# ALBERTA

# OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

# ORDER F2009-008

June 16, 2009

## EDMONTON POLICE SERVICE

Case File Number F4246

**Office URL:** www.oipc.ab.ca

**Summary:** In a request to access information under the *Freedom of Information and Protection of Privacy Act* (the "Act"), the Applicant asked the Edmonton Police Service (the "Public Body") for copies of records related to an ethics committee's review of the issue of a particular police officer providing evidence for the defence in a criminal matter. The Public Body granted partial access, withholding the remaining information under section 17 (disclosure harmful to a third party's personal privacy), section 21 (disclosure harmful to intergovernmental relations) and section 24 (advice, etc.) of the Act.

The Adjudicator found that section 17 of the Act applied to the personal e-mail addresses of certain individuals, as disclosure would be an unreasonable invasion of their personal privacy.

The Public Body applied section 21 of the Act to information on the basis that it was supplied implicitly in confidence by an agency of another government, being the RCMP, under section 21(1)(b). The Adjudicator found that the information was not properly withheld, as the nature of the information (an excerpt from an administrative manual) and the RCMP's consent to disclosure showed that it was not supplied in confidence.

The Adjudicator found that the Public Body properly applied section 24 to most of the information that it withheld under that section, as disclosure could reasonably be expected to reveal advice, proposals, recommendations, analyses or policy options

developed by or for the Public Body under section 24(1)(a) and/or consultations and deliberations involving officers or employees of the Public Body under section 24(1)(b). However, he found that the Public Body improperly applied section 24 to the names of individuals who sent and received particular e-mail correspondence, as well as dates, subject lines and parts of the e-mail correspondence that did not actually reveal the substantive content of any advice, etc. or consultations/deliberations.

The Adjudicator considered whether disclosure of information in the records was in the public interest under section 32 of the Act, but found that it was not.

The Adjudicator ordered the Public Body to disclose to the Applicant the information that was not subject to an exception to disclosure under section 17, 21 or 24 of the Act.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act,* R.S.A. 2000, c. F-25, ss. 1(h), 1(n), 17, 17(2), 17(2)(a), 17(4), 17(4)(b), 17(4)(g), 17(5), 17(5)(a), 21, 21(1)(b), 24, 24(1), 24(1)(a), 24(1)(b), 24(1)(b)(i), 24(2), 24(2)(g), 32, 32(1)(b), 67(1)(a)(ii), 71(1), 71(2), 72, 72(2)(a) and 72(2)(b).

**Authorities Cited: AB:** Orders 96-006, 97-002, 99-001, 99-013, 2000-005, 2001-006, 2001-038, F2002-028, F2003-005, F2004-015, F2004-024, F2004-026, F2005-004, F2005-016, F2006-008, F2007-013 and F2007-021.

## I. BACKGROUND

[para 1] By letter dated August 9, 2007, the Applicant made the following request to the Edmonton Police Service (the "Public Body") under the *Freedom of Information and Protection of Privacy Act* (the "Act"):

> *It is our information that the Ethics Committee considered the issue of [a particular police officer] providing evidence for the defence.*
>
> *This is an application under the FOIPP Act for copies of all records provided to the Ethics Committee, the minutes of the meeting, any reports or correspondence arising out of that, the request from the Chief's Committee to consider the issue, and any records relating to the Chief's consideration and reaction to that recommendation.*

[para 2] By letter dated September 12, 2007, the Public Body granted partial access to the requested information. It withheld the remaining information under section 17 (disclosure harmful to a third party's personal privacy), section 21 (disclosure harmful to intergovernmental relations) and section 24 (advice, etc.) of the Act.

[para 3] By letter dated October 4, 2007, the Applicant requested that this Office 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 4] By letter dated January 17, 2008, a copy of which was provided to this Office, the Applicant asked the Public Body to consider applying section 32 of the Act (disclosure in the public interest) to the access request. It appears that the Public Body did not respond.

[para 5] By letters dated April 24 and May 22, 2009, the Public Body disclosed portions of additional responsive records to the Applicant.

[para 6] In the course of the inquiry, the police officer identified in the Applicant's access request was notified as an affected party under section 67(1)(a)(ii) of the Act because, in my opinion, he was affected by the Applicant's request for review. The Royal Canadian Mounted Police (RCMP) was also notified as an affected party.

