ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2008-031

September 16, 2009

ALBERTA INSURANCE COUNCIL

Case File Number F3927

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (the "Act"), the Applicant asked the Alberta Insurance Council (the "Public Body") for files pertaining to their investigations of two complaints about him. The Public Body gave the Applicant partial access, withholding information under section 17 (disclosure harmful to personal privacy), section 20 (disclosure harmful to law enforcement), section 24 (advice, etc.) and section 27 (privileged information). The Applicant requested a review.

Section 4(1)(k) states that the Act does not apply to a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed. The Adjudicator found that he had jurisdiction over the records at issue, as the activities of the Public Body and those of an organization from which the Public Body obtained information – being the Mutual Fund Dealers Association (the "MFDA") – were not a "prosecution". The alleged contraventions by the Applicant were in the context of regulating his professional activities, not in relation to offences carrying true penal consequences.

The Adjudicator found that disclosure of some of the personal information of third parties in the records at issue would be an unreasonable invasion of their personal privacy under section 17. Other information was not properly withheld under section 17, for instance because it merely revealed that individuals acted in a representative or work-related capacity, or the information was relevant to a fair determination of the Applicant's rights.

The Adjudicator considered whether information was properly withheld under sections 20(1)(a) (harm to a law enforcement matter), 20(1)(c) (harm to investigative techniques and procedures) and 20(1)(f) (harm to an unsolved investigation). He found that neither the Public Body nor the MFDA showed that their specific law enforcement matters or investigations involving the Applicant would be harmed by disclosure of the records at issue. Sections 20(1)(a) and (f) therefore did not apply. Although it was argued, more generally, that disclosure of information shared between the MFDA and Public Body would result in witnesses and informants tailoring or withholding testimony in the course of investigations, the Adjudicator found that the Public Body and MFDA did not establish a reasonable expectation of such an outcome, or explain how such an outcome would cause damage or detriment to investigative techniques and procedures. Section 20(1)(c) therefore did not apply.

The Adjudicator found that the Public Body did not properly apply section 24(1)(a) or (b), as the records at issue did not reveal advice, proposals, recommendations, analyses or policy options, or consultations or deliberations. For example, some of them consisted merely of facts and information provided by third parties, with no suggested course of action for the Public Body to accept or reject. Others recorded communications between officers and employees, but no substance of any advice, or of any consultations or deliberations, was revealed.

The Adjudicator found that the Public Body properly withheld some of the records at issue under section 27(1)(a), as the information was subject to solicitor-client privilege. Other records were not properly withheld on this basis, as they did not entail the seeking or giving of legal advice.

The Adjudicator ordered the Public Body to disclose the information that was not properly withheld, and confirmed its decision to withhold the information that was properly withheld.

Statutes, Regulations, Orders and By-laws Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(h)(ii), 1(n), 1(n)(i), 1(n)(iv), 1(n)(vii), 1(n)(viii), 1(n)(ix), 2(e), 4(1), 4(1)(k), 17, 17(1), 17(2)(a), 17(4), 17(4)(b), 17(4)(g), 17(5), 17(5)(c), 17(5)(f), 17(5)(i), 20, 20(1), 20(1)(a), 20(1)(c), 20(1)(f), 24, 24(1), 24(1)(a), 24(1)(b), 24(1)(b)(i), 27, 27(1), 27(1)(a), 27(2), 30, 30(1)(b), 67(1)(a)(ii), 71(1), 71(2), 72, 72(2)(a), 72(2)(b) and 72(2)(c); *Insurance Act*, R.S.A. 2000, c. I-3, ss. 480, 480(1)(a), 480(1)(b), 499(1) and 791; *Securities Act*, R.S.A. 2000, c. S-4, ss. 64(1), 64(4), 69(1) and 69(2); *Freedom of Information and Protection of Privacy Regulation*, Alta. Reg. 200/1995, ss. 7(3) and 7(4) [formerly ss. 6(3) and 6(4)]; *Certificate Expiry, Penalties and Fees Regulation*, Alta. Reg. 125/2001, s. 13(1); *Delegation to the Alberta Insurance Council Order* (Minister of Finance Directive No. 05/01); *Delegation to the Life Insurance Council Order* (Minister of Finance Directive No. 01/01); Alberta Securities Commission, *Recognition Order in the matter of the Mutual Fund Dealers Association as a Self-Regulatory Organization*, November 14, 2008, ss. 10(A)(i) and 11(A) of Schedule A [which sections are the same as those in the previous Recognition Order dated May 18, 2004]. **BC:** *Freedom of Information and*

Protection of Privacy Act, R.S.B.C. 1996, c. 165, s. 3(1)(h) and Schedule 1 (definition of "prosecution"). **ON:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 65(5.2). **Other:** Mutual Fund Dealers Association of Canada, *By-law No. 1* (amended and consolidated to October 2, 2008), ss. 20, 21, 24, 23.3, 24.1.1 and 24.1.1(b).

Authorities Cited: AB: Orders 96-003, 96-006, 96-017, 96-019, 96-021, 97-003, 97-011, 98-008, 99-001, 99-010, 99-013, 99-023, 99-027, 99-028, 2000-005, 2000-019, 2000-023, 2000-028, 2001-002, F2002-024, F2002-028, F2003-004, F2003-005, F2003-014, F2003-016, F2004-003, F2004-015, F2004-022, F2004-023, F2004-026, F2004-028, F2004-032, F2005-004, F2005-008, F2005-009, F2005-016, F2006-006, F2006-008, F2006-030, F2007-005, F2007-008, F2007-013, F2007-021, F2007-025, F2007-029, F2008-009 and F2008-012; *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner)*, 2006 ABQB 515. **BC:** Order 290-1999. **ON:** Order PO-2703 (2008). **CAN:** *Solosky v. The Queen* (1979), [1980] 1 S.C.R. 821; *R. v. Wigglesworth*, [1987] 2 S.C.R. 541; *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44.

I. BACKGROUND

[para 1] The Applicant is an insurance agent. The Alberta Insurance Council (the "Public Body") is the regulatory body responsible for the licensing of insurance agents, and it conducts investigations into complaints about insurance agents and their alleged misconduct.

[para 2] By letter dated July 6, 2006, the Applicant's solicitor made a request on his behalf, under the *Freedom of Information and Protection of Privacy Act* (the "Act" or "*FOIP Act*"), to the FOIP Office representing the Public Body. The request was as follows:

> *[The Applicant] is requesting access [to] his own personal information from the Alberta Insurance Council. Specifically, [he] would like to receive a copy of any files that the Alberta Insurance Council has relating to two complaints, the particulars of which are:*
>
> 1. *AIC File No. [assigned number], from October 2004 to present, and*
> 2. *AIC File No. [assigned number], from March 2005 to present.*

[para 3] By letter dated September 18, 2006, the FOIP Office representing the Public Body advised the Applicant that it would be notifying some third parties, under section 30 of the Act, to give them an opportunity to agree to disclosure or indicate why disclosure should not occur.

[para 4] By letter dated November 10, 2006, the Public Body gave the Applicant partial access to the requested information, withholding the remaining information under

section 17 (disclosure harmful to personal privacy), section 20 (disclosure harmful to law enforcement), section 24 (advice, etc.) and section 27 (privileged information) of the Act.

[para 5] By letter dated January 3, 2007, the Applicant asked this Office to review 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 6] This Office notified persons who, in my opinion, were affected by the Applicant's request for review under section 67(1)(a)(ii) of the Act. These included the Mutual Fund Dealers Association of Canada (the "MFDA") and Partners in Planning Financial Services Ltd. ("PIPFS"), two organizations with which the Public Body dealt during its investigation of matters relating to the Applicant. The MFDA made representations during the inquiry, but PIPFS did not. The other affected persons who were notified under section 67(1)(a)(ii) were three individuals who provided information to the Public Body in the course of its investigations. This Office would have notified two similar individuals, but was unable to locate them.

[para 7] This Office invited a former client of the Applicant – being the client whose dealings with the Applicant was the subject of one of the investigations by the Public Body – to participate as an affected party in the inquiry, but she did not respond. This Office also invited the administrator of the estate of a deceased individual to participate in the inquiry, but received no response.

II. RECORDS AT ISSUE

[para 8] The records at issue are the withheld parts of three files of the Public Body that relate to the Applicant. Although the Applicant's access request referred to only two files, there is a third file relating to appeals that were initiated of the matters involving the Applicant.

[para 9] I asked the Public Body to prepare an index of the records at issue. The index describes each page of the three files, indicating whether the page was released to the Applicant, all or part of it was withheld under a particular provision of the Act, the page is a duplicate of one found elsewhere, or the page was considered to be non-responsive to the access request (with reason indicated). A copy of the indexes was provided by this Office to the Applicant, although a small amount of information was redacted on the basis that it might disclose the information at issue. Throughout this Order, I will refer to the records as they are set out in the indexes.

[para 10] I will generally not discuss any records noted as "non-responsive" in the indexes, as they are not at issue in this inquiry. No issue regarding records considered to be non-responsive was set out in the Notice of Inquiry, and the Applicant has not raised any concerns regarding them. Having said this, I will discuss a few of these records below, as there are indications elsewhere that they were actually withheld under a particular section of the Act.

[para 11] The Public Body submitted, *in camera*, hard copies of the three original files. It submitted two sets, the first with its initial submissions and the second after I requested the index of records. As the second hard copy set of files is the one that corresponds to the indexes prepared by the Public Body, it is the set that I used for the purpose of the inquiry and to which I will refer in this Order. The first file consists of 537 pages ("File No. 1"), the second file consists of 172 pages ("File No. 2"), and the third file consists of 89 pages ("File No. 3").

[para 12] The Public Body also submitted, *in camera*, copies of the three files in PDF format. These versions indicate which information was released to the Applicant (parts not shaded) and which information was withheld (parts shaded). I will occasionally refer in this Order to the PDF version of the records. However, when I indicate a page number, it is the one in the hard copy of the particular file.

[para 13] In the course of the inquiry, I asked the Public Body for clarifications regarding which specific information was withheld on some pages, as there were discrepancies between the index and the records in PDF format. I did not find it necessary to give the Applicant a copy of the Public Body's response, but he was advised that the clarifications had been sought and obtained.

