ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2009-024

March 30, 2010

SERVICE ALBERTA

Case File Number F4095

Office URL: www.oipc.ab.ca

Summary: The Applicants, a number of funeral homes, made a request for access to Alberta Government Services, (now Service Alberta) for records relating to decisions to lay charges or not lay charges against any or all of the Applicants.

The Public Body identified and located a number of records. It applied section 4(1)(l)(ii) (information in a registry), section 17 (information harmful to a third party's personal privacy), section 24(1)(a) (advice), section 27(1)(a) (privilege) and section 27(1)(b) (information prepared by the Minister of Justice and Attorney General) to some of the information. The Public Body also withheld information as "unresponsive" to the Applicants' request.

The Applicants requested review of the Public Body's response. The Adjudicator found that section 4(1)(l)(ii) applied to the record to which the Public Body had applied this provision. She confirmed that the Public Body had properly withheld information under section 17(1). She found that section 24(1)(a) applied to the information to which the Public Body had applied this provision, but found that the Public Body had not demonstrated that it had properly applied its discretion. The Adjudicator found that the Public Body properly applied section 27(1)(a); however, she found that in some cases, the Public Body had not properly applied section 27(1)(b). She decided that the evidence was insufficient to determine whether information was responsive or not, and ordered the Public Body to include in a new response to the Applicants an explanation as to why it

believes the Applicants had not requested the information it was withholding as "unresponsive".

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 4, 6, 7, 10, 12, 17, 24, 27, 72

Authorities Cited: AB: Orders 96-006, 2001-016, F2003-017, F2004-026, F2007-029, F2008-009, F2008-016, F2008-021, F2008-028

Cases Cited: *University of Alberta v. Pylypiuk*, 2002 ABQB 22; *Canada v. Solosky* [1980] 1 S.C.R. 821

I. BACKGROUND

[para 1] On October 30, 2003, the Applicants made the following request for access to records in the custody or control of Alberta Government Services (the Public Body):

> We act on behalf of the above Applicants and make this request for copies of records on behalf of the Applicants under the *Freedom of Information and Protection of Privacy Act.* We request copies of complete records relating to the Applicants in your control or custody which may or may not have resulted in charges being laid against any or all of the Applicants, and specifically:
>
> (a) all interviews, notes of interviews, audio or visual recordings of interviews or transcriptions of interviews, the subject matter of which were the Applicants, or any of them;
> (b) all information and documents received from any former employee, employee, affiliate, consultant, contractor, or agent of the Applicants or any of them;
> (c) all correspondence between any governmental department, agency or board and the Applicants, or any of them, including email correspondence;
> (d) all correspondence between any governmental department, agency or board and any employee or agent of the Applicants, or any of them, including email correspondence;
> (e) all correspondence between any governmental department, agency or board, including email correspondence,
> (f) all documents collected or relied upon in respect of an investigation relating to the Applicants;
> (g) copies of any policies or protocols relevant to the investigation, whether or not resulting in a prosecution, involving the Applicants, or any of them;
> (h) copies of any complaints, letters, notices or comments in relation to the Applicants;
> (i) all documents or records considered prior to, subsequent to, or in the course of any investigation relating to any or all of the Applicants;
> (j) all news releases, inter-departmental memos and notes relating to any or all of the Applicants; and
> (k) all records, documents, and files in the possession of, or created by or through, the Alberta Funeral Services Regulatory Board, or any employee, agent or contractor in that capacity.

[para 2] On August 31, 2006, September 22, 2006, March 15, 2007 and March 26, 2007 the Public Body responded to the Applicants' access request. The Public Body gave access to records but withheld information under sections 17, 24, and 27 of the FOIP Act. It also indicated that it considered some records to be exempt from the application of the FOIP Act under sections 4(1)(a) and 4(1)(l)(ii), or on the basis that they were not

responsive to the Applicants' access request. The Applicants requested review of these decisions by this office on May 11, 2007.

[para 3] The Commissioner authorized mediation. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

II. RECORDS AT ISSUE

[para 4] 3047 records identified by the Public Body in response to the Applicant's access requests of October 30, 2003 and November 14, 2003, cited above, are at issue.

III. ISSUES

Issue A: Did the Public Body fulfill its duty to the Applicant under section 10 of the FOIP Act by conducting an adequate search for responsive records?

Issue B: Are records excluded from the application of the FOIP Act by section 4?

Issue C: Does section 17 of the Act (information harmful to the personal privacy of a third party) apply to the information in the records?

Issue D: Did the Public Body properly apply section 24 of the Act ("advice") to the information in the records?

Issue E: Did the Public Body properly apply section 27 of the Act (privileged information) to the information in the records?

Issue F: Did the Public Body properly identify and withhold records that were unresponsive to the access request?

IV. DISCUSSION OF ISSUES

Issue A: Did the Public Body fulfill its duty to the Applicant under section 10 of the FOIP Act by conducting an adequate search for responsive records?

[para 5] Section 10 of the FOIP Act explains a public body's obligations to respond to an applicant when an applicant makes an access request for records. It states, in part:

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

[para 6] The Public Body has the onus of establishing that it has made every reasonable effort to assist the Applicants, as it is in the best position to explain the steps it has taken to assist the Applicants within the meaning of section 10(1).

