), 373 (upper half), 389 (upper two thirds) and 571. [I point out that the Public Body did not apply section 27(1)(c) to the lower third of page 389, so the section is not under consideration there.] I will consider the Public Body's alternative application of section 24 to the foregoing pages later in this Order.

[para 165] In some instances, I was able to ascertain from the records themselves that the individuals who sent or received various correspondence were lawyers of Alberta Justice – as on pages 352 (upper half, above the solid line), 353 (lower third, below the dotted line), 372, 373 (lower half, below the dotted line), 388 (lower two thirds, below the first dotted line), 389 (lower third, below the second dotted line) and 395 (upper half, above the dotted line). Because the information in correspondence is also in relation to a matter involving the provision of advice or other services by these individuals, I find that the substantive information falls under section 27(1)(c)(ii).

[para 166] Section 27(1)(c) applies only to the "information in correspondence"; it does not apply to the remainder of the information, such as the fact that the record is correspondence between persons specified in section 27(1)(c) (Order F2003-001 at para. 63). Given this, and in keeping with principles articulated in respect of sections 22 and 24 of the Act, section 27(1)(c) therefore does not extend to the dates or the names, job titles and business contact information of the senders and recipients of the correspondence. I note that the Public Body did not withhold these in the foregoing records. It occasionally withheld part of a subject line, which I find falls under section 27(1)(c) – even if similar information that merely reveals a topic generally does not fall under section 22(1) or 24(1). In my view, what an individual includes in a subject line is part of the "information in correspondence".

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

[para 167] The Public Body says little about its exercise of discretion not to disclose information under section 27 of the Act, other than that its decision "is justified given the legal context of the records." Despite its limited submissions in this regard, I find that it properly exercised its discretion to withhold information under section 27(1)(a) where the information is subject to solicitor-client privilege. This is due to the importance attached to solicitor-client privilege and an implicit understanding in society that the privilege should not be easily infringed. The Supreme Court of Canada has stated:

> Solicitor-client privilege is fundamental to the proper functioning of our legal system. […] Experience shows that people who have a legal problem will often not make a clean breast of the facts to a lawyer without an assurance of confidentiality "as close to absolute as possible":
>
> > [S]olicitor-client privilege must be as close to absolute as possible to ensure public confidence and retain relevance. As such, it will only yield in certain clearly defined circumstances, and does not involve a balancing of interests on a case-by-case basis. (*R. v. McClure*, [2001] 1 S.C.R. 445, 2001 SCC 14, at para. 35, quoted with approval in *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, [2002] 3 S.C.R. 209, 2002 SCC 61, at para. 36)

> It is in the public interest that this free flow of legal advice be encouraged. Without it, access to justice and the quality of justice in this country would be severely compromised. […]
>
> [*Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44 at para. 9]

[para 168] Due to the importance attached to solicitor-client privilege, a public body's decision to withhold information under section 27(1)(a) will be a reasonable exercise of discretion in most cases where the public body or the records themselves establish that this particular privilege applies – even with only a minimum explanation from the public body regarding its exercise of discretion. Having said this, I do not preclude the possibility of a rare case in which it may be apparent from the facts that a public body has not properly exercised its discretion to withhold information subject to solicitor-client privilege.

[para 169] For other discretionary exceptions to disclosure under section 27 of the Act – namely those under sections 27(1)(b) (information prepared in relation to legal services), under section 27(1)(c) (information in correspondence to or from a lawyer or agent) and in respect of privileges other than *solicitor-client privilege* under section 27(1)(a) – a public body must more clearly show that it properly exercised its discretion not to disclose information. Here, I have found that some of the information withheld by the Public Body was not subject to solicitor-client privilege but instead fell under section 27(1)(b) or (c). As under other sections of the Act, a public body exercising its discretion relative to the foregoing exceptions to disclosure under section 27 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).

[para 170] With respect to the Public Body's decision to withhold information from the Applicant generally, it states: "The Public Body submits that the partial release of information and exceptions applied were in keeping with the requirements of the Act and the spirit of accountability. The Public Body considered the objects and purposes of the Act one of which is transparency and accountability through access, however subject to limited exceptions which we have applied." With respect to the information withheld under section 27, the Public Body's reference to the legal context of the records suggests that it considered that it was important to protect information about the legal services and advice that were provided in relation to Bill 27. As a result of its general statement regarding the Act's purposes, and its more specific statement about what it was trying to achieve under section 27, I find that it has shown that it properly exercised it discretion to withhold the information falling under section 27(1)(b) and section 27(1)(c).

5. Conclusions under section 27

[para 171] I find that the content of the records themselves, or of the surrounding records, enable the Public Body to meet its burden, under section 71(1) of the Act, of proving that the Applicant has no right of access to some of the records at issue to which it applied sections 27(1)(a), (b) and/or (c). I therefore conclude that it had the authority to withhold those records.

[para 172] In the absence of more specific submissions from the Public Body, I conclude that it did not properly apply section 27(1)(a), (b) and/or (c) to other records at issue. However, where the Public Body alternatively applied section 24(1) of the Act to these records, I will now discuss them in the next part of this Order.

G. Did the Public Body properly apply section 24 (advice, etc.) to the records/information?

[para 173] Section 24 of the Act reads, in part, 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,*
>
> *(c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Alberta or a public body, or considerations that relate to those negotiations,*
>
> *...*
>
> *(e) the contents of draft legislation, regulations and orders of members of the Executive Council or the Lieutenant Governor in Council,*

[para 174] Under section 71(1) of the Act, it is up to the Public Body to prove that the Applicant has no right of access to the information that it withheld under section 24.

[para 175] Many of the records at issue to which the Public Body applied sections 24(1)(a), (b), (c) and/or (e) have already been discussed in this Order, as I found that the information in question is excluded from the Act's application under section 4(1)(q) (record created by or for and sent to member of Executive Council or Member of Legislative Assembly), or was subject to the exception to disclosure under section 17 (disclosure harmful to personal privacy), 22 (Cabinet confidences) or 27 (privileged information). I will only address the remaining information at issue in this part of the Order.

1. Relevant provisions, tests and principles

[para 176] In order to refuse access to information under section 24(1)(a) of the Act, on the basis that it could reasonably be expected to reveal advice, proposals, recommendations, analyses or policy options – which I often shorten in this Order to "advice, etc." – the information must meet the following criteria: (i) be sought or expected from, or be part of the responsibility of a person, by virtue of that person's position, (ii) be directed toward taking an action, and (iii) be made to someone who can take or implement the action (Order 96-006 at p. 9 or para. 42; Order F2004-026 at para. 55).

[para 177] 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 – which I often shorten in this Order to "consultations/deliberations". A "consultation" occurs when the views of one or more of the persons described in section 24(1)(b) are sought as to the appropriateness of particular proposals or suggested actions; a "deliberation" is a discussion or consideration 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 178] The test for information to fall under section 24(1)(b) is the same as under section 24(1)(a) in that the consultations or deliberations must (i) be sought or expected from, or be part of the responsibility of a person, by virtue of that person's position, (ii) be directed toward taking an action, and (iii) be made to someone who can take or implement the action (Order 99-013 at para. 48; Order F2004-026 at para. 57).

[para 179] Part (2) of the test under both sections 24(1)(a) and (b) is that the information must be directed toward taking an action. The information must relate to a suggested course of action, which will ultimately be accepted or rejected by the recipient (Order 96-006 at p. 8 or para. 39; Order 99-001 at para. 17; Order F2007-013 at para. 108). Taking an action includes making a decision (Order 96-019 at para. 120; Order F2002-028 at para. 29). However, sections 24(1)(a) and (b) of the Act do not protect a decision itself, as they are only intended to protect the path leading to the decision (Order F2005-004 at para. 22; Order F2007-013 at para. 109).

[para 180] Section 24(1)(a) does not apply to the bare recitation of facts or summaries of information; facts may only be withheld if they are sufficiently interwoven with other advice, proposals, recommendations, analyses or policy options so that they cannot reasonably be considered separate or distinct (Order 99-001 at paras. 17 and 18; Order F2007-013 at para. 108). These same principles apply in the context of consultations/deliberations under section 24(1)(b) (Order 96-006 at p. 10 or para. 50; Order F2004-026 at para. 78).