## II. RECORDS AT ISSUE

[para 7] The Public Body initially granted the Applicant partial access to ten pages of documents. In the course of the inquiry, the Public Body granted partial access to five additional pages, which it had previously overlooked. After the affected police officer provided his consent to disclosure of his personal information, the Public Body disclosed to the Applicant the whole of two of those five additional pages. The records at issue in this inquiry are the parts of these various pages that remain withheld from the Applicant.

[para 8] Portions of some pages were not disclosed to the Applicant on the basis that the information was non-responsive to the access request. As there is no issue in this inquiry regarding these non-responsive portions, I will not discuss them.

[para 9] In this Order, I have broken down the pages containing the records at issue into seven separate documents, which I will later describe and reference.

## III. ISSUES

[para 10] The Notice of Inquiry, dated November 25, 2008, set out the following issues, although I have placed them in a different sequence for the purpose of this Order:

> Did the Public Body properly apply section 24 of the Act (advice, etc.) to the records/information?
>
> Did the Public Body properly apply section 21 of the Act (disclosure harmful to intergovernmental relations) to the records/information?
>
> Does section 17 of the Act (disclosure harmful to a third party's personal privacy) apply to the records/information?

[para 11] In its submissions, the Applicant briefly discusses the application of section 32 of the Act to the records at issue, stating that "disclosure of the information is clearly in the public interest". In its rebuttal submissions, the Public Body states that it

has not made submissions with respect to section 32, as this was not identified as an issue in the Notice of Inquiry.

[para 12] I did not formally add the application of section 32 as an issue in this inquiry, as I did not require further submissions from the parties in order to determine whether disclosure of any of the records at issue was required under the section. The only possibility is that disclosure is warranted under section 32(1)(b), on the basis that it would be "clearly in the public interest". However, for section 32(1)(b) to apply, there must be circumstances *compelling* disclosure, or disclosure *clearly* in the public interest, as opposed to a matter that may be of interest to the public (Order F2004-024 at para. 57). My review of the information in the records at issue does not lead me to conclude that any of it should be released on the basis that there is a clear or compelling public interest in disclosure. I therefore conclude the section 32 does not apply.

## IV. DISCUSSION OF ISSUES

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

[para 13] The relevant parts of section 24 of the Act 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,*
>
> …
>
> *(2) This section does not apply to information that*
>
> …
>
> *(g) is a substantive rule or statement of policy that has been adopted by a public body for the purpose of interpreting an Act or regulation or administering a program or activity of the public body.*
>
> …

[para 14] Under section 71(1) of the Act, it is up to the Public Body to prove that the Applicant has no right of access to the information that it withheld under section 24.

[para 15] Under section 24(2) of the Act, section 24(1) cannot apply to certain information. I considered whether any of the provisions of section 24(2) applied to the

records at issue that the Public Body withheld under section 24(1), but found that they did not. In particular, I considered whether any of the information was a statement of policy that had or has been adopted by the Public Body for the purpose of administering an aspect of its programs or activities under section 24(2)(g). I found that section 24(2)(g) was not applicable. Although the records at issue contain information about what the Public Body's policy should be regarding the outside employment of police officers, the records do not indicate an actual policy – whether a policy existing at the time the records were created, or a policy later adopted.

[para 16] In order to refuse access to information under section 24(1)(a) of the Act, on the basis that it could reasonably be expected to reveal advice, proposals, recommendations, analyses or policy options – which I often shorten in this Order to "advice, etc." – the information must meet the following criteria: (i) be sought or expected, 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 F2002-028 at para. 29).

[para 17] Section 24(1)(b)(i) of the Act gives a public body the discretion to withhold information that could reasonably be expected to reveal consultations or deliberations involving officers or employees of a public body – which I often shorten in this Order to "consultations/deliberations". A "consultation" occurs when the views of one or more officers or employees are sought as to the appropriateness of particular proposals or suggested actions; a "deliberation" is a discussion or consideration of the reasons for and/or against an action (Order 96-006 at p. 10 or para. 48; Order F2007-021 at para. 66). The test for information to fall under section 24(1)(b) is the same as that under section 24(1)(a) in that the consultations/deliberations must (i) be sought or expected, 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 F2007-021 at para. 67).

### 1. The information that the Public Body withheld under section 24

[para 18] The Public Body applied sections 24(1)(a) and (b) of the Act to information on several pages of the records. It submits that advice, recommendations and analyses were sought and expected from members of the Ethics Committee as part of their positions as members of that Committee. It likewise submits that consultations and deliberations were undertaken by members of the Ethics Committee as part of their roles as such. The Public Body says that information from the Ethics Committee was given on the issue of whether a member of the Public Body, in a secondary employment capacity outside his or her duties, should be able to act as an expert and provide opinion evidence in a criminal prosecution at the request of defence counsel. The Public Body indicates that the views of the Ethics Committee would ultimately be provided to the Chief of Police, the Chief's Committee or the human resources department, who would have authority to act on the information.