[para 14] The index for File No. 1 states that page 283 was withheld but that there is "no reason not to release" it. The information on page 283 is similar to that on surrounding pages that were released to the Applicant and I agree that no exception to disclosure applies. It will therefore be among the records that I order to be disclosed.

III. ISSUES

[para 15] The Notice of Inquiry, dated May 28, 2008, set out the following issues, although I have placed them in a different sequence for the purpose of this Order:

> Does section 20 of the Act (disclosure harmful to law enforcement) apply to the records/information?
>
> Does section 27 of the Act (privileged information) apply to the records/information?
>
> Does section 24 of the Act (advice, etc.) apply to the records/information?
>
> Does section 17 of the Act (disclosure harmful to personal privacy) apply to the records/information?

[para 16] In addition to discussing the foregoing issues, I will discuss a further one because it was briefly raised in the Public Body's submissions:

> Are the records excluded from the application of the Act under section 4(1)(k) (records relating to an incomplete prosecution)?

This additional issue addresses whether I have jurisdiction over the records at issue, so I will discuss it first in this Order. I did not arrange for the Notice of Inquiry to be amended to formally include it, as the existing submissions and my review of the records themselves are sufficient for me to address it.

IV. DISCUSSION OF ISSUES

A. Are the records excluded from the application of the Act under section 4(1)(k) (records relating to an incomplete prosecution)?

[para 17] Section 4(1)(k) of the Act reads as follows:

> *4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*
>
> *...*
>
> *(k) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed;*

[para 18] Section 4(1) is a provision that limits my jurisdiction because, if a record falls within one of the provisions of section 4(1), the Act does not apply and the Public Body has no obligation to provide access to the record (Order F2002-024 at para. 11). I decided to address the application of section 4(1)(k) in this inquiry because the Public Body raised it in its submissions, stating that the matters relating to the Applicant are the subject of pending appeals. In correspondence to this Office dated May 7, 2009, the Applicant advised that the Insurance Councils Appeal Board issued its decisions in November 2008, but that the decisions have in turn been appealed to the Court of Queen's Bench.

[para 19] Regardless of whether the overall proceedings involving the Applicant are complete, I find that section 4(1)(k) does not apply in this inquiry, as the proceedings are not a "prosecution". In reaching my conclusion, I note the meaning of "prosecution" that has been used in other jurisdictions with respect to provisions virtually identical to section 4(1)(k) [being section 3(1)(h) of B.C.'s *Freedom of Information and Protection of Privacy Act* and section 65(5.2) of Ontario's *Freedom of Information and Protection of Privacy Act*].

[para 20] Under Schedule 1 of B.C.'s *Freedom of Information and Protection of Privacy Act*, "prosecution" means the prosecution of an offence under an enactment of British Columbia or Canada. An analogous definition has been used in Ontario [Ontario Order PO-2703 (2008) at para. 38]. Orders in both jurisdictions have added, however, that – in the context of access to information legislation – not every breach of a provincial or federal enactment is an "offence" so as to render the associated proceedings a "prosecution". For there to be an "offence", it must result in true penal consequences

[B.C. Order 290-1999 at paras. 26 to 34; Ontario Order PO-2703 (2008) at paras. 38 to 41].

[para 21] The Supreme Court of Canada has stated that a true penal consequence is imprisonment or a fine which by its magnitude would appear to be imposed for the purpose of redressing the wrong done to society at large rather than to the maintenance of internal discipline within a limited sphere of activity [*R. v. Wigglesworth*, [1987] 2 S.C.R. 541 at para. 24]. The Supreme Court distinguished matters "of a public nature, intended to promote public order and welfare within a public sphere of activity" from "private, domestic or disciplinary matters which are regulatory, protective or corrective and which are primarily intended to maintain discipline, professional integrity and professional standards or to regulate conduct within a limited private sphere of activity" [*R. v. Wigglesworth* at para. 23].

[para 22] I agree with and adopt the foregoing principles in defining "prosecution" for the purpose of section 4(1)(k) of the Act. A "prosecution" is accordingly a prosecution of an offence under an enactment of Alberta or Canada, in which the offence carries true penal consequences.

[para 23] Here, the Applicant was investigated for alleged contraventions of sections 480(1)(a) and (b) of the *Insurance Act*. Section 13(1) of the *Certificate Expiry, Penalties and Fees Regulation* sets out a fine of up to $5,000 for a matter referred to in section 480(1)(a) of the *Insurance Act*, and a fine of up to $1,000 for a matter referred to in section 480(1)(b).

[para 24] The charges faced by the Applicant under the *Insurance Act* are in relation to the Applicant's ability to have a certificate of authority to act as an insurance agent. The fines that may be imposed for contraventions of section 480(1)(a) and (b) are not, in my view, significant enough to mean that there are true penal consequences and that the associated proceedings are therefore a prosecution. The purpose of the Public Body's investigations and the penalties that may result is to regulate the professional activities of the Applicant, rather than redress larger wrongs done to society. The fact that the possible penalties appear in the same regulation that governs the duration and expiry of an insurance agent's certificate, and the fees payable by insurance agents for certificates and examinations, suggests to me that the penalties are imposed from an internal perspective in order to maintain discipline, professional integrity and professional standards within the limited sphere of the insurance profession.

[para 25] As will be explained below, the Applicant is also the subject of an investigation by the MFDA. As an affected party, the MFDA explains that it is responsible for regulating and overseeing the conduct of the Applicant in his capacity as a mutual funds dealer. I therefore considered whether any of the records at issue related to a "prosecution" by the MFDA.

[para 26] Again, regardless of whether the MFDA's proceedings are complete, I find that they do not constitute a prosecution under section 4(1)(k). The MFDA is a self-

regulatory body that develops rules and by-laws with which it members and persons approved to conduct mutual fund business must comply. For a violation, section 24.1.1(b) of the MFDA's *By-law No. 1* contemplates a fine not exceeding the greater of $5,000,000 and an amount equal to three times the profit obtained or loss avoided by a person as a result of committing the violation. However, I do not believe that the purpose of the penalty is to redress wrongs done to society or to promote public order or welfare. Rather, the penalty is intended to maintain discipline within a more limited sphere of professional activity. Section 24 of the *By-law* – which sets out the penalties – is entitled "Discipline Powers" and section 20 – which governs the conduct of hearings – is entitled "Disciplinary Hearings".

[para 27] Given the foregoing, I conclude that the records at issue do not fall under section 4(1)(k) of the Act. I therefore have jurisdiction over them.

B. Does section 20 of the Act (disclosure harmful to law enforcement) apply to the records/information?

[para 28] Section 20 of the Act reads, in part, as follows:

> *20(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 a law enforcement matter,*
> *...*
>
> *(c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,*
> *...*
>
> *(f) interfere with or harm an ongoing or unsolved law enforcement investigation, including a police investigation,*

[para 29] 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 20.

[para 30] The index prepared by the Public Body indicates that it applied section 20 of the Act to pages 160-165, 171, 245, 252, 291-299, 307-320, 322-333, 395-401 and 415-420 of File No. 1. Pages 300-306 are also shaded in the PDF version of the records submitted in *camera*, implying that they too were withheld under section 20, so I will also discuss them here. (I do not need to discuss page 321, as it is blank.) The Public Body did not apply section 20 to the other two files.

[para 31] The index states that page 171 is an e-mail provided by a third party regulator but it actually consists of handwritten notes of an employee of the Public Body. As page 171 is mischaracterized in the index, I do not believe that section 20 was actually applied to it. For the reasons set out below, I would not find that section 20 applies in

any event. I will instead consider page 171 under section 17 of the Act later in this Order.

1. Law enforcement

[para 32] Sections 20(1)(a), (c) and (f), reproduced above, all refer to "law enforcement", meaning that there must be or have been law enforcement in order for the sections to apply. Under section 1(h)(ii) of the Act, "law enforcement" means, among other things, an "administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred." To meet this definition, both the investigative authority and the penalty or sanction must be under the same statute (Order 99-010 at para. 21).

(a) Activities of the Public Body

[para 33] As stated earlier, the Applicant was investigated for alleged contraventions under sections 480(1)(a) and (b) of the *Insurance Act*. Under section 480(1)(a), an insurance agent may be found guilty of misrepresentation, fraud, deceit, untrustworthiness or dishonesty. Under section 480(1)(b), he or she may be found to have contravened any other provision of the Act. In this case, the Applicant was alleged to have contravened section 499(1), under which no insurance agent may, directly or indirectly, pay or allow any compensation to any person acting as an insurance agent, unless that person is authorized to act as an insurance agent.

[para 34] Sections 480(1)(a) and (b) of the *Insurance Act* allow the Minister to revoke an insurance agent's certificate of authority or impose a penalty if satisfied that the insurance agent has been guilty of misrepresentation, fraud, deceit, untrustworthiness or dishonesty, or has contravened any provision of the *Insurance Act*. Section 13(1) of the *Certificate Expiry, Penalties and Fees Regulation* sets out the fines that may be imposed for contraventions of sections 480(1)(a) and (b) of the *Insurance Act*.

[para 35] Section 791 of the *Insurance Act* permits the responsible Minister to delegate any power, duty or function conferred or imposed on the Minister by that Act. The *Delegation to the Alberta Insurance Council Order* delegated to the Public Body the power to investigate complaints on behalf of insurance councils regarding alleged contraventions of the *Insurance Act*, and also delegated the performance of administrative functions necessary to enable insurance councils to conduct investigations under that Act. The *Delegation to the Life Insurance Council Order* delegated to the Life Insurance Council the power to hold hearings, find contraventions and impose penalties under section 480 of the *Insurance Act*.

[para 36] The Applicant was the subject of two investigations by the Public Body, and the Public Body reported its findings and recommendations to the Life Insurance

Council. The Life Insurance Council reviewed each of the matters and imposed penalties on the Applicant, in decisions dated April 19 and June 12, 2006.