[para 181] Further, the Commissioner made the following comments about section 24(1) in Order F2004-026 (at paras. 71 and 75):

> In my view, section 24(1) does not generally apply to records or parts of records that in themselves reveal *only* any of the following: that advice was sought or given, or that consultations or deliberations took place; that particular persons were involved in the seeking or giving of advice, or in consultations or deliberations; that advice was sought or given on a particular topic, or consultations or deliberations on a particular topic took place; that advice was sought or given or consultations or deliberations took place at a particular time. There may be cases where some of the foregoing items reveal the content of the advice. However, that must be demonstrated for every case for which it is claimed.
>
> […] I accept that the policy behind the rules is to allow a free discussion. However, in my view the rule achieves this policy by shielding the substance of the discussions. Sections 24(1)(a) does not permit the withholding of who gave advice; it permits the withholding of advice. In my view the words "reveal advice" means "reveal what the advice was", Similarly, with respect to section 24(1)(b), "reveal … consultations or deliberations" means "reveal what the consultations or deliberations were".

[para 182] For information to fall under section 24(1)(c) of the Act, it must reveal positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the government or a public body, or considerations that relate to those negotiations. A "consideration" is a fact or thing taken into account in deciding or judging something (Order 99-013 at para. 44). The intent of section 24(1)(c) is similar to 24(1)(a) and (b), in that it is to protect information generated during the decision-making process, but not to protect the decision itself (Order 96-012 at para. 37; Order F2005-030 at paras. 71 and 72). The Public Body did not often apply section 24(1)(c) to the remaining records at issue, so I will discuss it only a few times below.

[para 183] For information to fall under section 24(1)(e) of the Act, it must reveal the contents of draft legislation, regulations, ministerial orders or orders-in-council. Section 24(1)(e) does not apply to information about who was involved in the creation or editing of legislation, who commented on it, the dates on which the drafts were written, sent or

commented on, or the topic of the legislation, unless that information would reveal the substantive content of the drafts (Order F2004-026 at para. 42). It is not necessary for me to determine whether section 24(1)(e) applies to most of the draft legislation and regulations to which the Public Body applied the section, as I already found, earlier in this Order, that section 22(1) (Cabinet confidences) applies.

[para 184] The Public Body indicates that it considered whether any of the information in the records at issue fell under section 24(2) of the Act, in which case section 24(1) cannot apply. I agree that section 24(2) is not relevant. I specifically turned my mind to section 24(2)(e), which states that section 24 does not apply to information that is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal, that is complete or on which no progress has been made for at least 3 years. I did not find that any of the information to which the Public Body applied section 24 was the result of research of a "scientific" or "technical" nature.

[para 185] Even if I am wrong and there is information falling under section 24(2)(e), I believe that, in the end, I will have ordered disclosure of that information in any event. In this particular inquiry, information that is possibly the result of background research of a technical nature undertaken in connection with the formulation of a policy proposal that is complete (i.e., the formulation of Bill 27 and its regulations) is also background information to which section 24(1) does not apply, as it does not reveal the substance of advice, etc. or consultations/deliberations.

2. The parties' submissions

[para 186] The Applicant says that it has a suspicion that the Public Body simply used section 24 of the Act as a "catch all" exception for records that that it did not want to release. It objects to what it feels is a broad and indiscriminate use of the exception to disclosure under the provision.

[para 187] In its submissions, the Public Body discussed certain records at issue specifically, and I accordingly considered it submissions regarding those records in reaching my conclusions below. Apart from making these specific submissions and reproducing excerpts from previous orders of this Office, the Public Body offered only the following kinds of general comments about its application of section 24:

> *The entire consultation process was considered. The Public Body applied sections 24(1)(a)(b)(c)(e) to protect the free flow of advice and recommendations in the decision making process and the contents of draft legislation. The Minister acted on the advice and recommendations and disclosure would divulge the basis of the action taken.*
>
> *The Public Body took into consideration the three-part test under section 24(1)(a) as defined by IPC Order 96-006.*

[...]

The records at issue under section 24 are advice, proposals, analysis and recommendations developed for a member of the Executive Council, the Minister of Alberta, Employment and Immigration (formerly Human Resources and Employment) and some contain the contents of draft legislation. The Public Body is of the opinion that the records at issue contain information that meets the criteria under section 24(1)(a)(b)(c)(e) of the Act.

[...]

The Public Body submits that in its opinion the decision to apply sections 24(1)(a)(b)(c)(e) of the Act to sever and withhold information in their entirety the records at issue was applied properly.

[...]

The Public Body submits that the intention of section 24 of the Act is to allow the Public Body to operate in a zone of confidentiality and to protect the free flow of advice and recommendations within the deliberative process by which the government enacts legislation. The Public Body submits that section 24 was properly applied to the records.

[para 188] At this juncture, I point out *FOIP Practice Note 10* of this Office, which reads, in part, as follows:

Public Bodies do not meet the burden of proof if they do not provide evidence to support written or oral arguments made in inquiries. Providing arguments alone is not sufficient. Arguments are not a substitute for evidence.

It is also not sufficient to provide the Commissioner with records, and leave it up to the Commissioner to figure out from the records the facts upon which he will base his decisions. The Commissioner requires that persons within Public Bodies provide evidence by speaking to the contents of records. Affidavit evidence is preferred.

Public Bodies that do not provide evidence for inquiries risk having decisions go against them for lack of evidence to support their arguments.

[para 189] I have reproduced *FOIP Practice Note 10* because public bodies must do more in an inquiry than repeat tests and principles articulated in previous orders and then simply say that they were applied, without demonstrating how they were applied. For instance, with respect to sections 24(1)(a) and (b) in this inquiry, the Public Body has not always shown in what way information was sought or expected, how providing the

information was part of someone's responsibility or position, toward what specific action or decision the information was directed, how the recipient of the information was in a position to take or implement the action or decision, and why the information reveals the decision-making process rather than a decision itself.

[para 190] In applying the three-part test for withholding information under section 24(1)(a) and (b), the Public Body merely states that "[t]he information was requested and expected to be provided to the Minister to make a decision"; that "[a]dvice, recommendations, analysis and options were provided to the Minister for a course of action to be taken"; and that "[t]he Minister of Alberta Employment and Immigration … is a member of the Executive Council charged by the Lieutenant Governor in Council and designated under section 16 of the *Government Organization Act* … and section 8 of … the *Designation of Transfer of Responsibility Regulation*". These designate the Minister as responsible for various enactments. The Public Body seems to say, very broadly, that everything it withheld under section 24 found its way to the Minister for the purpose of an action or decision (or would reveal information that did), and that the information was in some way connected to decisions regarding Bill 27. In my view, these broad assertions do not permit me to conclude that the Public Body properly applied section 24 in every instance where it withheld information under the section.

[para 191] As with information falling under other sections of the Act, such as section 22 (Cabinet confidences) and 27 (privileged information), I was often able to ascertain from the records themselves – in conjunction with the Public Body's broad submissions – that information fell under section 24(1). For example, I can infer that certain information was sought or expected from officers and employees of the Public Body acting in their various roles, that it was directed toward formulating and drafting Bill 27 and its regulations, and that it was provided to the Minister of the Public Body, who can act on the information by taking proposals to Cabinet and ultimately introducing, enacting and implementing legislation on behalf of government. In other instances, however, I required more specific submissions from the Public Body as to the nature of the action that was to be taken or the decision that was to be made. This was especially in the context of e-mail correspondence and draft versions of documents, which are discussed in greater detail below, as these would not appear to have been sent or given to the Minister.

[para 192] The Public Body points out that some of the records at issue are the same as or similar to records that were at issue in the inquiry that resulted in Order F2004-026. Following release by this Office of Order F2004-026 in September 2006, the Public Body reviewed the records that it had withheld and provided the Applicant with additional information in December 2006. It did so because Order F2004-026 resulted from an inquiry involving the same Applicant, the same request for information and similar records at issue, although a different public body. However, as explained at the outset of this Order, I may not necessarily reach the same conclusions as those in Order F2004-026, as my findings will depend on the submissions of the parties to this inquiry and my interpretation of the facts regarding the content and creation of the various records.

3. Records to which the Public Body incorrectly applied section 4(1)(q) but alternatively applied section 24

[para 193] I found earlier in this Order that the following "Action Request Approval Sheets" do not fall under section 4(1)(q) of the Act and I therefore have jurisdiction over them: pages 659, 663, 668, 672, 687, 692, 697, 703, 707, 710, 727 and 735. I previously discussed the alternative application of section 17 to these records at issue, finding only that the names of members of the general public – but not the names, job titles and signatures of individuals acting in a representative or work-related capacity – was subject to that mandatory exception to disclosure. As the Public Body applied sections 24(1)(a) and/or (b) in the further alternative, I will now discuss their application.

[para 194] I find that sections 24(1)(a) and (b) do not apply to any information on the Action Request Approval Sheets. The Sheets indicate the fact that the Public Body or a member of the Executive Council sought, from elsewhere in the Public Body, advice or recommendations on how to respond to a particular matter. However, the Sheets do not themselves reveal the substance of any advice, etc. or consultations/deliberations. I considered whether the subject lines revealed the substance of advice, etc. or consultations/deliberations, but in the absence of more specific submissions from the Public Body, I find that they do not. I note that on other Action Request Approval Sheets – to which the Public Body did *not* apply section 4(1)(q) – it only severed certain personal information. It did not withhold any information on the basis of section 24(1).