[para 19] While I discuss the relevant documents and pages in more detail below, I find that sections 24(1)(a) and/or (b) apply to most, but not all, of the information that the Public Body withheld under section 24.

[para 20] I first note that the Ethics Committee consists of individuals with the capacity to develop advice, etc. by or for the Public Body within the meaning of section 24(1)(a), and includes individuals who are its officers and employees under section 24(1)(b)(i). The aforementioned tests for withholding information under section 24(1)(a) and (b) are met, for the most part, in that the records at issue reveal information sought or expected from members of the Ethics Committee as part of their responsibilities and by virtue of their positions, the information was directed toward taking an action, and the information was provided to someone who could take or implement the action.

[para 21] Specifically, the Public Body indicates that the Ethics Committee was approached by the Public Body's human resources department to review the issue of the appropriateness of a member of the Public Body testifying for the defence in a criminal matter. I find that most of the information that the Public Body withheld under section 24 relates to a suggested course of action that was to be ultimately accepted or rejected by the recipient of the information, and that it therefore falls within section 24(1) (Order 96-006 at p. 8 or para. 39; Order F2007-013 at para. 108). The Public Body states that the Ethics Committee reports to the Chief of Police or the Chief's Committee. The Chief of Police, as head of the Public Body, and/or the Chief's Committee may presumably direct that human resources policies on the outside employment of police officers be created or amended. I find that much of the information that the Public Body withheld under section 24 shows the path leading to such a decision, as opposed to the decision itself, and that the information falls within section 24(1) on that basis (Order F2005-004 at para. 22; Order F2007-013 at para. 109).

[para 22] I will now discuss each document and page in greater detail. Where I indicate a date, a subject line or topic, or the identity of a sender or recipient, these were already disclosed by the Public Body to the Applicant.

[para 23] Document 1 is a one-page agenda of the Ethics Committee, dated March 14, 2007. The information that the Public Body withheld under section 24 consists of handwritten notes. The notes are regarding the outside employment of a police officer by defence counsel and appear to have been made by one of the Committee members during the Committee's discussion of the matter. I find that the withheld information reveals consultations/deliberations under section 24(1)(b).

[para 24] Document 2 is a two-page memorandum, dated April 7, 2007, from the Public Body's Manager, Legal Services and Risk Management Branch, to the Superintendent, Human Resources Division (and copied to another Superintendent), on the subject of "EPS experts acting for the defence counsel in criminal prosecutions". The Public Body withheld all of the substantive content (i.e., everything other than the letterhead, footers, headings, date, subject line, and names, titles and signatures of the

sender and recipients of the memorandum). I find that the withheld information reveals both advice, etc. under section 24(1)(a) and consultations/deliberations under section 24(1)(b). The individual who sent the memorandum was a member of the Ethics Committee and the information in the memorandum conveys the Committee's advice, recommendations and analyses regarding the subject in question, its views as to the appropriateness of particular proposals or actions, and the reasons for or against those proposals and actions.

[para 25] Document 3 consists of two pages of minutes of the Ethics Committee, dated March 15, 2007. The information that the Public Body withheld under section 24 is on the second page, and relates to the portion of the meeting during which the Committee discussed the issue of police members acting as experts for the defence. I find that the withheld information reveals both advice, etc. under section 24(1)(a) and consultations/deliberations under section 24(1)(b). The information reveals what the Ethics Committee discussed, what it concluded, and what it intended to report to the Chief of Police for the latter's consideration and decision.

[para 26] Document 4 consists of two pages of an e-mail exchange. With respect to this document, I requested clarification from the Public Body regarding which sections of the Act were applied to which parts. It resubmitted a copy with the clarifications and, at the same time, chose to disclose more information to the Applicant than previously disclosed. I will therefore only discuss this later severed version.

[para 27] At the top of the first page of Document 4, the Public Body relied on section 24 to withhold the substantive portions of an e-mail, dated April 11, 2007, from a member of the Ethics Committee to an officer or employee of the Public Body, and copied to another member of the Ethics Committee. The e-mail is on the subject of "Members as agents – RCMP policy". I find that the withheld portions reveal consultations/deliberations under section 24(1)(b). The individuals participating in the e-mail exchange were following up on previous discussions and recommendations of the Ethics Committee regarding members of the Public Body acting as agents for defence counsel.