[para 37] As the investigations of the Applicant and the available penalties were authorized by the *Insurance Act*, or the regulations and ministerial orders made under it, I find that the activities of the Public Body constituted "law enforcement" under section 1(h)(ii) of the *FOIP Act.* Specifically, there were administrative investigations by the Public Body leading to a penalty or sanction imposed by another body, being the Life Insurance Council, to which the results of the investigations were referred.

(b) Activities of the MFDA (an Affected Party)

[para 38] The MFDA explains that it is recognized under Alberta's *Securities Act* [section 64(1)] as the national self-regulatory organization for the distribution side of the mutual fund industry, and that it develops rules and by-laws with which members and approved persons such as the Applicant must comply [as contemplated by section 64(4)]. The MFDA states that its enforcement department investigates breaches of the MFDA rules and by-laws. I note that the investigations are authorized by section 21 of the MFDA's *By-law No. 1*, and that the MFDA may refer a matter to a hearing panel of the applicable regional council. The MFDA submits that the hearing panel may impose sanctions, under section 24.1.1 of *By-law No. 1*, in the form of fines or the suspension or revocation of an approved person's ability to conduct mutual fund business.

[para 39] I find that the activities of the MFDA also constitute "law enforcement" under section 1(h)(ii) of the *FOIP Act*, as the MFDA's investigations and the penalties that may be imposed derive their authority from the *Securities Act*. While not created by the *Securities Act*, the MFDA is nonetheless recognized under it. The Alberta Securities Commission's *Recognition Order*, which was made under the *Securities Act* in relation to the MFDA as a self-regulatory organization, requires the MFDA to establish rules to govern and regulate all aspects of its business and affairs, and to seek compliance by members and approved persons with applicable securities legislation and standards of practice [s. 10(A)(i) of Schedule A]. The *Recognition Order* also states that the approval of the Securities Commission is necessary for any changes to the rules or by-laws of the MFDA [s. 11(A) of Schedule A].

[para 40] Further, section 69(1) of the *Securities Act* states that, where a recognized self-regulatory organization is empowered under its by-laws or rules to conduct hearings, a person conducting a hearing has various powers in relation to witnesses and obtaining evidence, and section 69(2) states that the decision after conducting a hearing has the same force and effect as a judgment of the Court of Queen's Bench, once filed there. I find that these provisions effectively mean that the penalties that may be imposed on members of the MFDA – and, by implication, the investigations leading up to them – are authorized under the *Securities Act*.

[para 41] Because the MFDA's investigative authority and the penalties for contraventions of its rules and by-laws are effectively "under" the *Securities Act*, the

definition of "law enforcement" is met. In reference to section 1(h)(ii), the MFDA conducts administrative investigations leading to a penalty or sanction that may be imposed on persons approved to conduct mutual fund business, such as the Applicant.

2. Harm to law enforcement

[para 42] In order to withhold information under section 20(1) of the Act, it must be shown that one of the consequences enumerated under it would occur if the records at issue were disclosed. In its submissions, the Public Body specifically refers to section 20(1)(a) (harm to a specific law enforcement matter), stating that disclosure would harm its law enforcement activities, as well as those of the MFDA. It also submits that, in order for it and the MFDA to accomplish their respective statutory and regulatory mandates, it is critical that documents relating to the conduct of ongoing law enforcement investigations not be disclosed, which I consider to be an implied reference to section 20(1)(f) (harm to an ongoing investigation). Finally, in stating that it and the MFDA must have the ability to protect the confidentiality and integrity of their investigative processes, and prevent harm to those processes, the Public Body implicitly refers to sections 20(1)(c) (harm to investigative techniques and procedures).

[para 43] As noted earlier, the MFDA is responsible for regulating and overseeing the conduct of the Applicant in his capacity as a mutual funds dealer. It states that, in the context of its own investigation of the Applicant, it has shared documents and information with the Public Body, who has jurisdiction over the Applicant in his capacity as an insurance agent. The MFDA then makes the following submissions:

> *It is necessary that the MFDA have the ability to conduct investigations in a focused and discreet manner, without having to disclose prematurely the information that has been obtained. If a prosecution or other law enforcement proceeding results, disclosure will be required at the appropriate time, but that is a separate matter from the type of access generally available to the public under the Act.*
>
> *It is in the public interest that the MFDA and the AIC [the Public Body] be able to continue their practice of sharing information and records for the purpose of law enforcement activities, such as the [r]ecords at issue here. Indeed, such information-sharing is authorized as a term of the Recognition Orders by which the MFDA became an SRO [self-regulatory organization], and is contemplated by s. 23.3 of MFDA By-law 1.*
>
> *Requiring the disclosure of the [r]ecords under the Act in the midst of ongoing proceedings, as a matter of course, can reasonably be expected to inhibit the creation and sharing of information and records among law enforcement bodies, and thereby harm the law enforcement investigations and proceedings being conducted by those bodies. It can reasonably be expected that, if a third party law enforcement agency such as the MFDA knows that it is effectively putting its investigative information into the*

public domain by sharing it with the AIC [the Public Body] which must then disclose it in response to requests made under that Act, investigators, witnesses and informants will become less forthcoming. Indeed, such a decision would likely result in less sharing of records between law enforcement bodies which may impede investigations involving inter-regulatory issues.

Ongoing investigations are generally not conducted in public, as the Act recognizes. Preserving the confidentiality of ongoing investigations serves to maintain the integrity of such investigations by reducing the likelihood that witnesses will tailor their testimony to suit the statements and documents provided by others. Preserving the confidentiality of ongoing investigations also recognizes the interests of the parties involved in the investigations, a factor of considerable importance given the professional reputations and private client interests at stake and the fact that the majority of investigations are closed and do not result in public proceedings. As such, it is the submission of MFDA [s]taff that the records should be withheld under section 20 of the Act

[para 44] As explained above, I consider the Public Body to have explicitly or implicitly applied sections 20(1)(a), (c) and/or (f) to information that it withheld from the Applicant. I will now determine whether the specific harm to law enforcement that is contemplated by each of these sections has been made out.

(a) Harm to a specific law enforcement matter

[para 45] In order to properly apply section 20(1)(a) of the Act, under which information may be withheld if disclosure could reasonably be expected to harm a law enforcement matter, a public body must satisfy the "harm test" that has been articulated in previous Orders of this Office. Specifically, there must be a clear cause and effect relationship between the disclosure and harm alleged; the harm that would be caused by the disclosure must constitute damage or detriment and not simply hindrance or minimal interference; and the likelihood of harm must be genuine and conceivable (Order 96-003 at p. 6 or para. 21; Order F2005-009 at para. 32).

[para 46] The harm test must be applied on a record-by-record basis (Order F2002-024 at para. 36). In order for the test to be met, explicit and sufficient evidence must be presented to show a reasonable expectation of probable harm; the evidence must demonstrate a probability of harm from disclosure and not just a well-intentioned but unjustifiably cautious approach to the avoidance of any risk whatsoever because of the sensitivity of the matters at issue (Order 96-003 at p. 6 or para. 20; Order F2002-024 at para. 35). The harm test – specifically in relation to law enforcement matters under section 20 of the Act – and the requirement for an evidentiary foundation for assertions of harm were upheld in *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner)*, 2006 ABQB 515 (at paras. 6, 59 and 60).

[para 47] The Public Body has not established that section 20(1)(a) applies to the records at issue. Its investigations of the Applicant are already complete, as are the proceedings before the Life Insurance Council. All that remained, from the time of the Applicant's access request onwards, were various appeals. I fail to see how disclosure of the records at issue would harm a law enforcement matter if the law enforcement – being the investigations and imposition of sanctions – is already finished.

[para 48] Further, when seeking to apply section 20(1)(a), the public body should identify a specific law enforcement matter that would be harmed and not simply claim harm to law enforcement in general (Order 96-003 at p. 6 or para. 21). While the Public Body submits that it is critical that documents relating to the conduct of ongoing law enforcement investigations not be disclosed, and argues that it and the MFDA must have the ability to protect the confidentiality and integrity of their investigative processes, the Public Body does not explain how disclosure of the records at issue would harm the specific law enforcement matter involving the Applicant. Similarly, the MFDA's submissions are in relation to its law enforcement generally, as it does not specifically assert that the law enforcement matter involving the Applicant would be harmed if records at issue were disclosed. I conclude that section 20(1)(a) does not apply in this inquiry.

(b) Harm to an ongoing law enforcement investigation

[para 49] Section 20(1)(f) of the Act authorizes a public body to refuse to disclose information if disclosure could reasonably be expected to interfere with or harm an ongoing or unsolved law enforcement investigation. An ongoing or unsolved investigation means one that is "currently taking place or in progress" (Order F2004-023 at para. 10). Here, the investigations by the Public Body have already been concluded and sanctions have already been imposed. Section 20(1)(f) therefore cannot apply in relation to the investigations by the Public Body.

[para 50] The MFDA states that its own investigation of the Applicant is still ongoing. Although the MFDA is a different body, section 20(1)(f) may hypothetically apply. First, the section does not purport to restrict its application to ongoing investigations by the public body to which an applicant has made an access request. Second, the Public Body in this inquiry specifically submitted that it also had the law enforcement investigation of the MFDA in mind when it withheld information from the Applicant under section 20. (Had the Public Body not had the investigation of the MFDA in mind, it might have been argued that it did not actually exercise its discretion to withhold information in reference to that investigation.)

[para 51] However, the MFDA has not explained how disclosure of the records at issue would interfere with or harm its specific law enforcement investigation involving the Applicant. Again, its submissions are directed toward its law enforcement generally. While it submits that confidentiality maintains the integrity of its investigations by reducing the likelihood that witnesses will tailor their testimony to suit the statements and documents provided by others, the MFDA does not assert that testimony would be

tailored in this particular case, if records were disclosed. It may even be that all of the relevant information in the MFDA's investigation of the Applicant's activities has already been gathered. I conclude that section 20(1)(f) does not apply in this inquiry.

(c) Harm to investigative techniques and procedures

[para 52] Section 20(1)(c) of the Act refers to harm to investigative techniques and procedures used in law enforcement. The harm under this section can be to general or overall techniques and procedures, not just those in a specific investigation. Still, the harm test set out above must be met under section 20(1)(c) (Order F2004-022 at para. 56; Order F2004-032 at para. 16). Further, the harm test contained in this exception precludes the refusal of basic information about well-known investigative techniques; the focus in this exception is on the refusal of information about investigative techniques and procedures that relate directly to their continued effectiveness (Order 99-010 at para. 78; Order F2007-005 at para. 9).