[para 195] I considered whether surrounding records, in conjunction with the Action Request Approval Sheets, might reveal the substance of advice, etc. or consultations/deliberations. However, I find that the surrounding correspondence written by members of the public does not reveal what any advice, etc. was or what any consultations/deliberations were. There may have been briefing notes from officials of the Public Body to the Minister in relation to the action requests, but there were no such briefing notes in the package of records submitted in this inquiry. Finally, I considered whether the information on pages 728, 731-732, 737-738, 865-866 and 904 – being letters to rather than from the general public – revealed the substance of advice, etc. or consultations/deliberations under section 24(1), but found otherwise. The content conveyed to the public in these letters is of a general, factual or informational nature. I further note that the Public Body did not take the position that section 24(1) applied to the information in similar letters to the public, which it disclosed entirely to the Applicant with the exception of only the recipient's personal information.

[para 196] I found earlier in this Order that certain records at issue do not fall under section 4(1)(q) because, although they were included as attachments from MLAs, they were not authored by or on behalf of those MLAs. Pages 657, 661, 666, 670, 685, 690, 700-701, 724-726, 730 and 733 are copies of letters or e-mails from members of the general public or individuals writing for an organization in a representative or work-related capacity. It will be recalled that certain information in them is subject to the mandatory exception to disclosure under section 17 of the Act, being the identifying

information of the members of the public who wrote the letters and e-mails in their personal capacities.

[para 197] I find that the remaining information at issue in the foregoing records (i.e., the substantive content of the letters and e-mails) does not fall under section 24(1)(a) or (b), as the information was not sought or expected by virtue of the senders' positions. General feedback or input from stakeholders or members of the public does not normally meet the first requirement of the test under section 24(1)(a) or (b), as the stakeholders or members of the public do not provide the information by virtue of any advisory "position" (Order F2008-008 at para. 42). There should be something more than merely thoughts, views, comments or opinions on a topic (Order F2008-008 at para. 43). I considered whether handwritten notes added to page 725 by somebody else revealed the substance of any advice, etc. of consultations/deliberations but found otherwise.

[para 198] Pages 675-684 consist of background information about Bill 27, or a summary and analysis of it, by particular associations or organizations. Pages 711-719 consist of a summary of legislative proposals by another organization. I considered whether the information on these pages fell under section 24(1)(a) and/or (b) on the basis that these groups are stakeholders with a particular knowledge, expertise or interest in relation to the topic, and were specifically engaged to develop advice, proposals, recommendations, analyses or policy options on behalf of the Public Body (Order F2008-008 at para. 44). While these groups may have a particular expertise or interest, I have no evidence, on the face of these records, that the groups were specifically engaged by the Public Body in an advisory role. I therefore do not find that the information was specifically sought or expected from them by virtue of their positions, or even sought or expected at all. As the Public Body has not established that the information on pages 675-684 and 711-719 falls under section 24(1), I intend to order disclosure of these pages (with the exception of the name that I found to be subject to section 17 on page 683).

[para 199] As explained earlier in this Order, there is no need for me to remit the foregoing records, which fall within the jurisdiction of the Act, back to the Public Body for it to decide whether to apply any exceptions to disclosure. This is because it has already told me that it would apply sections 17, 24(1)(a) and/or 24(1)(b). I have found that certain personal information must be withheld under section 17 but that section 24(1) does not apply to the remaining information. I will accordingly order it to be disclosed.

4. Records to which the Public Body applied both sections 17 and 24

[para 200] I found earlier in this Order that disclosure of the names, job titles, signatures and business contact information of individuals acting in their representative or work-related capacities would not be an unreasonable invasion of their personal privacy under section 17 of the Act.

[para 201] On consideration of whether this information may instead be withheld under section 24(1)(a), (b), (c) and/or (e), I conclude that it may not. In the absence of more specific submissions from the Public Body, I find that the foregoing names, job

titles, signatures and business contact information do not reveal the substance of any advice, etc., the substance of any consultations/deliberations, any information developed for the purpose of negotiations, or the content of draft legislation or regulations. My conclusion is consistent with my reasons set out later in this Order with respect to the identities and other information about individuals where the Public Body *did not* apply section 17.

5. Records to which the Public Body applied both sections 22 and 24

[para 202] I concluded earlier in this Order that the Public Body did not properly withhold certain information under section 22 of the Act (Cabinet confidences). I will now determine whether the information falls under provisions of section 24(1) that the Public Body alternatively applied.

[para 203] I found that section 22(1) applied to the second, third and, where applicable, fourth columns of the "three column documents" at pages 1-8, 18-24, 26-32 and 131-139 of the records, as these set out proposed changes to legislation and the rationale. However, under section 22(2)(c)(i), I found that section 22(1) did not apply to information in the first column of these records (except for page 139) because it constitutes background facts relating to the formulation and drafting of Bill 27 or the *Regional Health Authority Collective Bargaining Regulation*, which decisions have been made public. Because the first columns reveal only background facts, I also find that they do not reveal the substance of any advice, etc. under section 24(1)(a) or consultations/deliberations under section 24(1)(b). For the same reason that I found that the various headings on the foregoing pages would not reveal the substance of deliberations of Cabinet, I likewise find that they do not reveal information falling under section 24(1).

[para 204] In the absence of more specific submissions from the Public Body in relation to section 24(1)(c), I also fail to see how the information in the three-column documents would reveal information developed for the purpose of contractual or other negotiations. I considered whether the first columns remaining at issue reveal the content of draft legislation or regulations under section 24(1)(e), but found that they do not, as they reveal the content of *existing* legislation or regulations.

[para 205] The Public Body makes specific submissions regarding pages 26-32 (and therefore indirectly makes them regarding other three-column documents). It again points out that the Commissioner permitted other public bodies, to which the Applicant had also made an access request, to fully or partially withhold similar records in Order F2004-026 and Order F2007-013. However, as noted at the outset of this Order, the extent to which a public body successfully shows that an exception to disclosure applies to a record will often depend on the submissions made by that public body, surrounding records, and other factual or contextual information available to the Commissioner or Adjudicator. This may lead to variations in the result.

[para 206] Page 149 consists of e-mail correspondence. The e-mail indicates that someone reviewed attachments to the e-mail, but the content of the attachments is not revealed, nor is the substance of what the individual might have said. The remainder of the e-mail sets out information of a clerical or administrative nature. I find that section 24(1) does not apply.

[para 207] I found earlier in this Order that section 22(1) does not apply to various headings, subject/topic lines, dates, names, signatures, job titles and business contact information in Legislation Templates, memoranda, Minister's Reports, attachments and e-mail correspondence among pages 13-16, 128, 191, 194-199, 214-225, 262-273, 329, 397-398 and 571. I also find that sections 24(1)(a) and (b) do not apply. For the same reasons that I found that the information did not reveal the substance of deliberations of Cabinet under section 22, I find that it does not reveal the substance of any advice, etc. or consultations/deliberations under section 24. Neither section 22 nor 24 protects "non-substantive" information, unless the non-substantive information would in itself reveal, or allow an accurate inference to be drawn about, the substance of information protected by those sections (Order F2004-026 at paras. 33 and 77).

[para 208] The Public Body also applied section 24(1)(c) or (e) to some of the foregoing pages. However, it has not explained how their content would reveal information developed for the purpose of contractual or other negotiations, and I do not find that the actual content of any draft legislation or regulations is revealed in the non-substantive information that remains at issue. I conclude that neither section 24(1)(c) nor (e) applies.

[para 209] Page 72 and 201 are versions of a document entitled "Advice to Caucus", and pages 607-608 are a briefing to a caucus. Although I found earlier that section 22(1) does not apply, I do find that sections 24(1)(a) and (b) apply to the information that the Public Body withheld on pages 72, 201 and the bottom half of page 607. While the information does not reveal the substance of deliberations of Cabinet, it does reveal advice, etc. developed by a public body and consultations/deliberations involving officers and employees. The information was presumably sought or expected from officials and employees by virtue of their positions, it was directed toward decisions regarding the implementation of Bill 27, and those decisions could be taken or implemented by the Public Body or the Executive Council. Unlike under section 22, the fact that the information on the foregoing pages was given to a caucus (as opposed to Cabinet) does not detract from a conclusion that it reveals advice, etc. and consultations/deliberations, in relation to the Public Body more generally, under section 24.

[para 210] I find that section 24(1) does not apply to the top half of page 607 and all of page 608, as they consist of factual information in the nature of an update, which does not reveal the substance of any advice, etc. or consultations/deliberations.