[para 28] The second page of Document 4 includes a request from the Public Body for information from the RCMP, which is part of an e-mail dated April 5, 2007. I find that section 24(1)(b) applies to the four lines of information disclosing the substance of that request, as they reveal consultations/deliberations of officers or employees of the Public Body. I find that section 24(1) does not apply to the remaining information on the page, as the information merely reveals the fact that the Public Body asked the RCMP for assistance, and the names of the individuals making and receiving the request. Having said this, I consider the Public Body's alternative application of section 21 to parts of Document 4 later in this Order.

[para 29] Document 5 is a one-page e-mail exchange on the subject of "Ethics Committee – EPS experts acting for defence counsel". Under section 24, the Public Body withheld the substantive content, which consists of some of the same information

as in the memorandum discussed above (Document 2). For the same reasons set out in relation to the memorandum, I find that the information in this e-mail exchange reveals both advice, etc. under section 24(1)(a) and consultation/deliberations under section 24(1)(b). The last paragraph is different from that withheld elsewhere in the records. I find that it reveals consultations/deliberations under section 24(1)(b), as the paragraph is regarding the appropriateness of particular action.

[para 30] Section 24(1)(a) does not apply to the bare recitation of facts or summaries of information; facts may only be withheld if they are sufficiently interwoven with other advice, proposals, recommendations, analyses or policy options so that they cannot reasonably be considered separate or distinct (Order 99-001 at paras. 17 and 18; Order F2007-013 at para. 108). These same principles apply in the context of section 24(1)(b) (Order 96-006 at p. 10 or para. 50; Order F2004-026 at para. 78). Further, sections 24(1)(a) and (b) generally do not apply to information that merely reveals that advice, etc. was sought or given on a particular topic, or that consultations/deliberations on a particular topic took place (Order F2004-026 at para. 71).

[para 31] Given the foregoing principles, I considered whether the three to four introductory sentences that were withheld in each of Document 2 (memorandum), Document 3 (minutes) and Document 5 (e-mail) did not fall under section 24(1), on the basis that they merely reveal the topic under discussion or background factual information. I find that they reveal more than merely the topic under discussion, and that the background information is sufficiently interwoven with the advice, etc. or the consultations/deliberations, so as to fall under section 24(1).

[para 32] Document 6 consists of two pages of an e-mail exchange on the subject of "Confidential – File Review". The information that the Public Body withheld under section 24 consists of the substantive parts of an e-mail from a member of the Ethics Committee to the recorder for the Committee on March 6, 2007 ("E-mail #1"), and the whole of two other e-mails following this first e-mail ("E-mail #2" and "E-mail #3").

[para 33] A public body is entitled to withhold under sections 24(1)(a) and (b) only the records or parts of them that reveal substantive information about the matter or matters on which advice was being sought or given, or about which the consultations or deliberations were being held; other information cannot generally be withheld under section 24(1)(a) or (b), including the names of correspondents, dates and, in many cases, subject lines, as well as documents or parts of documents that express the fact that advice is being sought or given or that information is being conveyed, without revealing any substantive content (Order F2004-026 at para. 89).

[para 34] Given the foregoing, I find that the Public Body improperly withheld the names of the individuals who sent and received E-mail #2 and E-mail #3, the dates of those e-mails, and their subject lines. (I note that the Public Body properly disclosed this type of information to the Applicant elsewhere in the records, including in E-mail #1.) Further, I find that none of the text of E-mail #2 or E-mail #3 reveals the substantive content of any advice, etc. or consultations/deliberations. These two e-mails merely

reveal the fact that advice, etc. was sought, or consultations/deliberations took place, in relation to a topic that the Ethics Committee was asked to review. This is despite the fact that the e-mails are marked "confidential". The fact that something is marked "confidential" does not make it advice, etc. under section 24(1)(a) or make it consultations/deliberations under section 24(1)(b).

[para 35] Conversely, I find that the substantive parts of E-mail #1 that the Public Body withheld reveal consultations/deliberations under section 24(1)(b), as the information consists of the views and reasons of a member of the Ethics Committee regarding the appropriateness of particular action.

[para 36] I conclude that sections 24(1)(a) and (b) do not apply to the information in Document 6 after the substantive content of E-mail #1 – in other words the last ten lines of information on the first page and all of the second page of Document 6. The Public Body therefore did not have the discretion to withhold this information under section 24. My finding that section 24(1) does not apply extends to the personal information of the individual mentioned in the subject line of E-mail #3 and in the text of that e-mail. However, in a later part of this Order, I will consider whether disclosure of this information – as well as the personal information of the e-mail senders and recipients – would be an unreasonable invasion of personal privacy under section 17 of the Act.