[para 53] The Public Body's limited submissions regarding the "confidentiality and integrity" of investigative processes do not satisfy the harm test under section 20(1)(c). The MFDA argues, more thoroughly, that the investigative technique of sharing information between law enforcement agencies would be hindered, if the shared information were prematurely disclosed into the public domain, because investigators, witnesses and informants would be less forthcoming or would tailor their testimony. The MFDA essentially wants me to find that disclosure, on an access request, of any information provided by it to the Public Body would harm its investigative techniques and procedures – at least until the conclusion of its own investigation in which the information is relevant.

[para 54] I do not find that the result contemplated by the MFDA can reasonably be expected to occur. I have insufficient evidence to conclude that investigators, witnesses and informants would routinely alter the information that they provide if they were aware of what other documents and information have already been provided by others in a specific case, or were aware that the information they provide may hypothetically be disclosed following an access request to a different body. Proof of harm must be on a balance of probabilities, which means that there must be more than speculation, and more than a mere possibility of harm (Order F2003-004 at para. 67; Order 99-023 at para. 32).

[para 55] Moreover, neither the Public Body nor the MFDA sufficiently explain the harm that would result if information exchanged between them were disclosed in even a hypothetical case. They do not show how the tailoring or withholding of testimony would cause damage or detriment to ongoing investigations. While the MFDA's point is that all of the relevant and truthful information and evidence may not be obtained in some cases, it does not explain how this would cause damage or detriment to overall investigative techniques and procedures, or would lead to wrong or improper conclusions at the end of investigations. Even if certain witnesses or informants alter or withhold testimony, this does not necessarily mean that relevant and truthful evidence is not

available elsewhere. Investigators presumably consider and weigh all of the evidence and the credibility of the sources when reaching their conclusions.

[para 56] Further, in those situations where disclosure of information by one body might detrimentally affect the other's ability to gather information in its own investigation, I believe that the alleged harm is more appropriately captured by section 20(1)(a) (harm to a specific law enforcement matter) or 20(1)(f) (harm to an ongoing investigation). In other words, unless it is proven that altered testimony or less frankness from third parties would routinely occur (which has not been proven here), these possibilities are more properly assessed on a case-by-case basis. As explained above, it has not been shown in this inquiry that disclosure of the records held by the Public Body would specifically make investigators, witnesses and informants less forthcoming during investigations of matters involving the Applicant.

[para 57] The MFDA also essentially argues that it may choose not to share information with the Public Body if it knows that such information might be disclosed following an access request, and that such a reduction in information-sharing would harm the investigative techniques and procedures of both bodies. With respect to this particular argument, I find the harm alleged to be unlikely and not genuine. The MFDA itself says that there is a public interest in sharing information. I find it disingenuous to assert that there will be less information-sharing generally, simply because some of that information may be the subject of an access request and disclosed in accordance with the Act. In those cases where it is shown that disclosure of information would actually harm a specific law enforcement matter or investigation, the Act permits it to be withheld. Even if the Applicant succeeds in this particular inquiry, the MFDA should not fear that the information that it provides to the Public Body will routinely fall into the public domain.

[para 58] Given the foregoing, I see no clear cause and effect relationship between disclosure of the records at issue and harm to the investigative techniques or procedures used by the Public Body or MFDA. The harm that may be caused by disclosure does not constitute damage or detriment, and the likelihood of harm is not genuine or conceivable. I conclude that section 20(1)(c) does not apply in this inquiry.

(d) Review of the records at issue

[para 59] I considered whether the content of the records themselves suggested that there would be harm to a law enforcement matter, harm to an unsolved investigation or harm to investigative techniques and procedures if they were disclosed. I concluded otherwise.

[para 60] The records given to the Public Body by the MFDA, which appear in File No. 1, include correspondence indicating only the fact and nature of the MFDA's investigation (page 245) and cover letters containing nothing substantive about the information obtained or exchanged (pages 252, 291 and 295). Other documentation (on pages 296, 300-306, 310-320 and 322-333) was provided by the Applicant himself or an

employee representing his business, or was given to the Applicant shortly after the information was prepared (as he signed to acknowledge the contents). Much of this documentation was also released to him elsewhere in the Public Body's files. As the foregoing pages do not reveal the substance of information provided by witnesses or informants, or are already in the possession of the Applicant (and are therefore in the "public domain", as the MFDA puts it), I fail to see how their disclosure would harm the law enforcement undertaken by the Public Body or the MFDA.

[para 61] As for pages that reveal the substance of information obtained and exchanged by the MFDA, but are not duplicates of pages already given to the Applicant, the information in them was provided by individuals or organizations that also provided their accounts directly and independently to the Public Body. For instance, pages 292-294, 297-299 and 307-309 reveal information provided by PIPFS, but its representatives were also contacted by the Public Body, as evidenced by activity logs and other records. There is an e-mail sent by the original complainant to the MFDA (on pages 160-165 and 415-420), but that individual also provided the substance of his complaint to the Public Body (e.g., on pages 53-56), including when he copied the Public Body in one of his very same e-mails to the MFDA (on pages 395-401).

[para 62] While the content of the information provided by witnesses and informants to the Public Body and the MFDA is not always identical, I fail to see how disclosure of the different or additional information provided to the MFDA would harm law enforcement. The MFDA's concern is that individuals will tailor their testimony if they know what others have said, yet the general thrust of the accounts of PIPFS and the complainant have already been given to both the MFDA and the Public Body. Any further witnesses and informants can already find out the views and testimony of PIPFS and the complainant by examining the information that they provided directly and independently to the Public Body. Even if a witness or informant were aware of the different information that was given by others to the MFDA, the Public Body and MFDA have not satisfied me that there would be harm to law enforcement, for all of the reasons set out in the preceding part of this Order.

[para 63] My review of the records at issue accordingly confirms my conclusion that their disclosure would not cause the harms alleged by the Public Body and MFDA under section 20 of the Act. I conclude that the Public Body did not properly apply sections 20(1)(a), (c) and/or (f) to the information requested by the Applicant.

[para 64] Because the records to which the Public Body applied section 20 also contain the personal information of third parties, I will return to them in the part of this Order discussing the application of section 17 of the Act (disclosure harmful to personal privacy).

C. Does section 27 of the Act (privileged information) apply to the records/information?

[para 65] Section 27 of the Act reads, in part, as follows:

27(1) The head of a public body may refuse to disclose to an applicant

(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege,

...

(2) The head of a public body must refuse to disclose information described in subsection (1)(a) that relates to a person other than a public body.

[para 66] 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. In its submissions, the Public Body refers to solicitor-client communications and legal advice. It accordingly raises the application of solicitor-client privilege under section 27(1)(a). 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 67] In its November 10, 2006 response to the Applicant's access request, the Public Body stated that it was relying on section 27(2) to refuse access to some of the information requested by the Applicant. Section 27(2) refers to privileged information that relates to a person other than a public body. In its index and submissions, however, the Public Body refers only to section 27(1). As the records to which the Public Body applied section 27 do not contain the privileged information of any person other than the Public Body, I will not discuss section 27(2) further.

1. Records falling under section 27

[para 68] The Public Body applied section 27 of the Act to pages 9-10 of File No. 2 and pages 17-18, 26-27 and 31-32 of File No. 3. Although no section of the Act is cited in relation to pages 34, 65 and 77 of File No. 3, the index states that these were withheld and that they relate to "discussions between the investigator and internal counsel". It therefore appears that section 27 was the section applied.

[para 69] I find that the lower half of page 18 and pages 31-32, 34, 65 and 77 of File No. 3 fall under section 27(1)(a), as they contain information subject to solicitor-client privilege. The information consists of communications between an employee of the Public Body and the Public Body's solicitor (who I know is the solicitor, given his title indicated in the records), which entail the giving and seeking of legal advice. 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). I also find that the

communications were intended to be confidential. 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 70] Privilege also applies to information passing between a client and lawyer that is provided for the purpose of seeking or giving legal 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). In this particular case, the information subject to solicitor-client privilege includes, in one instance, correspondence between the Applicant's solicitor and the Public Body, as I can see from the records that the correspondence was in turn given to the Public Body's solicitor for the purpose of obtaining legal advice in response to or regarding it.

[para 71] Pages 9-10 of File No. 2 and pages 17 and 26-27 of File No. 3 consist of additional correspondence between an employee of the Public Body and its solicitor. However, I find that the information is not subject to solicitor-client privilege, as it does not entail the seeking or giving of legal advice. The exchanges relate to the Public Body's processes and there is no express or implied indication that a legal issue is involved. 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).

[para 72] I also find that the upper half of page 18 does not fall under section 27(1)(a), as it merely conveys information, in this case an individual's availability for court dates. Solicitor-client privilege does not attach to records that merely give or request information, rather than give or seek legal advice (Order 97-003 at para. 221).

[para 73] The Public Body also withheld from the Applicant certain parts of "activity logs", which are found at pages 1-16 of File No. 1 and pages 2-7 of File No. 2. The indexes indicate that sections 17, 24 and 27 of the Act were applied to some of these pages, but they do not specifically indicate which section was applied to which information. In any event, most of the information in the activity logs is not subject to solicitor-client privilege, as it does not relate at all to communications with a solicitor or matters involving legal advice, but instead relates to the Public Body's dealings with various other individuals regarding non-legal matters. I will therefore discuss below only the information in the activity logs that might possibly fall under section 27.

[para 74] The activity logs do not themselves contain communications to or from the Public Body's solicitor, but they contain records of the fact of such communications. Solicitor-client privilege may attach to an employee's notes regarding a solicitor's legal advice, and comments on that advice (Order 99-027 at para. 95), as well as notes "to file" in which legal advice is quoted or discussed (Order F2005-008 at para. 42). It may also

attach to information reflecting a question that was asked of a lawyer, as that is part of the seeking of legal advice (Order F2007-008 at para. 12).