6. Records to which the Public Body applied both sections 27 and 24

[para 211] I found earlier in this Order that section 27 of the Act does not apply to certain records at issue, but the Public Body alternatively applied sections 24(1)(a), (b) and/or (e). I already discussed the application of section 24 to page 571 in the part of this Order just above. Other records to which the Public Body improperly applied section 27 include the information that it withheld on pages 213, 298-299, 351, 352 (lower half), 353 (middle third), 355 (upper half), 372 (upper half), 373 (upper half), 388 (upper third), 389 (upper two thirds).

[para 212] I find that section 24(1) applies to most of the information remaining at issue on the foregoing pages (exceptions regarding pages 213, 351 and 355 are noted below). While the pages do not contain information subject to solicitor-client privilege under section 27(1)(a) – and the Public Body did not establish that the information was prepared by or for, or was in correspondence between, persons listed under section 27(1)(b) or (c) – the pages do contain information falling under section 24(1). There is a wider list of individuals who are able to provide information falling under section 24(1)(a) or (b), as the information needs only to be developed by or for a public body or involve officers and employees of a public body (among other persons). Sections 27(1)(b) and (c), by contrast, require the involvement of an "agent or lawyer".

[para 213] Here, the withheld information on the foregoing pages, in conjunction with information in the surrounding records, reveal the nature of the advice, etc. that was given under section 24(1)(a) and the consultations/deliberations that took place under section 24(1)(b). However, various dates, names, business contact information and subject lines also remain at issue on pages 213, 351, 355 just discussed – as well as on pages 310-311. I find that section 24(1) does not apply, as the information is non-substantive and therefore reveals no advice, etc., consultations/deliberations, or the contents of draft legislation or regulations.

7. Records to which the Public Body applied only section 24

[para 214] For the purpose of the remaining discussion under section 24 of the Act, I will often presume that where an individual was an official or employee of the Public Body or another part of government, or appears to be a hired consultant, he or she provided information in the records at issue as part of his or her position or responsibilities. Unless otherwise indicated, I will also often presume that the information was sought or expected by someone. Records may fall within the terms of section 24(1)(a) and/or (b) even though they do not reveal who created or received them, as the contrary conclusion could result in the disclosure of advice in situations where this would defeat the policy of the provisions (Order F2004-026 at para. 63).

[para 215] I will accordingly primarily focus on other parts of the tests for withholding information under section 24(1) in discussing my findings below. For instance, I will note whether the information was directed toward an action that could be accepted or rejected by a person who could take or implement action, or whether the

information was part of a decision-making process rather than revealing a decision itself. I will also focus on whether the withheld information reveals the substance of any advice, etc. or consultations/deliberations, as opposed to merely topics or background facts that do not themselves reveal these things.

(a) E-mail correspondence

[para 216] Here, I will discuss whether various e-mail correspondence that was withheld by the Public Body constitutes advice, etc. under section 24(1)(a) of the Act and/or consultations/deliberations under section 24(1)(b). There are sometimes attachments to the e-mail correspondence, but I will discuss those documents later in this Order.

[para 217] I find that section 24(1)(a) and/or (b) apply to all or parts of pages 200, 328, 436-439, 441, 447, 473-474, 481, 507, 510, 517, 570, 576, 599-600, 605, 619-622 that the Public Body withheld, as they reveal information given or intended to be given to Ministers, officers or employees of the Public Body or other government staff, for their consideration in deciding whether or how to proceed with some course of action. Some of this information includes background information that is inextricably interwoven with the advice, etc. or consultations/deliberations (Order F2004-026 at para. 78; Order F2007-013 at para. 111).

[para 218] However, in some records, including some in the preceding paragraph, I find that only the information that actually reveals the substance of advice, etc. or what the consultations or deliberations were may be withheld under section 24(1)(a) or (b). In Order F2004-026 (at para. 89), the Commissioner stated:

> … the Public Body is entitled to withhold under sections 24(1)(a) and 24(1)(b) only the records or parts of them that reveal substantive information about the matter or matters on which advice was being sought or given (Bill 27), or about which the consultations or deliberations were being held. The remainder of the information cannot be withheld under section 24(1)(a) or (b). The latter includes the names of correspondents, dates and, in many cases, subject lines, as well as documents or parts of documents that express the fact that advice is being sought or given or that information is being conveyed, without revealing any substantive content. A great many of the documents include such information.

[para 219] Given the foregoing, I find that section 24(1) does not apply to the dates, the names and job titles of the senders and recipients, and the subject lines and topics of discussion (including the names of e-mail attachments) that were withheld on pages 328, 436-437, 439, 441, 447, 473-474, 481, 507, 510, 511, 517, 570, 576, 599-600 and 620-621. I reach the same conclusion in respect of the information remaining at issue on page 511, the substantive content of which I found above falls under section 4(1)(q). I also include business contact information among the information that may not be withheld as advice, etc. or consultations/deliberations. Further, the Public Body sometimes withheld

the fact that an e-mail was sent with a particular level of importance, or withheld the version number of a draft document. In the absence of more specific submissions from the Public Body, I fail to see how these things reveal the nature of any advice, etc. or what any consultations/deliberations were.

[para 220] On pages 343, 345, 384, 394, 450-451, 502, 524, 535, 536, 569, 585 and 588, the Public Body properly disclosed some information but it withheld other information. However, I find that section 24(1) does not apply to *any* of the information on these pages, as they do not reveal the substance of any advice, etc. or what consultations/deliberations were. For instance, the e-mails withheld on pages 450 and 451 reveal a decision that has already been made, or convey something for informational purposes only. The e-mail on page 588 asks whether others have concerns or questions about something, but reveals nothing substantive. Page 345 refers to and attaches suggested changes to something, but they are not revealed in the e-mail itself. Pages 535 and 536 raise the possibility of discussions with outside parties, but do not contain the substance of any discussions.

[para 221] In addition to applying section 24(1)(a) and (b) to communications between individuals on pages 481 and 619-622 discussed above, the Public Body also applied section 24(1)(e). This was not proper. Section 24(1)(e) applies only to information that actually reveals the substantive contents of draft legislation or regulations (Order F2004-026 at para. 42). Where an e-mail indicates that it attaches draft legislation or regulations, but the e-mail itself reveals nothing about their contents, the e-mail itself does not fall under section 24(1)(e).

(b) Other records

[para 222] If I indicate all or part of the title of a document below, that information was already disclosed to the Applicant.

[para 223] Pages 34 and 37-40 appear to be part of one document. I find that section 24(1)(a) and/or (b) applies to all of the content except the main heading and the information under "Background" (being all of page 40 and the note at the top of page 39), as well as all of page 34. This latter information reveals something that has already occurred rather than the path leading to a decision. The background information discloses facts that, in the absence of more specific submissions from the Public Body, I find do not reveal the substance of the advice, etc. or consultations/deliberations appearing elsewhere in the document.

[para 224] Page 43 is entitled "Overview of Health Care Policy Options". I find that the information that the Public Body withheld on these pages falls under sections 24(1)(a) and (b). It is evident from the record itself that the information sets out legislative and policy options to be considered, and the substance of consultations/deliberations. The content sets out proposed action, possible responses and the rationale behind them, which demonstrates to me that the information was in relation to the decision-making process.

[para 225] Pages 122-126 are entitled "(Script) … Alberta Labour Relations Code". In the absence of more specific submissions from the Public Body, such as an indication of the person for whom the information was intended and what decision was being made or action was being taken, I find that the withheld information does not fall under section 24(1)(a) or (b). The information on pages 122-126 discuss matters that appear already to have been decided. There is no date on the document in order for me to ascertain whether the information was still at the developmental stage of the formulation and implementation of Bill 27.

[para 226] Page 127 is a fax cover sheet on which the Public Body withheld one sentence. In the absence of more specific submissions from the Public Body, I find that the information does not reveal any advice, etc. or consultations/deliberations.

[para 227] Pages 202, 204 and 206 are parts of a ministerial report or briefing note. Pages 231-232, 234-236, 238-241, 243-244, 246-248, 254, 257 and 260-261 are part of a "Health Care Labour Relations Reform Executive Summary" and what appear to be other documents in relation to it. I find that section 24(1)(a) and (b) apply to most of the information, including the interwoven background information, as it risks revealing the substance of the advice, etc. or consultations/deliberations. However, in the absence of any explanation as to why the topic under discussion would reveal information falling under sections 24(1)(a) and/or (b), I find that the headings at the top of pages 232, 236, 241, 244 and 261 may not be withheld. I considered whether pages 246-247 consist merely of factual background information, but find that the information was sufficiently interwoven with the advice, etc. and consultations/deliberations elsewhere.