[para 37] Document 7 is a three-page memorandum, dated February 15, 2007, from members of the Public Body's Employee and Family Assistance Section to the Superintendent, Human Resources Division, on the subject of "Request for Permission to Give Expert Evidence for the Defence". The Public Body withheld all of the substantive content of the memorandum under section 24 (i.e., everything other than the letterhead, footers, headings, date, subject line, and names and titles of the senders and recipient of the memorandum).

[para 38] Document 7 was provided to the Ethics Committee in order to initiate its review, so the record does not directly reveal any advice, etc. developed by members of the Committee, or their consultations/deliberations. While it is arguable that Document 7 indirectly reveals these things, I do not need to decide this. This is because the withheld information falls within section 24(1)(a) on the basis that it reveals advice, etc. that was sought or expected from the members of the Employee and Family Assistance Section as part of their responsibilities and by virtue of their positions, and the information was directed toward a decision that could be taken by the Superintendent. The memorandum also contains background facts that are sufficiently interwoven with this advice, etc. so that they cannot reasonably be considered separate or distinct. The advice, etc. – and the interwoven background facts that are the basis for it – reveal the path leading to a decision (Order F2005-004 at para. 22; Order F2007-013 at para. 109). The decision itself is found in a memorandum dated February 19, 2007, which the Public Body disclosed to the Applicant in the course of the inquiry.

[para 39] Except for the information noted in relation to Documents 4 and 6 above, I conclude that all of the information that the Public Body withheld under section 24 of the

Act falls within sections 24(1)(a) and/or (b). I will now review whether the Public Body properly exercised its discretion when it refused to disclose the information.

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

[para 40] The Applicant did not make specific submissions regarding the Public Body's application of section 24 of the Act, other than to say that its discretion was exercised unreasonably. The Public Body submits that it properly exercised its discretion to withhold information under section 24(1)(a) and (b).

[para 41] A public body exercising its discretion relative to a particular provision of the Act should consider the Act's general purposes, the purpose of the particular provision on which it is relying, the interests that the provision attempts to balance, and whether withholding the records would meet the purpose of the Act and the provision in the circumstances of the particular case (Order F2004-026 at para. 46). Further, a public body must not exercise its discretion for an improper or irrelevant purpose (Order 2001-006 at para. 46).

[para 42] On review of the Public Body's submissions and supporting affidavits, I find that it properly exercised its discretion not to disclose information under section 24. It indicates that it recognizes the principles of access outlined in the Act, but that these are tempered by exceptions to disclosure. The Public Body considered the Ethics Committee's role in providing advice, guidance and assistance regarding ethical issues and professionalism, and determined that its members need to be able to discuss matters fully and freely. It states that, in the particular circumstances of the case, the topic under discussion was the subject of controversy, both internally and in the media, and that the ability of the Ethics Committee to be consulted, deliberate and provide well-reasoned advice was all the more important. The Public Body adds that it considered the impact that disclosure would have on its ability to carry out similar internal decision-making processes in the future. I presume that the Public Body also had much of the foregoing in mind when it chose to withhold the advice, etc. given by the Public Body's Employee and Family Assistance Section to the Superintendent, Human Resources Division.

[para 43] With the exception of the information in Documents 4 and 6 that I found above did not fall under section 24(1), I conclude that the Public Body properly applied section 24 of the Act to the information that it withheld under that section. Disclosure could reasonably be expected to reveal advice, proposals, recommendations, analyses or policy options developed by or for the Public Body under section 24(1)(a) and/or consultations and deliberations involving officers or employees of the Public Body under section 24(1)(b) – and the Public Body properly exercised its discretion not to disclose the information.

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

[para 44] The relevant parts of section 21 of the Act read as follows:

*21(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to*

*(a) harm relations between the Government of Alberta or its agencies and any of the following or their agencies:*

*(i) the Government of Canada or a province or territory of Canada,*

…

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

…

[para 45] 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 21.

[para 46] The Public Body applied section 21(1)(b) to portions of the two-page e-mail exchange that formed Document 4, discussed earlier in this Order. It did this on the basis that disclosure would reveal information supplied, explicitly or implicitly, in confidence by an agency of the Government of Canada – in this case, the RCMP "K" Division. I found earlier that parts of Document 4 were properly withheld under section 24, so will not discuss those parts here.