[para 75] Given the foregoing, I find that solicitor-client privilege applies to some of the entries in the activity logs – namely entries 72, 148 and 154 in File No. 1 and entries 5, 21 and 45 in File No. 2. These entries reveal the fact of a communication with the Public Body's solicitor, and include the substance of legal advice that was given or the topic about which legal advice was sought. (My references to the entries are to the numbers under the first column of the activity logs entitled "ID").

[para 76] Other records of communications with the Public Body's solicitor in the activity logs do not actually reveal anything about the seeking or giving of legal advice. They merely show that the solicitor was contacted in some way, or that he provided or received a copy of something. No issue or topic about which legal advice was sought or given is indicated. I am referring, in particular, to entries 76, 144, 151-153 and 159 in File No. 1. As I fail to see how these entries are subject to solicitor-client privilege, I am unable to find that the information falls under section 27(1)(a). I reach the same conclusion regarding entries 59 and 61 in File No. 2, as these merely reveal that the solicitor was forwarded correspondence or that he provided information, not legal advice.

[para 77] In other instances – entry 71 in File No. 1 and entries 43 and 53 in File No. 2 – a topic of conversation is disclosed as well as the fact that the Public Body's solicitor was to be contacted or involved, but there is no legal advice being sought or given. Third parties, namely the Applicant's solicitor and the MFDA, were merely seeking or providing information, and moreover, these third parties are not the clients of the Public Body's solicitor.

[para 78] While not cited in the index, notations in the PDF version of the records submitted *in camera* indicate that the Public Body applied section 27(1) to a comment in a box and handwritten notes on pages 410 of File No. 1 and to additional handwritten notes on page 412. I find that the comments and notes are subject to solicitor-client privilege, as they are communications between an employee and solicitor of the Public Body that entail the seeking of legal advice. The comment and notes indicate a topic to be discussed and, in this instance, I can infer that the topic involved legal implications.

[para 79] Pages 68-69, 78-79 and 82-83 of File No. 3 are indicated as "released" in the index, yet I note that the word "privileged" is stamped on them in the copy of the records submitted by the Public Body. In case the index is erroneous and the Public Body actually withheld these pages under section 27(1)(a) of the Act, I considered whether the information on them was subject to solicitor-client privilege. I found otherwise. The e-mail correspondence on pages 68-69 deals merely with scheduling and does not appear to entail the seeking or giving of legal advice. Pages 79 and 82-83 reveal a solicitor's request for a document, and the giving and seeking of other information, but there is no explicit or implicit indication that legal advice is being sought or given. The e-mail correspondence on page 78 asks a question of a solicitor and he gives a response, but in the absence of more specific submissions from the Public Body as to how the

exchange entails the giving and seeking of legal advice, I find that the information is not subject to solicitor-client privilege.

[para 80] Given all of the foregoing, I find that some of the records to which the Public Body applied section 27 of the Act fall under the section, but other records do not. Having said this, sometimes where I have found that section 27 does not apply, the records at issue also contain the personal information of third parties. I will therefore return to this information in the part of this Order discussing the application of section 17 (disclosure harmful to personal privacy).

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

[para 81] The Public Body says little about its exercise of discretion not to disclose information under section 27 of the Act. Despite its limited submissions, I find that it properly exercised its discretion to withhold information under section 27(1)(a) because 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 82] 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. Here, I find that the Public Body properly exercised its discretion to withhold the information that I have found to fall under

section 27 of the Act. However, I do not preclude the possibility of a rare case in which it may be apparent from the facts that a public body did not properly exercise its discretion to withhold information subject to solicitor-client privilege.

D. Does section 24 of the Act (advice, etc.) apply to the records/information?

[para 83] In its submissions, the Public Body indicates that it relied on sections 24(1)(a) and (b) of the Act to refuse access to some of the information requested by the Applicant. The relevant parts of these provisions read 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,*

[para 84] 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. The Public Body submits that the information that it withheld involves discussions between its employees about the conduct of the investigation of the Applicant's activities, and that disclosure would inhibit the frank exchange of advice as well as ongoing policy development.

[para 85] In order to refuse access to information under section 24(1)(a), on the basis that it could reasonably be expected to reveal advice, proposals, recommendations, analyses or policy options, 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 86] Section 24(1)(b)(i) 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 "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). The test for information to fall under section 24(1)(b) is the same as under section 24(1)(a) in that the information provided during 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 87] 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 88] The Public Body applied section 24(1) of the Act to parts of the activity logs found at pages 1-16 of File No. 1 and pages 2-7 of File No. 2. As noted earlier, the indexes indicate that sections 17, 24 and 27 of the Act were applied to the information in the activity logs. For the purpose of this part of the Order, I will discuss only the information that may possibly fall under section 24 (and that I have not already found to fall under section 27 above).

[para 89] The Public Body severed all or part of entries 2, 58 and 68 of the activity log for File No. 1. I find that the information does not fall under section 24(1)(a) or (b), as it was provided by members of the public. The information was not sought or expected from them by virtue of an advisory position vis-à-vis the Public Body. Moreover, the individuals were merely conveying information, not suggesting or discussing any particular course of action.

[para 90] Elsewhere in the activity log for File No. 1 – being entries 25, 29, 45, 47, 63, 64, 71, 75 and 76 – the Public Body severed information reflecting interactions with representatives of the MFDA. While the representatives may have provided information by virtue of their positions working for the MFDA, and the information may have been used by the Public Body for the purpose of a decision in its investigation of the Applicant, the entries do not themselves reveal any suggested course of action to be accepted or rejected by the Public Body. They reveal information shared between the MFDA and the Public Body, but the MFDA is not advising the Public Body on how to proceed in its investigation, nor consulting or deliberating with the Public Body regarding any action or decision to be taken by it. I therefore find that sections 24(1)(a) and (b) do not apply to any of the foregoing information.

[para 91] I find that sections 24(1)(a) and (b) do not apply to entries 144, 151-153 and 159 in File No. 1, even though they reveal that interactions between employees of the Public Body occurred in relation to particular activities or documents. Section 24(1) does not generally apply to a record that merely reveals that advice was sought or given, consultations or deliberations took place, or that particular individuals or topics were involved, when the record does not reveal the substance of the discussions (Order F2004-026 at paras. 71 and 75). In the foregoing entries, the substance of any advice, etc., or of any consultations or deliberations, is not revealed.

[para 92] The Public Body severed entry 11 of the activity log for File No. 2. Again, the individual providing the information was a member of the public, and was merely reporting information to the Public Body, so I find that sections 24(1)(a) and (b) do not apply.

[para 93] The Public Body severed entry 43 in File No. 2, which indicates that employees of the Public Body interacted with the Applicant's lawyer. Sections 24(1)(a) and (b) do not apply, as the Applicant's lawyer is not responsible for providing advice regarding the Public Body's actions or decisions, and she does not consult or deliberate in relation to the Public Body's actions or decisions. Rather, her position is to provide advice, and to consult or deliberate, in relation to her own client's actions and decisions. No suggested course of action to be taken by the Public Body appears in entry 43 in any event.

[para 94] The Public Body severed entry 53 in File No. 2, which reflects another conversation with a representative of the MFDA. I find that the information does not fall under section 24(1)(a) or (b), as the MFDA was seeking information (possibly for its own decision, but the MFDA is not a public body). The MFDA was not providing information for the purpose of any decision that was to be taken by the Public Body.

[para 95] I conclude that the Public Body did not properly apply section 24 of the Act to any of the records at issue. However, because the activity logs also contain the personal information of third parties, I will return to some of the information in them in the next part of this Order.

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

[para 96] Section 17 of the Act requires a public body to withhold personal information if disclosure would be an unreasonable invasion of a third party's personal privacy. Section 17 reads, in part, 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*
>
> *(a) the third party has, in the prescribed manner, consented to or requested the disclosure,*
>
> *...*
>
> *(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
>
> *...*

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

…

(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

…

(c) the personal information is relevant to a fair determination of the applicant's rights,

…

(f) the personal information has been supplied in confidence,

…

(i) the personal information was originally provided by the applicant.

[para 97] 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 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 in the records at issue and determine whether disclosure would or would not be an unreasonable invasion of personal privacy.

1. Personal information of third parties

[para 98] Section 17 of the Act can apply only to the personal information of a third party. Section 1(n) defines "personal information", in part, as follows:

1(n) "personal information" means recorded information about an identifiable individual, including

(i) the individual's name, home or business address or home or business telephone number,

...

(iv) an identifying number, symbol or other particular assigned to the individual,

...

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

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

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

[para 99] I find that the records at issue contain the personal information of third parties, as set out in sections 1(n)(i), 1(n)(iv) and 1(n)(vii) above. This includes names, addresses, telephone numbers, identifying numbers assigned to individuals (e.g., file numbers), information about educational history (e.g., exam results), information about financial history (e.g., investments made) and information about employment history (e.g., places worked). There is also other recorded information about identifiable individuals, such as information about their dealings or activities in relation to the Applicant or in relation to the Public Body's investigations of the Applicant.

[para 100] Under section 1(n)(ix), "personal information" includes an individual's personal views or opinions, except if they are about someone else. Some of the information that the Public Body severed in the records at issue consists of the views and opinions of third parties about the Applicant. Such views or opinions are the personal information of the Applicant under section 1(n)(viii). Having said this, while the substance of the view or opinion of a third party about the Applicant is not the third party's personal information, the fact that the third party gave the view or opinion – i.e., his or her identity – is the third party's personal information (Order F2006-006 at para. 115). Where events, facts, observations and circumstances contained in a record would identify a third party, there is personal information about that third party (Order 96-019 at para. 43; Order 2000-028 at para. 18).

[para 101] Given the foregoing, many of the records at issue in this inquiry contain the Applicant's own personal information intertwined with that of third parties. Where an applicant's personal information (such as opinions about him or her) is intertwined with the personal information of third parties (including contextual information that identifies them), it becomes necessary to decide whether some or none of the applicant's

personal information can be disclosed (Order 2000-019 at para. 76; Order F2006-006 at para. 112). A public body must make this "all or nothing" decision regarding disclosure by weighing the applicant's right of access to information against the third party's right to protection of privacy (Order 98-008 at para. 35; Order 99-027 at para. 134). I have borne this principle in mind when reaching my conclusions below.