[para 228] Pages 274-278, 300-302, 312, 422-423, 425-426 and 430-431 were withheld in their entirety, with the exception of certain dates and parts of titles. I find that section 24(1)(a) and (b) apply to the withheld information, as it reveals the substance of advice, etc. and consultations/deliberations. In most instances, I also find that the background information and more detailed headings are interwoven with the advice, etc. or consultations/deliberations, so that disclosure of the former could reasonably be expected to reveal the latter. I therefore find that sections 24(1)(a) and (b) also apply to this factual information or indicator of the topic. I make an exception regarding the more general headings at the top of pages 278 and 302, which the Public Body only partly disclosed. I also make an exception regarding page 431, in that the top half of the page is the bare recitation of factual information that is separate and distinct from the information that follows.

[para 229] Page 286 consists of handwritten notes. As the notes discuss a particular policy or legislative option, I find that most of the information falls under section 24(1)(a). However, there are two names that do not reveal the substance of any advice, etc. or consultations/deliberations, so may not be withheld under section 24(1). I considered whether telephone numbers on page 286 should also be disclosed, but find in this instance, that section 17 applies to them. Unlike the telephone numbers in various other documents and e-mails, I cannot clearly tell in the handwritten notes whether the

phone numbers are business contact information. (The word "office" appears but I do not know for certain which phone number it is referring to.)

[para 230] Pages 313-314 consist of a memo between two Deputy Ministers, while pages 287-297, 326-327, 392-393 and 411-416 consist of memos from the Alberta Labour Relations Board. I have included pages 326-327 – on which the Public Body did not cite any provision of the Act – as these pages are similar to the other memos, so I assume that the Public Body applied sections 24(1)(a) and (b). The Public Body properly disclosed headings, dates, subject lines, names, job titles and business contact information in the foregoing records. I agree that the remaining information reveals the substance of advice, etc. and consultations/deliberations.

[para 231] It is clear from the content of pages 385-386, entitled "Comments re", that they consists of an individual's views regarding another document, his or her proposed changes to it, and answers to questions that were posed to him or her by someone else. I find that all of the withheld information constitutes advice, etc. and consultations/deliberations.

[para 232] Pages 457-458 and 644-645 are copies of a document partially entitled "Alberta Labour Relations Code Amendments"; and pages 592 (erroneously numbered 692), 593, 606 and 610 are copies of a document partially entitled "Bill 27 Regulations". In the absence of more specific submissions from the Public Body, such as an indication of what decision was being made or action was being taken, I find that the withheld information does not fall under section 24(1)(a) or (b). The records do not themselves indicate that they were directed toward someone who can make a decision, or that they were part of the decision-making process. In the context of these particular records, nothing is being suggested to a particular recipient. Rather, the records appear to be directed toward the public and stakeholders rather than individuals within government, to be for informational purposes only, and to explain things in relation to the formulation of Bill 27 that had already been decided. This is given the content itself, as well as the fact that some pages have dates on them that are after the tabling of Bill 27.

[para 233] Where the Public Body applied section 24(1) to a particular record remaining at issue in this part of the Order, it usually specifically applied sections 24(1)(a) and/or (b). The Public Body also applied section 24(1)(e) to page 606, just discussed, but I find that page 606 does not reveal the substance of draft legislation or regulations. The information appears to describe legislation or regulations that have already been introduced.

[para 234] The portion of the title already disclosed by the Public Body on pages 586-587 is "Bill 27 Regulations". These pages set out various recommendations and the rationale for them, so I find that the information on them falls under section 24(1)(a) and (b). The only exception relates to the three lines of headings at the top of page 587, which merely reveal the topic under discussion and a party that received the recommendations or participated in the discussion about them. In the absence of more

specific submissions from the Public Body, I fail to see how this information reveals the substance of any advice, etc. or consultations/deliberations.

[para 235] The portion of the title already disclosed by the Public Body on page 609 is "Bill 27". As the information in the record relates to something that might possibly happen, I find that it reveals advice, etc, as to how the recipient of the information may respond if the possibility were to occur. It therefore falls under section 24(1)(a).

[para 236] Page 640 is entitled "Bill 27 Labour Relations (Regional Health Authorities Restructuring) Amendment Act". In the absence of more specific submissions from the Public Body, I fail to see how the information constitutes advice, etc. and/or consultations/deliberations. The record reveals who was responsible for certain matters or tasks, but not the substance of those matters or tasks.

[para 237] Pages 739 and 918 are each entitled "Advice to the Minister". The Public Body properly disclosed headings, dates, topics and background information. I agree that the remaining information falls under sections 24(1)(a) and (b).

[para 238] Page 934 is a letter from an organization to the Public Body. The Public Body indicates in its submissions that it is willing to disclose to the Applicant all but the first two paragraphs. Here, I am prepared to accept that the first two paragraphs reveal advice, etc. and consultations/deliberations and may therefore be withheld under sections 24(1)(a) and (b). This is because the information is directed toward a decision that can be taken by the recipient of the letter, who is acting on behalf of the Public Body, and it would appear that the advice, etc. was specifically sought in this particular instance.

(c) Draft versions of documents

[para 239] In its submissions or by way of notations in the *in camera* package of the records at issue, the Public Body indicates that it withheld certain information under section 24(1) on the basis that it was contained in a draft document. Many of these drafts are discussed elsewhere in this Order, but I will now take the opportunity to discuss others in greater detail, with a view to explaining the extent to which draft documents may be withheld under section 24 of the Act.

[para 240] Few orders of this Office have expressly discussed the application of section 24 to draft documents. In Ontario, however, it has been stated that a draft document is not, simply by its nature, advice or recommendations; in order to qualify as such, the record must recommend a suggested course of action that will ultimately be accepted or rejected during the deliberative process of government policy-making and decision-making [Ontario Order PO-2264 (2004) at para. 16 and Ontario Order PO-1690 (1999) at para. 13, discussing the comparable section 13(1) of Ontario's *Freedom of Information and Protection of Privacy Act*; Ontario Order MO-2337 (2008) at para. 110, discussing the comparable section 7(1) of Ontario's *Municipal Freedom of Information and Protection of Privacy Act*].

[para 241] In British Columbia, it has been stated:

> It is immaterial for the purposes of s. 13(1) [which is analogous to section 24(1) of Alberta's Act] that a record is, in some sense, a draft. If the record contains information that qualifies as advice or recommendations, its status as a draft or final document does not matter. But the fact that a record is only a draft, in some sense, does not mean that all of the record can be withheld under s. 13(1). The usual principles apply and a public body can withhold only those parts of the draft that actually are advice or recommendations within the meaning of the section. [B.C. Order 00-27 (2000) at para. 23, discussing section 13(1) of B.C.'s *Freedom of Information and Protection of Privacy Act*]

[para 242] I adopt the foregoing principles with respect to both advice, etc. under section 24(1)(a) of the Act and consultations/deliberations under section 24(1)(b). Whether information in a draft document may be withheld, on the basis that it reveals advice, etc. or consultations/deliberations, depends on whether the information itself meets the three-part test for withholding information under sections 24(1)(a) and (b).

[para 243] Where the final version of a record meets the requirements of section 24(1), the draft of the record will also meet the requirements of section 24(1) if the information in the draft and in the final version was the same (Order 96-021 at para. 240). Conversely, where the final version of a document does not fall under the exception to disclosure and/or was disclosed, only those parts of the draft version that actually reveal advice, etc. may be withheld [B.C. Order F07-17 (2007) at para. 28]. For example, the draft version – or parts of it – may be a "work in progress" that contains suggestions and options to be considered for reflection in the final version [Ontario Order P-1573 (1998) at para. 11].

[para 244] Finally, a public body relying on section 24(1) in order to withhold information in a draft document must explain how and why the section applies. I adopt approaches set out in two B.C. Orders:

> I have already said that [the public body] did not explain how it considers that s. 13(1) [which is analogous to section 24(1) of Alberta's Act] applies in this case and, except for the suggested changes, I am unable to identify any information in these pages that constitutes advice or recommendations. [B.C. Order 04-15 (2004) at para. 15]
>
> and
>
> Both in the case of the records which are marked draft and those which give the appearance of being final versions of letters, I am not able to glean from their face what advice or recommendations the records might contain (apart from the annotations). [The public body] should not expect me to divine this sort of thing but should support its position with

> argument and evidence and should specify what the advice or recommendation is and where it is to be found. Mere assertions do not suffice. [The public body] has failed, in my view, to demonstrate that the so-called draft letters are, in their entirety, advice or recommendations… [B.C. Order 03-37 (2003) at para. 61]

[para 245] The B.C. Orders refer to suggested wording changes and annotations that may be properly withheld. In my view, however, edits and comments on a draft do not *automatically* fall under section 24(1)(a) or (b) of the Act – particularly where changes in vocabulary represent the same idea already expressed, or comments reflect nothing truly substantive. Moreover, it is possible that such changes and notations are not directed to another person for the purpose of an action or decision, as it is common for an individual to prepare various versions of a document while drafting it, without anyone else even looking at them, let alone making a decision in relation to them. In order to meet the test for withholding information under section 24(1)(a) or (b), a public body must show to whom and how the suggested wording changes or annotations were directed for the purpose of an action or decision.