[para 47] The RCMP was notified as an affected party in this inquiry under section 67(1)(a)(ii) of the Act because, in my opinion, it was affected by the Applicant's request for review. This Office provided the RCMP with a copy of the e-mail that it had sent to the Public Body, and requested any representations that the RCMP wished to make. The RCMP replied that it did not oppose the disclosure of the contents of the e-mail. This Office then sent copies of the RCMP's representations to the Applicant and the Public Body. The Applicant indicated that it had no rebuttal comments, and the Public Body did not submit anything further.

[para 48] In its initial submissions, the Public Body argues that the information supplied by the RCMP was implicitly supplied in confidence, and therefore falls under section 21(1)(b). In support, the Public Body's Acting Supervisor of its Freedom of Information and Protection of Privacy Unit swore an affidavit, in which he states that he was informed by the Sergeant responsible for the Policy Management Unit at the relevant time that "when policy information is provided to the EPS by the RCMP, as in this case, it is done on the implicit condition that it will only be used by the EPS for the specific purpose for which it was requested, and on the implicit understanding that the confidentiality of the information will be maintained".

[para 49] Despite the Public Body's belief that the information supplied by the RCMP was implicitly supplied in confidence, I find that it was not. I do so for two main reasons.

[para 50] First, the nature of the information does not suggest that the RCMP intended for it to remain confidential. The information in the e-mail is an excerpt from the RCMP's Administration Manual, regarding police members acting as agents (as already disclosed in the records provided to the Applicant). In my view, this type of administrative policy or procedure (i.e., practices relating to employment matters or human resources) is not normally information that a body or organization intends to be confidential, or in relation to which it has a reasonable expectation of confidentiality. In the absence of more specific submissions from the Public Body as to why the particular information provided by the RCMP was implicitly meant to be confidential, I find that it was not. The Public Body appears to have simply applied a general rule that all policy information provided by the RCMP is supplied implicitly in confidence. The Public Body did not provide sufficient evidence to explain why the specific information and circumstances in this case mean that section 21(1)(b) applies.

[para 51] Second, the RCMP has consented to disclosure of the information in the e-mail that it sent. While this does not necessarily mean that the RCMP did not supply the information in confidence at the time, it strongly suggests that it did not. If the excerpt of the RCMP's Administrative Manual was intended to remain confidential, it is unlikely that the RCMP would now consent to its release.

[para 52] I conclude that section 21(1)(b) of the Act does not apply to the contents of the e-mail sent by the RCMP to the Public Body, or any other part of Document 4. The Public Body therefore did not have the discretion to withhold the information under section 21.

[para 53] Although I have found that section 21 does not apply to Document 4, there is personal information that the Public Body withheld on the second page. I will therefore consider, in the next part of this Order, whether disclosure would be an unreasonable invasion of personal privacy under section 17 of the Act.

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

[para 54] Section 17 of the Act requires a public body to withhold personal information if disclosure would be an unreasonable invasion of a third party's personal privacy. The provisions of section 17 that are relevant to this inquiry are as follows:

> *17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.*

*(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*

*(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,*

*...*

[para 55] 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, I must also independently review the information, and determine whether disclosure would or would not be an unreasonable invasion of personal privacy.

[para 56] 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. In some instances in the records at issue, I find that the presumption against disclosure under section 17(4)(g) applies (name plus other personal information).

[para 57] The Public Body cited the presumption against disclosure under section 17(4)(b) (law enforcement record) in its letter to the Applicant of September 12, 2007, but did not proceed to argue that the section applied in its submissions in the inquiry. I find that the presumption under section 17(4)(b) does not apply. The personal information of third parties does not appear in a record in the context of "law enforcement", as defined in section 1(h) of the Act.

[para 58] I will refer to other relevant provisions of section 17 of the Act as they arise during the discussion of specific personal information below.

**1. E-mail addresses of two individuals**

[para 59] Under section 17 of the Act, the Public Body withheld the e-mail addresses of two third parties, which are found in Documents 5 and 6. E-mail addresses fall within the definition of "personal information" under section 1(n) of the Act (Order 2001-038 at para. 37; Order F2007-013 at para. 48). The Public Body also initially withheld, under section 17, the names of three civilian members of the Ethics Committee appearing in the records. However, in the course of the inquiry, the Public Body disclosed those names to the Applicant. They are therefore not at issue.

[para 60] Section 17(2) of the Act enumerates situations where disclosure of a third party's personal information is not an unreasonable invasion of personal privacy. The Public Body did not find that any of the situations exist with respect to the e-mail addresses. I agree that section 17(2) does not apply to them.