[para 102] I find that other information in the records at issue is not anyone's personal information. This consists, for example, of information about the MFDA, PIPFS and other organizations. In order for section 17 to apply, there must be personal information of a third party, and "personal information" is defined in section 1(n) as recorded information about an identifiable "individual", being a single human being (Order F2003-004 at para. 272). While section 17 can apply to the personal information of individual employees and representatives, it cannot apply to the information of businesses and organizations generally.

2. Situations where there is a presumption of an unreasonable invasion of personal privacy

[para 103] Section 17(4) of the Act enumerates situations where the disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy. The Public Body and the MFDA both submit that there is a presumption of an unreasonable invasion of personal privacy, if the personal information in the records at issue were disclosed, because the information is an identifiable part of a law enforcement record under section 17(4)(b) (and disclosure is not necessary to dispose of the law enforcement matter or to continue an investigation).

[para 104] I found above that the activities of the Public Body and the MFDA in relation to the Applicant constitute law enforcement. As the records at issue were created and used in the context of law enforcement, there are law enforcement records under section 17(4)(b). Disclosure of the personal information of third parties in them is accordingly presumed to be an unreasonable invasion of their personal privacy.

[para 105] Although not cited by the Public Body, I also find that, in some instances, there is a presumption against disclosure of the personal information of third parties because the information consists of the names of third parties appearing with other personal information about them, or the disclosure of the names themselves would reveal personal information about the third parties, under section 17(4)(g).

3. Situations where there would not be an unreasonable invasion of personal privacy

[para 106] Under section 17(2)(a) of the Act, disclosure of a third party's personal information is not an unreasonable invasion of personal privacy if the third party has, in the prescribed manner, consented to the disclosure.

[para 107] In accordance with section 30(1)(b) of the Act, the Public Body notified a particular third party because it was considering giving access to records that may contain information the disclosure of which may be an unreasonable invasion of her personal privacy under section 17. She is the former client of the Applicant whose circumstances gave rise to one of the Public Body's investigations of the Applicant. In a letter to the Public Body dated September 20, 2006, she wrote: "I [her name] give you permission to release any information on file that [the Applicant] requests".

[para 108] Under sections 7(3) and 7(4) of the *Freedom of Information and Protection of Privacy Regulation* [the content of which was found in sections 6(3) and 6(4) at the time that the Applicant's client wrote her letter], one of the prescribed manners for consenting to disclosure is as follows:

> *7(3) The consent or request of a third party under section 17(2)(a) of the Act must meet the requirements of subsection (4), (5) or (6).*
>
> *(4) For the purposes of this section, a consent in writing is valid if it is signed by the person who is giving the consent.*

[para 109] As the Applicant's former client signed the above-mentioned letter and therefore consented to disclosure in the prescribed manner, I find that section 17(2)(a) applies. Disclosure of her personal information in the records at issue would therefore not be an unreasonable invasion of her personal privacy.

4. Relevant circumstances in deciding whether disclosure would be an unreasonable invasion of personal privacy

[para 110] In determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy – even where there are presumptions against disclosure under section 17(4) – all of the relevant circumstances must be considered under section 17(5) of the Act. I will now determine which circumstances are relevant in this inquiry.

(a) Fair determination of the Applicant's rights

[para 111] Although not expressly cited by the Applicant, he raises the relevant circumstance under section 17(5)(c) of the Act, which is that the personal information of third parties is relevant to a fair determination of his rights. He submits that the Public Body's ability to investigate and impose sanctions may have dire consequences on an individual's ability to carry on the business of insurance, and that the full content of the Public Body's files should have been given to him so that he could make full answer and defence against the charges leveled against him.

[para 112] In order for section 17(5)(c) to be a relevant consideration, all four of the following criteria must be fulfilled: (a) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right

based solely on moral or ethical grounds; (b) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; (c) the personal information to which the applicant is seeking access has some bearing on or is significant to the determination of the right in question; and (d) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing (Order 99-028 at para. 32; Order F2008-012 at para. 55).

[para 113] I find that the foregoing test is met in this inquiry. First, the right in question is the Applicant's legal right to be licensed as an insurance agent under the *Insurance Act*. Second, at the time of his access request, an appeal to the Insurance Councils Appeal Board was in existence or contemplated, and a further appeal to the Court of Queen's Bench followed. Third, some of the personal information in the records at issue has a bearing on the determination of the Applicant's right to practice as an insurance agent. Fourth, this same personal information is required in order to prepare for a proceeding (i.e., the appeals) or to ensure an impartial hearing.

[para 114] The particular third party personal information that I find has a bearing on a determination of the Applicant's rights, and is necessary for him to prepare for a proceeding or ensure an impartial hearing, consists of the identities of the third parties who provided information about him during investigations of his conduct, and third party personal information that is intertwined with his own personal information (e.g., facts, observations, view and opinions about the Applicant that also contain information about third parties). Information as to who witnessed things, what they said and any related information may be considered useful to an applicant preparing a legal case (Order F2004-015 at para. 98). In this particular inquiry, I find that information revealing the attitudes of witnesses and informants toward the Applicant is also relevant to a fair determination of the Applicant's rights, as it provides context behind their views and opinions about him.

[para 115] Further, I find that, in order to fairly determine his rights, the Applicant would have to know the identities and other personal information of co-workers/employees, business associates and clients whose dealings with him are set out in the records at issue. In other words, he has a legitimate interest in knowing not only the identities of witnesses and informants, but also the identities of third parties whose information was provided by those witnesses and informants. In order to respond to the matters raised against him regarding his particular dealings with third parties, the Applicant would need to know which third parties and their dealings are in question. Having said this, there are a few instances (e.g., among pages 160-165, 395-401 and 415-420 of File No. 1) where I find that the Applicant's knowledge of the identities of third parties is not necessary for him to prepare for a proceeding or ensure an impartial hearing. This is where the individual making the original complaint about the Applicant attributes comments or sentiments to certain clients or business associates, in second-hand fashion. I find it would be sufficient for the Applicant to have access to the substance of the attributed comment or sentiment, and that he would not have to know the name of the individual who was allegedly the source.

[para 116] The Public Body submits that one of the e-mails written by the person who made the original complaint about the activities of the Applicant was received by the Public Body after it presented its investigation report to the Life Insurance Council. This does not detract from my finding that information in the e-mail is relevant to a fair determination of the Applicant's rights. The e-mail is nonetheless in the Public Body's files and available to be referenced and used by it, if not during the original investigation, then during the subsequent appeals.

[para 117] Given the foregoing, I find that some of the personal information of third parties in the records at issue is relevant to a fair determination of the Applicant's rights under section 17(5)(c) of the Act, which weighs in favour of disclosure.

(b) Information supplied in confidence

[para 118] I considered the possibility that some of the personal information of third parties in the records at issue was supplied in confidence under section 17(5)(f) of the Act, which is a relevant circumstance weighing against disclosure. It is possible that some witnesses and informants believed or understood that personal information that they provided, such as their own names and information about other individuals, would be kept confidential.

[para 119] The Public Body and MFDA both raise confidentiality as a factor in not disclosing information in the context of law enforcement under section 20 of the Act, but neither argues that any personal information was supplied in confidence under section 17. Moreover, none of the individuals who made representations in this inquiry state that they understood that they were providing information to the Public Body in confidence. (One of them asks that his identity *now* be held in confidence, but he does not reference any understanding on his part when he supplied information.) I also found no notations in the records themselves indicating that information that was withheld by the Public Body was supplied in confidence.

[para 120] The fact that there is no indication in the materials that witnesses and informants supplied personal information in confidence, and the Public Body and affected parties do not make any argument to this effect, suggests that section 17(5)(f) is not a relevant circumstance (Order F2004-015 at para. 99). Investigation informants are not automatically or always entitled to confidentiality (Order 2000-023 at para. 56).

[para 121] I note, on the other hand, that the context in which third party personal information is given during an investigation can make it reasonable to conclude that it was supplied in confidence, and that there was an expectation of confidentiality (Order F2003-014 at para. 18). The sensitivity of the events recorded may also show that information was implicitly supplied in confidence (Order 2003-016 at para. 36).

[para 122] Here, the events recorded in the Public Body's files concern the conduct of the Applicant as an insurance agent and mutual funds dealer, which I do not believe to be as sensitive a matter as those in other inquiries where it was found that information

was implicitly supplied in confidence (e.g., Order F2003-014 at para. 18, involving alleged workplace harassment; Order F2003-016 at para. 36, involving a complaint of harassment and unfair employment practices; Order F2006-006 at para. 106, involving a child protection matter; and Order F2008-009 at para. 58, involving allegations of police misconduct). I accordingly find that the context of the investigations by the Public Body and MFDA, in this case, does not establish that the personal information of third parties was supplied in confidence.

[para 123] Given my review of the records at issue and the fact that the parties did not actually raise the relevant circumstance under section 17(5)(f), I accord very limited weight to the possibility that personal information was supplied in confidence by any third parties.

(c) Refusal or inability to consent to disclosure

[para 124] The Public Body submits that, among the records at issue, there are documents and information provided by third parties who have not given their consent to release the information. I note that 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 individuals who were notified as affected parties and made representations in this inquiry all object to disclosure of their personal information. I will accordingly take their refusals to consent to disclosure into account.

[para 125] The Public Body also argues against disclosure of the personal information of a deceased individual, as his consent could not be sought. I agree that where it is not possible for a public body to contact a third party, this is a relevant circumstance to consider (Order 96-021 at para. 172). As there are also individuals with personal information in the records at issue who were not notified as affected parties by this Office – for instance because they were unable to be located – I will also take into account their inability to consent or object to disclosure of their personal information.

[para 126] The Public Body withheld some information on the basis that the MFDA, and possibly other organizations and businesses, did not consent to its release. However, except to the extent that a particular representative of an organization or business does not consent to release of his or her own personal information, the general objection of an organization or business is not relevant to the application of section 17 of the Act. As explained earlier, section 17 cannot apply to information about organizations and businesses. Still, as I presume the MFDA to be making submissions on behalf of its officers and employees, I will take into account the possibility that these individuals specifically object to disclosure of their personal information.