[para 246] Pages 63-67, 333-337, 442-446 and 614-616 are various drafts of a communications plan, which the Public Body withheld almost in their entirety. I can see an evolution in that pages 614-616 are part of Draft #5, pages 63-67 and 333-337 are part of Draft #9, and pages 442-446 are part of Draft #10. I can tell from other records that a very early version of the communications plan was sent to a person or persons, presumably for the purpose of approval and therefore a decision. However, I find that the later the version of the communications plan, the more it reveals a decision itself, rather than a path leading to a decision. Although the later versions remains drafts, I find that they reveal information in relation to a decision that has already been made – namely what the communications approach or strategy *will be*. The later versions do not suggest that they are a *proposed* communications plan. In the absence of specific submissions from the Public Body, I do not see how a communications plan that has more or less already been determined – even if minor aspects of it or anticipated facts may slightly change – reveals any advice, etc. or consultations/deliberations.

[para 247] Had the Public Body explained how disclosure of the information in the draft communications plan would reveal advice, etc. or consultations/deliberations, I might have viewed the drafts differently. I note that surrounding records indicate that versions of the communications plan were sent to other people for input. However, just because a draft document was circulated does not demonstrate that *everything* in it was the subject of advice, etc. or consultations/deliberations. It must be shown which parts of the draft reveal these things, for instance because those parts were the ones actually discussed, or revised since the last round of input.

[para 248] Given the foregoing, I find that sections 24(1)(a) and (b) do not apply to the later versions of the communications plan, which are found at pages 66-67 and 333-337 (Draft #9) and 442-446 (Draft #10). These documents reveal, in my view, a plan or decision that has already been made. If a record reveals only that a decision has been

made, the record may not be withheld under section 24(1) (Order 97-010 at para. 82; Order F2007-013 at para. 109). I accordingly intend to order the Public Body to disclose pages 63-67, 333-337 and 442-446 to the Applicant.

[para 249] Conversely, I find that parts of pages 614-616, being Draft #5 of the communications plan, fall under section 24(1)(a) and/or (b), as this earlier version is still preliminary in nature, as shown by the fact that it contains options for consideration. Some of pages 614-616 reflect background information that does not constitute advice, etc. or consultations/deliberations, but it is the same as that appearing in Drafts #9 and #10. I do not find it necessary in this case to order disclosure of the same information again.

[para 250] Pages 519-523 is a draft of a different communications plan in respect of a different audience. As with Drafts #9 and #10 of the communications plan just discussed, I find that much of this one discloses a decision that has already been taken regarding the communications plan – i.e., what "will" be done – and that sections 24(1)(a) and (b) therefore do not apply. However, there are parts of pages 519-523 that do reveal advice, etc., as they contain suggestions that the recipients of the information are asked to consider. These parts falling under section 24(1)(a) are all of pages 519-520, the information under points 1 and 2 on page 521 (but not the headings), and the third and fourth to last paragraphs on page 522. I do not include page 523, as it does not actually reveal any of the substance of the communications plan.

[para 251] Page 427 is a draft agenda, most of which the Public Body withheld. The Public Body specifically indicates that it disclosed the final versions of three other agendas to the Applicant, but not the one on page 427 because it was in draft form. I find that page 427 does not reveal the substance of any advice, etc. or the substance of any consultations/deliberations. The agenda refers to documents that likely contain such information, but the agenda itself does not. Sections 24(1)(a) and (b) therefore do not apply. The only exception is that I accept that the handwritten notations on page 427 fall under section 24(1)(b), as they appear to have been made following an actual discussion. In other words, while the agenda itself merely reveals topics to be discussed, the handwritten notes reveal the substance of consultations/deliberations.

[para 252] Pages 573-575, 577-578 and 583-584 are drafts of news releases, being material intended to be published. The dates on the records, or the dates of e-mail correspondence to which they are attached, show that the records were being prepared the same day as or after the tabling of Bill 27. In other words, the records explain a decision that has already been made. That decision is in respect of "proposed" amendments, but this does not mean that the information falls under section 24(1)(a) or (b). Once the proposed amendments found in Bill 27 were determined, they had become a decision regarding the drafting and formulation of the proposed amendments.

[para 253] I accordingly find that the draft news releases do not reveal any advice, etc. or consultations/deliberations. While there are sometimes suggested wording changes or minor comments on the news releases, it is incumbent upon the Public Body

to explain why they fall under section 24(1), as explained above. I note that the Public Body indicates on some of the pages that it consulted with another public body regarding a draft, but it does not explain how the content of the draft reveals what the consultations/deliberations were. In my view, a document is not shielded from disclosure under section 24 simply by virtue of the fact that it was given to somebody else for possible comment. A public body must more specifically show how disclosure of the draft document would reveal information meeting the three-part test for withholding information under section 24(1).

[para 254] I also note that the Public Body indicates that it released the final version of one of the news releases. Still, this does not lead me to conclude that any parts of the drafts may be withheld, as I do not know what any of the differences are between the drafts and final version. Even if there were differences, the Public Body would then also have to show how those differences reveal advice, etc. or consultations/deliberations. In the absence of more specific submissions from the Public Body, I find that the information in the draft news releases does not fall under sections 24(1)(a) or (b). I will according order disclosure of pages 573-575, 577-578 and 583-584.

[para 255] As with some of the foregoing documents, it is sometimes clear from the record itself that the content is still preliminary and is therefore not reflective of a decision that has already been taken. Such is also the case at pages 315-320 and 601-604, which are entitled "Health System Labour Relations Reform". Although these pages contain information about a strategy, the definitive strategy has not yet been determined, given the version number of the draft and the fact that it contains various matters to be considered. Because I find that the records reveal the path leading to decisions, I conclude that sections 24(1)(a) and (b) apply to almost all of the information on the foregoing pages.

[para 256] The exceptions are in relation to everything above the solid line at the top of pages 320 and 604, and the dates at the bottom of these pages. (I note that the same information was withheld on pages 315-319 and 601-603, but there is nothing to be gained here in disclosing the same information more than once.) These withheld portions merely reveal the topic under discussion, the party that prepared the information or participated in the discussion about it, the version number of the draft document and other information about the date or nature of the draft. In the absence of more specific submissions from the Public Body, I fail to see how this information reveals the substance of any advice, etc. or consultations/deliberations. There may be cases where this type of information reveals the content of advice, etc. or consultations/deliberations, but – as explained at the outset of this part of the Order – this must be demonstrated for every case for which it is claimed (Order F2004-026 at para. 71).

[para 257] I find that section 24(1)(a) and (b) apply to all of the information that the Public Body withheld on the drafts at pages 44-59. These pages are an example where the overall substantive content itself reveals advice, etc. and consultations/deliberations and therefore also the suggested wording changes. The only exception is that sections

24(1)(a) and (b) do not apply to the headings at the top of pages 45, 48, 53 and 56, as these reveal only a topic.

[para 258] By way of another example, page 417 is a draft three-column document. I find that section 24(1)(a) and (b) apply to the second and third columns, consistent with my conclusions earlier in this Order. In other words, I find that *both* the draft and final versions of the second and third columns of any three-column documents among the records at issue in this inquiry fall under section 24(1). Conversely, section 24(1) does not apply to the headings or the information in the first column on page 417, also consistent with my conclusions earlier in this Order. In other words, whether the information in the first column is draft or finalized, it is not advice, etc. or consultations/deliberations, as it conveys only background factual information about a current state of affairs. I also find that section 24(1) does not apply to the additional information to the left of the three main columns on page 417, as it conveys only topics.

[para 259] Pages 68-71 and 418-420 are draft versions of the same document. Here, I am prepared to find that the content reveals consultations/deliberations under section 24(1)(b), as the draft documents were prepared well in advance of the tabling of Bill 27 and the publication of accompanying regulations and I therefore believe that they are not yet reflective of a decision that has been made. However, I find that the headings at the top of pages 71 and 420 do not fall under section 24(1), as they merely reveal a topic.