[para 61] In determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, all of the relevant circumstances must be considered under section 17(5) of the Act. The Public Body submits that there are no relevant circumstances in favour of disclosure of the e-mail addresses in question. The Applicant submits that disclosure of the records at issue, generally, is desirable for the purpose of subjecting the activities of the Public Body to public scrutiny under section 17(5)(a), but does not specifically address the e-mail addresses in this regard. On consideration of the tests and criteria to establish that public scrutiny is a relevant circumstance (as set out in Order 97-002 at paras. 94 and 95; Order F2004-015 at para. 88; Order F2005-016 at para. 104), I do not find that disclosure of the two e-mail addresses is necessary in order to subject the activities of the Public Body to public scrutiny.

[para 62] The list of relevant circumstances under section 17(5) is not exhaustive. Here, the Public Body indicates that the e-mail addresses that it withheld are the personal e-mail addresses of two members of the Ethics Committee, as opposed to e-mail addresses assigned by the Public Body. I find that this is a relevant circumstance weighing against disclosure. Unlike the business contact information that I discuss in the

next section of this Order, I believe that disclosure of the two personal e-mail addresses, in this instance, would be an unreasonable invasion of personal privacy.

[para 63] A personal e-mail address may sometimes constitute business contact information, the disclosure of which would *not* be an unreasonable invasion of personal privacy, if an individual uses the personal e-mail address for the purpose of his or her business or professional activities. In this inquiry, however, it would appear that the personal e-mail addresses are not those normally used by the individuals in question for the purpose of the business of the Ethics Committee. The records show that other police and civilian members of the Ethics Committee have e-mail addresses assigned by the Public Body, and it would be reasonable to presume that the two third parties in question likewise have e-mail addresses that are those used for regular business contact. Accordingly, I find that the personal e-mail addresses, in this case, were being used for the limited purpose of corresponding with other specific individuals from a personal location on an occasional basis. In other words, what I consider to be an exceptional use of the personal e-mail addresses does not render them business contact information.

[para 64] As there are no factors weighing in favour of disclosure of the two personal e-mail addresses in this case, I conclude that the Public Body properly withheld them under section 17 of the Act.

### 2. Names, titles and business contact information of individuals acting in a representative capacity

[para 65] The Public Body states in its submissions that, because it opted to focus on other exceptions to disclosure, it abandoned its argument that section 17 of the Act applies to any of the information in the records at issue, apart from the two e-mail addresses discussed above. However, I concluded earlier in this Order that the Public Body did not properly apply section 21 and 24 to some information in Document 4 (e-mail exchange), and did not properly apply section 24 to some information in Document 6 (e-mail exchange). I must now go on to consider whether section 17 applies, as it sets out a mandatory exception to disclosure.

[para 66] Some of the information in Documents 4 and 6 that I found was not properly withheld under section 21 or 24 consists of the names, titles, phone numbers, fax numbers, mailing addresses and e-mail addresses of representatives of the Public Body, or the RCMP, who participated in the e-mail exchanges. The information also includes the name and title of an individual mentioned in the text of one of the e-mails in Document 4 (i.e., she is not a sender or recipient). All of this is the personal information of third parties under section 1(n) of the Act.

[para 67] I find that section 17 does not apply to the foregoing names and titles, as the information reveals only that the individuals did something in their representative or professional capacities, and this outweighs any applicable presumptions against disclosure under section 17(4)(g) (name plus other personal information). Where personal information in the form of names and titles in a record merely reveal the

activities of staff of a public body (or other body) in the course of performing their duties, this is a relevant circumstance weighing in favour of disclosure of the names and titles (Order F2003-005 at para. 96). Disclosure of the names and titles of employees, acting in their formal representative capacities, is generally not an unreasonable invasion of their personal privacy (Order 2000-005 at para. 116; Order F2006-008 at para. 42).

[para 68] With one exception, I also find that section 17 does not apply to the phone numbers, fax numbers, mailing addresses and e-mail addresses of the individuals who participated in the e-mail exchanges in Documents 4 and 6. These numbers and addresses are clearly business ones. The fact that a third party's personal information is business contact information is a relevant circumstance weighing in favour of disclosure (Order F2003-005 at para. 96; Order F2004-015 at para. 96). I likewise find that this outweighs any applicable presumptions against disclosure under section 17(4)(g) (name plus other personal information). Accordingly, disclosure of all but one of the aforementioned phone numbers, fax numbers, mailing addresses and e-mail addresses would not be an unreasonable invasion of personal privacy. I distinguish this conclusion from the one I reached above regarding the personal e-mail addresses of two third parties, for the reasons set out in the preceding section of this Order.