(d) Information merely revealing the performance of work-related or representative activities

[para 127] In arguing that disclosure of third party personal information would be an unreasonable invasion of personal privacy, the MFDA submits that the records are replete

with personal information, including the identities of investigating personnel employed by the MFDA and representatives of PIPFS.

[para 128] Where personal information of third parties 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 under section 17(5) of the Act (Order F2003-005 at para. 96; Order F2004-015 at para. 96). 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 public bodies and organizations as "about them" (Order F2006-030 at para. 12). Further, where a name (which constitutes personal information) appears only with the fact that an individual was discharging a work-related responsibility (which is not personal information), the presumption against disclosure under section 17(4)(g) (name plus personal information) does not apply (Order F2004-026 at para. 117).

[para 129] Consistent with the foregoing statements, several Orders of this Office have found that disclosure of the names, job titles and/or signatures of individuals acting in a formal or representative capacity is generally not an unreasonable invasion of their personal privacy (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). The fact that individuals were acting in their official capacities, or signed or received documents in their capacities as 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). Finally, several Orders of this Office have found 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 130] I accordingly find that the fact that the personal information of certain third parties merely reveals that they were acting in their representative or work-related capacities weighs in favour of disclosing their personal information. Specifically, this circumstance is relevant to the names, signatures, job titles and business contact information (i.e., telephone numbers, mailing addresses and e-mail addresses) of employees and representatives of the Public Body, the MFDA and PIPFS – as well as financial institutions with which the Public Body and PIPFS dealt (e.g., there is a name of a representative of CIBC in the activity log for File No. 1, and the name and telephone number of a representative of Manulife Financial on page 300 of File No. 1). Further, with respect to the foregoing individuals, the Public Body did not have the authority to withhold information about their work-related activities, conversations and correspondence, as this is not properly considered their personal information to which section 17 can apply.

[para 131] I find that the relevant circumstance regarding the performance of representative or work-related activities generally does not apply to the personal information of other third parties in the records at issue (exception noted below). Among these third parties is the individual who made the original complaint about the conduct of the Applicant, and the Applicant's co-workers/employees and business associates. While it is arguable that providing information to the Public Body, the MFDA or PIPFS for the purpose of their investigations was part of the work responsibilities or professional duties of these individuals, I find that the fact that they worked or dealt closely with the Applicant, and may possibly face consequences from him if he knew that they provided information about him, adds a personal dimension to their activities. One of the affected parties states that he would be "very concerned" if the Applicant had access to his name. Another affected party consents to her "business" correspondence being disclosed, but not her more "personal" correspondence and conversations with the Public Body.

[para 132] The above-noted exception is that I find that the relevant circumstance regarding the performance of work-related activities applies to the personal information of the Applicant's co-workers/employees and business associates where it does not reveal that they provided information about the Applicant to the Public Body, the MFDA or PIPFS. I am referring to instances in the records at issue where the names of the Applicant's co-workers/employees and business associates appear in business correspondence that pre-dates investigations of the Applicant's activities, or their work-related duties and functions are set out in the context of a branch compliance audit of the Applicant's business. Unless the third parties are reporting information about the Applicant – which adds a personal dimension to their activities – the fact that personal information merely reveals their regular work-related activities militates in favour of its disclosure.

[para 133] For clarity, I point out that I always include the representatives of PIPFS among the third parties carrying out representative or work-related activities, rather than among those that were not. PIPFS would appear to be the parent company of that part of the Applicant's business dealing in mutual funds. As its representatives may have had a close business relationship with the Applicant, it might be thought that there was a personal dimension to their activities when they reported information to the MFDA or Public Body. However, reporting information about the Applicant was part of the work-related responsibilities of the representatives of PIPFS, as they were the provincial and national compliance officers charged with monitoring adherence to the rules and by-laws of the MFDA.

[para 134] The relevant circumstance regarding the performance of representative or work-related activities does not apply to the personal information of the Applicant's various clients. The appearance of their names and financial information in the records at issue is the result of their personal decisions to arrange investments or otherwise use the services of the Applicant.

(e) Information originally provided by the Applicant

[para 135] Some of the records at issue contain the personal information of third parties that was provided by the Applicant himself, which is a factor in favour of disclosure under section 17(5)(i) of the Act (Order F2003-005 at para. 89). I am referring to the names and other personal information of the Applicant's co-workers/employees, business associates and clients that he provided when he was responding to the complaints made against him (e.g., on page 296), wrote other correspondence (e.g., on page 305), and participated in a branch compliance audit (information among pages 307-320 and 322-328).

5. Weighing the presumptions and relevant circumstances

[para 136] In reviewing the records at issue below, I will not only discuss the information to which the Public Body applied section 17 of the Act, but also the third party personal information appearing in the records at issue that I found not to fall under section 20, 24 or 27 of the Act above (as section 17 sets out a mandatory exception to disclosure).

(a) Activity logs

[para 137] With respect to the personal information that was withheld in the activity log at pages 1-16 of File No. 1, I find that disclosure of some of it would be an unreasonable invasion of the personal privacy of third parties. This is because the information is not relevant to a fair determination of the Applicant's rights, and I see no other relevant circumstances in favour of disclosure. I am referring, in particular, to what may be personal telephone numbers of individuals (other than the former client who consented to disclosure) as opposed to business contact information (in entries 2, 52, 58-60, 62 and 68; it should be noted that there are two telephone numbers in entry 58). I am also referring to information about third parties that has nothing to do with the allegations against the Applicant, and to file numbers associated with others matters of the Public Body (line 5 of entry 2, lines 4-5 of entry 40, lines 15-16 of entry 62, the first four words of entry 77, and the third and fourth words of entry 78).

[para 138] I find that disclosure of the remaining information at issue in the activity log for File No. 1 – as well as all of the information at issue in the activity log at pages 2-7 of File No. 2 – would not be an unreasonable invasion of the personal privacy of third parties. This is because:

- it is nobody's personal information (e.g., information about the MFDA);
- it is the personal information of the Applicant (e.g., statements about him);
- it is the personal information of the Applicant's former client who consented to disclosure (e.g., her name, telephone numbers and the circumstances regarding her dealings with the Applicant);
- it is business contact information or personal information that merely reveals that individuals carried out a representative or work-related function (e.g., the names

and telephone numbers of representatives of the Public Body, the MFDA and PIPFS); or

- it is the personal information of third parties who are not carrying out a representative or work-related function, but the relevant circumstance regarding a fair determination of the Applicant's rights outweighs the presumptions and circumstances militating against disclosure (e.g., the identities of witnesses and informants, and information about the Applicant's dealings with clients, co-workers/employees and business associates, including the identities of the latter).

[para 139] Specifically, I find that the fact that the personal information of third parties is relevant to a fair determination of the Applicant's rights outweighs the fact that it is part of a law enforcement record, names appear with or would reveal other personal information, individuals have objected to disclosure or could not be/were not contacted, and information may possibly have been supplied in confidence. I conclude that the Public Body did not have the authority, under section 17 of the Act, to withhold the information in the activity logs, other than that set out in paragraph 137 above.

[para 140] I note that page 11 of the activity log for File No. 1 is noted as "released" in the index, yet it was shaded in the PDF version of the records at issue, meaning that it was apparently withheld. In case the index is erroneous and the page was actually withheld, I considered whether section 17 applies to any third party personal information on page 11. I found otherwise, for all of the same reasons above.

(b) Handwritten notes

[para 141] The Public Body severed parts of pages 167-168 and 171-172 of File No. 1, which consist of handwritten notes made by an employee of the Public Body. Although the index states that pages 168 and 172 were released, parts of them are shaded in the PDF version of the records, meaning that they were apparently withheld. I will therefore discuss them here, along with page 171, which I found above did not fall under section 20 of the Act.

[para 142] The information that was severed on pages 167-168 consists of the names and telephone numbers of two individuals who are employees of the MFDA and Manulife Bank. The fact that this is business contact information, and the presence of the personal information merely reveals that these individuals were contacted in their representative or work-related capacities, sufficiently weighs in favour of disclosure. I conclude that section 17(1) does not apply.

[para 143] Some of the information that was severed on pages 171-172 also consists of the names and telephone numbers of some of the Applicant's co-workers/employees and business associates, but I find, as discussed above, that the circumstance relating to the performance of representative or work-related activities is not relevant. I also find that the circumstance regarding a fair determination of the Applicant's rights is not relevant to the information that the Public Body withheld on pages 171-172, as no information that the co-workers/employees and business associates may have provided in

relation to the Applicant has been withheld. Other information is about the insurance licences of third parties, their examinations for certification, or file numbers associated with them – none of which I find to be relevant to a fair determination of the Applicant's rights. As only presumptions and circumstances militating against disclosure remain, I conclude that the Public Body properly applied section 17 of the Act to the information that it withheld on pages 171-172 of File No. 1.

(c) Records obtained from the MFDA

[para 144] I found earlier in this Order that the Public Body did not properly apply section 20 of the Act (disclosure harmful to law enforcement) to the documents that were provided to it by the MFDA. I will now consider whether disclosure of any third party personal information would be an unreasonable invasion of personal privacy.

[para 145] Pages 160-165 and 415-420 of File No. 1 consist of duplicate copies of an e-mail from the person who made the original complaint about the activities of the Applicant, which e-mail was first sent to a third party individual, then forwarded to the MFDA, then forwarded to the Public Body. Pages 395-401 consist of another e-mail that the original complainant sent to both the MFDA and the Public Body, which was then forwarded within the Public Body. With the exceptions set out in the next paragraph, I find that disclosure of the information in all of the foregoing e-mail correspondence would not be an unreasonable invasion of the personal privacy of third parties for the following reasons:

- it is nobody's personal information (e.g., dates of e-mails and information about businesses, organizations and the insurance industry);
- it is the personal information of the Applicant (e.g., statements, views and opinions about him);
- it is the personal information of the Applicant's former client who consented to disclosure (e.g., her name and the circumstances regarding her dealings with the Applicant);
- it is business contact information or personal information that merely reveals that individuals carried out a representative or work-related function (e.g., the names, addresses and telephone numbers of representatives of the Public Body and MFDA who sent and received the e-mails); or
- it is the personal information of third parties who are not carrying out a representative or work-related function (e.g., information about the Applicant's dealings with clients, co-workers/employees and business associates, including their identities, and information revealing the attitude of the original complainant toward the Applicant), but the relevant circumstance regarding a fair determination of the Applicant's rights outweighs the fact that the information is part of a law enforcement record, names appear with or would reveal other personal information, individuals have objected to disclosure or could not be/were not contacted, and information may possibly have been supplied in confidence.