[para 260] Pages 279-283, 339-342, 566-568 and 629-633 are various sets of draft speaking notes, which appear to have been prepared by somebody other than the speaker. The substantive content of the speaking notes reflects background facts and decisions that had already been made by the Public Body. In my view, however, a draft speech or speaking notes prepared by someone other than the speaker constitutes advice or recommendations as to what the individual should or may wish to say – regardless of the substance of the draft speech. I accordingly find, in this context, that the draft speaking notes fall under section 24(1)(a). This is even if the final speech given was virtually identical. A draft speech prepared by somebody else remains advice, etc. until the speaker makes the final decision regarding what he or she will actually say. This differs from the draft news releases and draft communications plan discussed above, as those records reflect *only* a decision made by the Public Body. A draft speech *additionally* reflects a second decision that has not yet been made by the specific individual delivering it (i.e. what to say), and therefore reveals a decision-making process.

[para 261] Despite the foregoing conclusions regarding the draft speaking notes, I find that section 24(1) does not apply to the heading that the Public Body withheld at the top of pages 283, 342 and 633. This information merely reveals the topic of the speaking notes, rather than the text of the speech that the speaker was to accept or reject.

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

[para 262] I have concluded that some of the records at issue to which the Public Body applied sections 24(1) falls within the discretionary exception to disclosure under

that section. Principles regarding a public body's exercise of discretion to withhold information under the Act were set out earlier in this Order. With respect to its application of section 24, the Public Body submits that it provided the Applicant with as much information as possible and considered the objects and purposes of the Act with respect to the records. As reproduced earlier, it states that it applied sections 24 to protect the free flow of advice and recommendations in the decision-making or deliberative process by which government enacts legislation.

[para 263] As a result of its general statement regarding the Act's purposes, and its more specific statements about what it was trying to achieve under section 24, I find that the Public Body has shown that it properly exercised it discretion to withhold the information that falls within section 24(1). It did not have the discretion to disclose the information that I have found not to fall within section 24(1).

9. Conclusions under section 24

[para 264] I conclude that sections 24(1)(a) and (b) of the Act do not apply to the information that the Public Body incorrectly believed to be excluded from the application of the Act under section 4(1)(q) (record created by or for and sent to member of Executive Council or Member of Legislative Assembly). It is not necessary for any records to be remitted back to the Public Body for reconsideration under section 24(1)(a) or (b), as it would not have the discretion to withhold the information under those sections.

[para 265] Given the Public Body's submissions, as well as the content of the records themselves and surrounding records, the Public Body has met its burden, under section 71(1) of the Act, of proving that the Applicant has no right of access to some of the information that the Public Body withheld under sections 24(1)(a) and (b). I therefore conclude that it had the authority to withhold those records.

[para 266] In the absence of more specific submissions from the Public Body, I conclude that it did not properly apply sections 24(1)(a), (b), (c) and (e) to other records to which it applied any or all of those sections. Where I have found in this Order that neither section 24 nor any other exception to disclosure applies to the information at issue, the Public Body did not have the authority to withhold it.

10. Final note regarding all exceptions to disclosure

[para 267] For some of the records at issue in this inquiry, a very small portion did not fulfill the requirements of the section on which the Public Body relied to withhold the information, yet I have not discussed it nor will order its disclosure. This is because disclosure of this minimal information would provide either meaningless or worthless information to the Applicant.

[para 268] By way of example, the Public Body sometimes withheld one or two words in the title of a document while disclosing the remainder, or withheld a few

headings while disclosing others in the document and/or similar (even identical) headings in other (even identical) records. In other instances, it withheld the date of a draft document, its version number or whether an e-mail was sent with "high" importance, none of which I believe reveals anything substantive. By way of another example, pages that I found were excluded from the application of the Act under section 4(1)(q) sometimes had stamps (e.g. indicating the date received) or handwritten notes (e.g., indicating the date an action request was due), which were added by the Public Body. As this information was not in the original record sent under section 4(1)(q), it would not fall under that section.

[para 269] In the foregoing types of instances, however, I do not believe that disclosure of the withheld words or stamped information would provide meaningful information to the Applicant, as it so minimal or disclosure of the information would be devoid of any context (i.e., where almost all of the document may be withheld in any event). Alternatively, there are times where the information repeats information already disclosed to the Applicant, or that I intend to order to be disclosed. It is not worth ordering disclosure of the same information again, as there is nothing to be gained. I did not find it necessary to order disclosure in the types of situations just discussed, as it may be construed that the Public Body reasonably severed the information (Order 96-019 at para. 47; Order F2007-013 at para. 115).

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

[para 270] Section 10(1) of the Act reads as follows:

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

[para 271] The Public Body has the burden of proving that it fulfilled its general duty to assist the Applicant under section 10(1) (Order 99-038 at para. 10; Order F2004-008 at para. 10). Having said this, I will limit my discussion of the Public Body's duty to assist to the specific concerns raised by the Applicant in its submissions.

[para 272] The Applicant alleges a failure on the part of the Public Body to provide a clear explanation of its application of section 27, and to clearly identify the exceptions applied to the records. A public body's duty in this regard is set out under section 12(1) of the Act. In particular, section 12(1)(a) requires a public body to tell an applicant whether access to a record or part of it is granted or refused. If access to a record or part of it is refused, section 12(1)(c)(i) requires the public body to tell the applicant the reasons for the refusal and the provision of the Act on which the refusal is based.

[para 273] The general duty to assist applicants under section 10(1) does not encompass other, more specific duties set out under the Act, including those under section 12 (Order 2000-014 at para. 84; Order F2007-013 at para. 29). Accordingly, I

find that the Public Body's alleged failure to meet the requirements of section 12(1) does not mean that it failed to fulfill it duty under section 10(1).

[para 274] Even if I were to address the requirements of section 12(1) in this inquiry, I would not find that the Public Body has failed to meet those requirements insofar as the Applicant's specific submissions are concerned. The Public Body's response of October 6, 2003 to the Applicant indicated the number of pages that were withheld in their entirety and under what sections of the Act, including section 27. Generally speaking, the language of section 12 does not imply that a reason for withholding the information must be provided *in addition to* the naming of a particular statutory exception (Order F2004-026 at para. 98). While there may be situations in which more explanation may be called for, I would not find, in this inquiry, that the Public Body was required to more fully explain why it applied section 27 to the information that it withheld under that section.

[para 275] The Applicant is concerned that the Public Body's response to its access request, which consisted of many blank pages, did not allow it to identify which exceptions to disclosure were being applied to which records. However, the Public Body states that, where it removed pages in their entirety from the package provided to the Applicant, it stated the number of pages that were withheld, the number sequence and the sections of the Act applied. Where a public body withholds an entire page, I do not see how a more detailed explanation of which sections were applied to it would assist an applicant. The Applicant refers to what was apparently a more thorough response given to it by the public body in the matter that gave rise to Order F2007-013, but I do not know the details of that response, nor could I even consider it by way of comparison to the Public Body's response in the present matter. Under section 57(1) of the Act, the statements made and answers given by the public body during the investigation and inquiry that led to Order F2007-013 are inadmissible in this inquiry, which is a separate other proceeding. Given my limited understanding of the Applicant's concerns about the Public Body's indication of the exceptions to disclosure that it applied, I would not find that section 12(1) was breached.

[para 276] The Applicant is concerned about what it calls the Public Body's "cavalier application" of section 24, its "reflexive commitment to secrecy", and its failure to re-evaluate the records and disclose more information following Order F2004-026, which dealt with similar records, although a different public body. However, these concerns are not properly addressed under section 10(1), as they deal with the Public Body's application of exceptions to disclosure under other sections of the Act (which I have already addressed in the relevant parts of this Order above). The statement above – that a public body's general duty to assist under section 10(1) does not encompass other duties set out elsewhere in the Act – would extend to other, more specific decisions, such as those under section 24. Moreover, the Public Body has indicated that it provided additional access to information following the release of Order F2004-026.

[para 277] Given the foregoing, I conclude that the Public Body met its duty to assist the Applicant under section 10(1) of the Act.

V. ORDER

[para 278] I make this Order under section 72 of the Act.

[para 279] I find that the following portions of the records submitted by the Public Body *in camera* are non-responsive to the Applicant's access request and that the Public Body therefore has no obligation to provide access to them:

- the upper half of page 62 (except the first heading) and page 613

[para 280] As they are excluded from the application of the Act by section 4(1)(q) (record created by or for and sent to member of Executive Council or Member of Legislative Assembly), I find that I have no jurisdiction over the following records and can therefore make no order in relation to them:

- pages 129, 432-435, 459, 483, 496-501, 505, 511 (substantive content only, being the seven lines in the text of the e-mail), 580-582, 611-612, 647, 651-655, 658, 660, 662, 664-665, 667, 669, 671, 673-674, 677-680 (handwritten notes only), 686, 688-689, 691, 693-696, 698-699, 702, 704-705, 706, 708, 709, 720-721, 729, 734, 736, 871, 903, 911 and 916 (handwritten notes only)

[para 281] I find that I have jurisdiction over the remaining records at issue.