[para 69] Given my earlier conclusion, the one exception regarding the application of section 17 to the contact information mentioned in the preceding paragraph is that there would be an unreasonable invasion of personal privacy on disclosure of the personal e-mail address of a third party in the "To:" line of E-mail #2, on the first page of Document 6. However, I limit the application of section 17 to the characters following the "@" symbol, as the words before that symbol merely indicate the name of the individual who received the e-mail correspondence in his representative or professional capacity. (I did not find that any parts of the two personal e-mail addresses discussed earlier in this Order should be disclosed, as the relevant individual's name was already revealed next to one e-mail address, and the name forming part of the other e-mail address did not appear to be that of a member of the Ethics Committee or employee of the Public Body.)

### 3. Personal information of a particular police officer

[para 70] The Applicant requested records in relation to the Ethics Committee's consideration of the issue of a particular police officer providing evidence for the defence. This police officer was named as an affected party in this inquiry and invited to make submissions. He consented, in writing, to the disclosure of his personal information. As a result, the Public Body disclosed to the Applicant most of the information of the affected police officer that it had previously withheld. However, some of his personal information remains at issue.

[para 71] I found earlier in this Order that the Public Body improperly withheld, under section 24 of the Act, all of E-mail #3 in Document 6. I find that the subject line of this e-mail, other portions of its contents and the names of its two attachments contain the personal information of the affected police officer. As he consented to the disclosure of

his personal information in the records at issue, disclosure of the foregoing information is not an unreasonable invasion of his personal privacy under section 17(2)(a) of the Act. The Public Body therefore cannot withhold it under section 17.

[para 72] As I intend to order disclosure of the affected police officer's personal information in Document 6, it is not necessary for me to address the Applicant's argument that disclosure is desirable for the purpose of subjecting the activities of the Public Body to public scrutiny under section 17(5)(a). This argument is also not relevant where the personal information of any third party appears in a record that the Public Body properly withheld under section 24, which includes the information withheld in the memorandum of February 15, 2007 (Document 7).

## V. ORDER

[para 73] I make this Order under section 72 of the Act.

[para 74] I find that section 17 of the Act applies to the e-mail address in the "To:" line of the e-mail dated March 31, 2007 in Document 5, the e-mail address in the "From:" line of the e-mail dated March 6, 2007 in Document 6, and the part of the e-mail address following the "@" symbol in the "To:" line of the e-mail at the bottom of the first page of Document 6, as disclosure would be an unreasonable invasion of the personal privacy of third parties. Under section 72(2)(b), I confirm the decision of the Public Body to refuse the Applicant access to this information.

[para 75] I find that the Public Body did not properly apply section 24 of the Act to all of the contents of the two e-mails following the e-mail dated March 6, 2007 in Document 6 – being the last ten lines of information on the first page and the whole of the second page. With the exception of the portion of the e-mail address mentioned in the preceding paragraph, I also find that section 17 does not apply to any of this information. Under section 72(2)(a), I order the Public Body to give the Applicant access to the contents of the two e-mails, with the exception of the portion of the aforementioned e-mail address.

[para 76] I find that the Public Body did not properly apply section 24 of the Act to all of the contents of the e-mail dated April 5, 2007 in Document 4 – with the exception of the seventh to tenth last lines of information on the second page. I find that the Public Body did not properly apply section 21 to any of this information, as disclosure could not reasonably be expected to reveal information supplied by an agency of another government in confidence under section 21(1)(b). Finally, I find that section 17 does not apply to the foregoing information. Under section 72(2)(a), I order the Public Body to give the Applicant access to all of the contents of the e-mail dated April 5, 2007, with the exception of the seventh to tenth last lines of information on the second page of Document 4 (being the four lines setting out the "issue").

[para 77] I find that the Public Body properly applied section 24 of the Act to the remaining information that it withheld under that section, as disclosure could reasonably

be expected to reveal advice, proposals, recommendations, analyses or policy options developed by or for the Public Body under section 24(1)(a) and/or consultations and deliberations involving officers or employees of the Public Body under section 24(1)(b). Under section 72(2)(b), I confirm the decision of the Public Body to refuse the Applicant access.

[para 78] I find that section 32 of the Act (disclosure in the public interest) does not apply to any of the records at issue.

[para 79] I 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