[para 146] Some of the personal information on pages 160-165, 395-401 and 415-420 of File No. 1 is not relevant to a fair determination of the Applicant's rights and there are no other factors in favour of disclosure. This consists essentially of information unrelated to the Applicant or his dealings with others. Accordingly, I find that disclosure of the following third party personal information would be an unreasonable invasion of personal privacy, and that the Public Body was required to withhold it under section 17 of the Act:

- the mailing address of the original complainant toward the bottom of pages 160 and 415;
- the second to fifth lines in the sixth-to-last paragraph (point "11') on pages 162 and 417 (everything in that paragraph after the words "for all the above");
- the two names in the fifth line of the first full paragraph (point "16") on pages 163 and 418;
- the last sentence in the fifth-to-last paragraph on pages 164 and 419 (it is after the word "anymore");
- everything in the fourth-to-last paragraph on pages 164 and 419 (it consists of two lines);
- the information between the word "soon," and "I can add" in the third-to-last paragraph on pages 164 and 419;
- the last five words of the second line of the fifth paragraph on pages 165 and 420 (i.e., everything between the words "for the client" and "won't");
- the information between the words "financial background" and "So in that branch" in the last paragraph on pages 165 and 420;
- everything after the word "buying it," on the fifth-to-last line of pages 165 and 420 (i.e., all of the remaining information in the last fives lines of those pages);
- the sentence after the words "Life Insurance Council" (it consists of five words) and the sentence after the words "beleive [sic] me" (it consists of nine words) toward the middle of page 395;
- the last nine lines of page 395 (i.e., everything after the names of the addressees);
- everything before the words "I am not running out to phone" on page 396 (being all of the information in roughly the first half of the page);
- the last seven words of the third line on page 398 and all of the next six lines (i.e., everything after the words "what personal was" in the first, partial paragraph on the page);
- the third-to-last paragraph on page 398 (it consists of eight lines beginning with the word "In trying");
- the last eight words of the eleventh line and the first eight words of the twelfth line on page 399 (i.e., everything between the words "advice giving" and "___ was well aware");
- the last full (not partial) paragraph on page 399 (it consists of three lines);
- the first 17 words of the fourth sentence of the partial paragraph at the bottom of page 399 (i.e., everything between the words "line I draw" and "___ has I believe");

- the last three full paragraphs and the line at the bottom of page 400 (i.e., everything after the first 11 lines on the page);
- the first four lines of page 401 and the first four words of the following line (i.e., everything before the words "perhaps ___ will turn"); and
- everything after the words "his investment" in the ninth line on page 401 (i.e., all of the remaining information that follows on page 401).

[para 147] I considered whether disclosure of references to a third party's "past" and his "problems" among the foregoing pages would be an unreasonable invasion of his personal privacy. I found otherwise, as no substantive information about his past or problems is actually indicated.

[para 148] Pages 245, 252, 291, 295, 300-304 and 306 consist of relatively brief correspondence to or from the MFDA, PIPFS and Manulife Bank, and copies of cheques. I find that disclosure of all of the information on these pages would not be an unreasonable invasion of the personal privacy of third parties, as it is nobody's personal information, it is the personal information of the Applicant, it is the personal information of Applicant's former client who consented to disclosure, or it merely reveals the activities of individuals acting in a work-related or representative capacity.

[para 149] Pages 292-294, 296-298, 307-320 and 322-328 consist of much more substantive information collected and provided by PIPFS in the course of a branch compliance audit conducted in relation to the Applicant's business, and in the course of the MFDA's investigation. I find that disclosure of some of the information would not be an unreasonable invasion of personal privacy, for the same reasons as those set out in the preceding paragraph. I also include, here, the names of some of the Applicant's co-workers/employees and business associates among the personal information that merely reveals the performance of work-related duties and functions.

[para 150] Pages 292-294, 297-298, 307-309, 313-314, 320, 322 and 326 also contain personal information about individuals not acting in a representative or work-related capacity, being primarily the Applicant's clients but also sometimes his co-workers/employees or business associates (e.g., where they are reporting information about the Applicant and there is therefore a personal dimension to their activities). I find that the relevant circumstance regarding a fair determination of the Applicant's rights outweighs the fact that the foregoing information is part of a law enforcement record, names appear with or would reveal other personal information, individuals have objected to disclosure or could not be/were not contacted, and information may possibly have been supplied in confidence. Also weighing in favour of disclosure is the fact that some of the personal information about clients and co-workers/employees was originally provided by the Applicant himself (i.e., he gave information and answered questions during the compliance audit and the information was, in turn, repeated elsewhere). I conclude that disclosure of all of the third party personal information on the foregoing pages would not be an unreasonable invasion of personal privacy, and that the Public Body therefore did not have the authority to withhold it under section 17 of the Act.

[para 151] I find that the remaining records provided by the MFDA to the Public Body may also not be withheld under section 17. Page 299 consists of handwritten notes containing only the personal information of the client who consented to disclosure of her personal information and the telephone number of an individual acting in a work-related capacity. Page 305 is a letter written by the Applicant to the client who consented to disclosure, and the letter contains only the personal information of the Applicant and the client. Pages 329-333 consist of policies and procedures, which is nobody's personal information.

(d) Other records

[para 152] I found earlier in this Order that the Public Body did not properly apply section 27 (privileged information) to pages 9-10 of File No. 2 and pages 17, 18 (upper half), 26-27, 68-69, 78-79 and 82-83 of File No. 3. I will now determine whether section 17 applies. I will also now discuss page 156 of File No. 2 and page 86 of File No. 3, to which the Public Body applied section 17(1).

[para 153] Much of the third party personal information on the foregoing pages is business contact information or information that merely reveals that employees of the Public Body, or in a few instances the Applicant's solicitor, carried out a work-related activity. (There is information about an employee's absences from work in some instances, but no reason for the absences is indicated so as to add a personal dimension to the information.) Other information (on pages 9 and 156 of File No. 2 and pages 17 and 82-83 of File No. 3) is about co-workers/employees of the Applicant, but the information is relevant to a fair determination of the Applicant's rights. As these two circumstances in favour of disclosure outweigh the presumptions and circumstances against, I find that the information may not be withheld under section 17.

[para 154] There is information on pages 26-27 of File No. 3 about a different matter investigated by the Public Body (i.e., one not involving the Applicant). I find that disclosure of the name of the individual involved in that matter and the associated file number would be an unreasonable invasion of his or her personal privacy. This information has nothing to do with a fair determination of the Applicant's rights, meaning that there are no factors in favour of disclosure. I reach the same conclusion in respect of the information pertaining to this different matter on page 86.

[para 155] On pages 40, 41, 54 and 70 of File No. 3, the Public Body severed the same sentence appearing in various copies of e-mail correspondence. The sentence indicates an individual's availability for a business appointment and why he is unavailable at particular times. As the information merely reveals the activities of the individual in a work-related capacity – the reasons for his unavailability are business-related and have no personal dimension – I find that disclosure would not be an unreasonable invasion of his personal privacy.

V. ORDER

[para 156] I make this Order under section 72 of the Act.

[para 157] I find that the records at issue do not relate to a prosecution under section 4(1)(k) of the Act. I therefore have jurisdiction over them.

[para 158] I find that the Public Body did not properly apply section 20 of the Act (disclosure harmful to law enforcement) to any of the information in the records at issue.

[para 159] I find that the Public Body did not properly apply section 24 of the Act (advice, etc.) to any of the information in the records at issue.

[para 160] I find that the Public Body properly applied section 27 of the Act (privileged information) to the following information in the records at issue and therefore confirm, under section 72(2)(b), the decision of the Public Body to refuse the Applicant access:

> File No. 1 – entry 72 of the activity log on page 9, entries 148 and 154 of the activity log on page 15, the comment in the box and handwritten notes on page 410, and the handwritten notes on page 412;
>
> File No. 2 – entry 5 of the activity log on page 2, entry 21 of the activity log on page 3, and entry 45 of the activity log page 6 [here, the page references differ from those of the activity log itself, as they are the page numbers of the overall file];
>
> File No. 3 – page 18 (lower half only, below the solid line), pages 31-32, page 34, page 65 and page 77.

[para 161] I find that disclosure of some of the personal information in the records at issue would be an unreasonable invasion of the personal privacy of third parties under section 17 of the Act. I therefore confirm the decision of the Public Body to refuse the Applicant access under section 72(2)(b), or require it to refuse access under section 72(2)(c), to the following:

> File No. 1 – in the activity log at pages 1-16, the telephone numbers in entries 2, 52, 58-60, 62 and 68, the information withheld in line 5 of entry 2, the information withheld in lines 4-5 of entry 40, the information withheld in lines 15-16 of entry 62, the first four words withheld in entry 77 and the third and fourth words withheld in entry 78; the information withheld in the handwritten notes on pages 171-172; and the information in the e-mail correspondence on pages 160-165, 395-401 and 415-420 that is set out in paragraph 146 of this Order;
>
> [File No. 2 – nothing]

File No. 3 – the name of the individual associated with a different matter of the Public Body and his or her file number on pages 26-27 and 86.

[para 162] As I find that the Public Body did not properly apply an exception to disclosure to the information at issue other than that set out in the two preceding paragraphs, I order the Public Body, under section 72(2)(a), to give the Applicant access to the remaining information that it withheld or severed in the records at issue, as indicated in the indexes prepared by the Public Body (I am not referring to any information noted as "duplicate" or "non-responsive"). I also order the Public Body to disclose page 11 of File No. 1, and pages 68-69, 78-79 and 82-83 of File No. 3, if those pages were, in fact, withheld from the Applicant even though indicated as "released" in the indexes.

[para 163] 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