[para 282] As the Applicant no longer disputes the Public Body's decision to withhold information on the following pages – to which the Public Body applied section 17 of the Act (disclosure harmful to personal privacy) – I make no finding or order in relation to them:

- pages 182-184, 186-190, 338, 429, 449, 472, 525, 534, 538, 541-542, 594, 598, 636, 722 and 723

[para 283] As the Applicant no longer disputes the Public Body's decision to withhold information on the following pages – to which the Public Body applied section 21 of the Act (disclosure harmful to intergovernmental relations) – I make no finding or order in relation to them:

- pages 537 and 539

[para 284] I find that section 17 of the Act applies to some of the personal information in the records at issue, as disclosure would be an unreasonable invasion of the personal privacy of third parties. Under section 72(2)(b) or 72(2)(c), as the case may be, I confirm the decision of the Public Body to refuse the Applicant access, or require it to refuse access, to the following:

- the information withheld under section 17 in the correspondence from members of the public and Action Request Approval Sheets on pages 757-768, 772-778,

780-800, 802, 805-809, 814-833, 843-845, 846 (except the salutation), 847-859, 863-864, 867-870, 872-880, 881 (except the salutation), 882-899, 900 (except the names of two MLAs), 901-902, 905-910, 912-913, 916, 917 (except the name of an MLA), 919-927, 930 (except the date) and 931-933

- the names, signatures, mailing addresses and e-mail addresses (as the case may be) of the members of the public who wrote the correspondence on pages 843 and 847 [records to which the Public Body improperly applied section 17 to the entire correspondence]
- the names, signatures, home addresses, business addresses, e-mail addresses, home telephone numbers, business telephone numbers and fax numbers (as the case may be) of the members of the public who wrote or received the correspondence on pages 657, 661, 666, 670, 685, 690, 700-701, 724-726, 730, 733, 865-866 and 904 [correspondence to which the Public Body improperly applied section 4(1)(q)]
- other identifying information of certain members of the public who wrote the foregoing correspondence – being the workplace and number of years of employment of an individual on page 661; the geographic location and job title of an individual on page 670; the geographic, employment and other identifying information of an individual in the last two lines on page 700 and the third, fourth and fifth sentences on page 701
- the names of the members of the public in the subject lines on pages 659, 663, 668, 672, 687 and 703 [Action Request Approval Sheets to which the Public Body incorrectly applied section 4(1)(q)]
- the phone numbers on page 286
- the home phone number on page 328
- the name of the individual in the "from" line on page 683
- the names, addresses and telephone numbers on pages 851-859

[para 285] I find that section 16 of the Act (disclosure harmful to business interests) does not apply to any information in the records at issue.

[para 286] I find that section 22 of the Act applies to some of the information in the records at issue, as disclosure would reveal the substance of deliberations of Cabinet. Under section 72(2)(b) or 72(2)(c), as the case may be, I confirm the decision of the Public Body to refuse the Applicant access, or require it to refuse access, to the following:

- the information in the first column of page 139, the second and third columns of pages 18-24, 26-32 and 131-138, and the second, third and fourth columns of pages 1-8 (but not the headings of any of the columns or pages)
- the information on pages 13-16, 191, 194-199, 214-225, 262-273, 329 and 397-398 – except the main headings (those at the top of pages 14, 16, 191, 194, 197, 199, 215, 217, 223, 225, 263, 269, 271, 273, 329 and 398), subject/topic lines (those on pages 14, 191, 194, 197, 199, 225, 273, 329 and 398, as well as the four subject headings numbered from 1 to 4 among pages 218-223 and 264-269),

dates, department names, and individuals' names, signatures, job titles and business contact information on all of the foregoing pages (as the case may be)
- the information on pages 61, 62 (the responsive portion), 128 and 571 – except the main headings, subject/topic lines, dates, department/committee names, and individuals' names, signatures, job titles and business contact information on all of the foregoing pages (as the case may be)
- all of the information withheld on pages 140-148

[para 287] I find that the Public Body properly applied section 27(1)(a) of the Act to some of the information in the records at issue, as it is subject to solicitor-client privilege. Under section 72(2)(b), I confirm the decision of the Public Body to refuse the Applicant access to the following:

- the information on pages 207-212, 321-324, 347-350, 353 (upper third only, above the solid line), 354, 355 (lower half only, below the second solid line), 356-371, 375-383, 391, 395 (lower half only, below the dotted line) and 400-406

[para 288] I find that the Public Body properly applied section 27(1)(b) of the Act to some of the information in the records at issue, as it is information prepared for a lawyer of a public body in relation to legal services. Under section 72(2)(b), I confirm the decision of the Public Body to refuse the Applicant access to the following:

- pages 305-311 – except the date, letterhead, and names and business contact information of the sender and recipient

[para 289] I find that the Public Body properly applied section 27(1)(c) of the Act to some of the information in the records at issue, as it is information in correspondence between a lawyer of the Minister of Justice and Attorney General and another person, in relation to the provision of advice or other services by the lawyer. Under section 72(2)(b), I confirm the decision of the Public Body to refuse the Applicant access to the following:

- pages 352 (upper half, above the solid line), 353 (lower third, below the dotted line), 372, 373 (lower half, below the dotted line), 388 (lower two thirds, below the first dotted line), 389 (lower third, below the second dotted line) and 395 (upper half, above the dotted line) – except the dates, names, job titles and business contact information on all of the foregoing pages (as the case may be)

[para 290] I find that the Public Body properly applied section 24 of the Act to some of the information in the records at issue, as disclosure could reasonably be expected to reveal advice, proposals, recommendations, analyses or policy options under section 24(1)(a) and/or consultations or deliberations under section 24(1)(b). Under section 72(2)(b), I confirm the decision of the Public Body to refuse the Applicant access to the following:

- the information withheld on pages 213 (but not the headings, dates, subject lines, names, job titles and business contact information), 298-299 (but not the headings, dates, subject lines, names, job titles and business contact information), 351 (but not the name, job title and business contact information), 352 (lower half, but not the subject lines), 353 (middle third, but not the subject line), 355 (upper half, but not the names, dates and subject lines), 372 (upper half), 373 (upper half), 388 (upper third), 389 (upper two thirds) [records to which the Public Body improperly applied section 27]
- the information withheld on pages 200, 328, 436-439, 441, 447, 473-474, 481, 507, 510, 517, 570, 576, 599-600, 605, 619-622 – except the dates, subject lines, names of e-mail attachments, names of individuals, job titles, business contact information, and the fact that an e-mail was sent with particular importance, on all of the foregoing pages (as the case may be) [various e-mail correspondence]
- the information withheld on pages 37-39 (except the "note" at the top of page 39), 43-59 (except the headings at the top of pages 45, 48, 53 and 56), 68-71 (except the heading at the top of pages 71), 72, 201-202, 204, 206, 231-232 (except the heading at the top of page 232), 234-236 (except the heading at the top of page 236), 238-241 (except the heading at the top of page 241), 243-244 (except the heading at the top of page 244), 246-248, 254, 257, 260-261 (except the heading at the top of page 261), 274-278 (except the heading at the top of page 278), 279-283 (except the heading at the top of page 283), 286 (except the names of two individuals), 287-297, 300-302 (except the heading at the top of page 302), 312-320 (except the information above the solid line at the top of page 320 and the date at the bottom), 326-327, 339-342 (except the heading at the top of page 342), 385-386, 392-393, 411-416, 417 (information in the third and fourth columns only), 418-420 (except the heading at the top of page 420), 422-423, 425-426, 427 (handwritten notations only), 430, 431 (lower half only), 519-520, 521 (only the information under points 1 and 2, not including the headings), 522 (only the third and fourth to last paragraphs, being everything between "Spokespeople" and "employees"), 566-568, 586-587 (except the three lines of headings at the top of page 587), 601-604 (except the information above the solid line at the top of page 604 and the date at the bottom), 607 (lower half only), 609, 614-616, 629-633 (except the heading at the top of page 633), 739, 918 and 934 (first two paragraphs only) [other records to which the Public Body applied or alternatively applied section 24]

[para 291] With respect to the remaining information in the records at issue, I find that a mandatory exception to disclosure does not apply, and that the Public Body did not properly apply the discretionary exception to disclosure on which it relied, or alternatively relied, to withhold the information. Under section 72(2)(a), I order the Public Body to give the Applicant access to the remaining information in the records at issue.

[para 292] I find that the Public Body met its duty to assist the Applicant under section 10(1) of the Act.

[para 293] I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Wade Riordan Raaflaub
Adjudicator