[para 7] Previous orders of this Office have established that the duty to assist includes conducting an adequate search for records. In Order 2001-016, the Commissioner said:

> In Order 97-003, the Commissioner said that a public body must provide sufficient evidence that it has made a reasonable effort to identify and locate records responsive to the request to discharge its obligation under section 9(1) [now 10(1))]of the Act. In Order 97-006, the Commissioner said that the public body has the burden of proving that it has fulfilled its duty under section 9(1) [now 10(1)].
>
> Previous orders ... say that the public body must show that it conducted an adequate search to fulfill its obligation under section 9(1) [now 10(1)] of the Act. An adequate search has two components: (1) every reasonable effort must be made to search for the actual record requested and (2) the applicant must be informed in a timely fashion about what has been done.

[para 8] In Order F2007-029, the Commissioner described the kind of evidence that assists a decision-maker to determine whether a public body has made reasonable efforts to search for records. He said:

> In general, evidence as to the adequacy of a search should cover the following points:
>
> - The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request
> - The scope of the search conducted - for example: physical sites, program areas, specific databases, off-site storage areas, etc.
> - The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
> - Who did the search
> - Why the Public Body believes no more responsive records exist than what has been found or produced

[para 9] The Public Body argues that it conducted a reasonable search for responsive records. It describes the specific steps taken to conduct the search in the following way:

> On November 14, 2003, the FOIP Coordinator contacted the Consumer Services program area of Service Alberta, the Communications area, and the Alberta Justice seconded office that provides legal services to the Consumer Services program area for any records between January 1, 2000 to October 31, 2003 relating to the following corporate entities: Leyden's Funeral Home Ltd., Leyden's Funeral Home, Trillium Funeral Services Corp., Memorial Gardens Associations (Alberta) Limited, Memorial Gardens Canada Limited, Mountain View Memorial Gardens, Mountain View Funeral Home and Eden Brook Memorial Gardens [Copy of email, Tab 41]. Further, [an executive director of consumer services] forwarded the email to the AFSRB the same day [Copy of email, *supra*, Tab 41].
>
> Further, the FOIP Coordinator conducted a number of key word searches on the records management file system. She conducted similar searches on August 18, 2004 [Copy of searches, Tab 42].

In the Public Body's FOIP Coordinator's initial response to the Applicants on November 28, 2003 [Copy of letter, *supra*, Tab 2], she indicated that here were 10 audiotapes among the records. These were never found among the records. In the email on September 22, 2006 [Copy of email, Tab 43], the lead investigator on the matters pertaining to the Applicants… indicates that he had no recollection of any audiotapes, but if some existed, they would be in the FOIP Coordinator's possession. After the FOIP Coordinator who was originally responsible for the Applicants' access requests left the employ of the Public Body, the new FOIP Staff searched exhaustively for the audiotapes and could not locate any audiotapes.

Further, the Public Body stated that there were photographs in the records. As also indicated in [an employee's] email of September 22, 2006 [Copy of email, *supra*, Tab 43] these were in fact photocopies of photographs and not originals. The photographs were of deceased persons who were identified by name and have been withheld by the Public Body pursuant to section 17. The Public Body also withheld copies of photographs of family members of the deceased. However, the Public Body released copies of photographs of the Applicants' offices taken during the investigation.

[para 10] The Applicants argue that the Public Body has not conducted an adequate search for responsive records and has not provided a reasonable response under section 10(1) for that reason. They state:

In this case, the Applicants have not been provided with details of the Public Body's search efforts, nor have the Applicants been advised of the Public Body's search strategy. The Applicants respectfully submit that without this information, it is impossible for the Applicants or the Commissioner to determine whether the Public Body has complied with its obligations under section 10 of the Act.

In addition, there are numerous examples to support the Applicants' assertion that the Public Body has not complied with section 10 of the Act. For example, and without attempting to be exhaustive:

(a) on August 31, 2006, almost three years after the Request was made, the Public Body "discovered" approximately 500 additional records that were responsive to the Applicants' Request;
(b) documents 001464, 001476, 001491, 002107, 002144, 002150, and 002174 all make reference to attachments or additional information; however, the attachments and / or additional information referenced in those documents has not been provided to the Applicants;
(c) document 001494 makes reference to a meeting with [an individual] and [a member of the Applicants' counsel's Calgary office]. Although this meeting is noted by the Public Body and the Applicants to have been taped by the Public Body, no tape has been provided to the Applicants and, in the Applicants' submission, this issue has never been conclusively resolved. Furthermore, in the Decision, there is a suggestion that the Public Body has emails discussing the existence of the tape, but those emails have never been provided to the Applicants;
(d) documents 001493 and 001494 have not been disclosed to the Applicants and, in the Applicants' submission, the Public Body has not provided an adequate explanation for its failure to do so; and
(e) on March 31, 2009, just days before these submissions were due to be filed, the Public Body "reconsidered and released" more than 1000 additional records (or parts thereof).

The Applicants acknowledge that in the Decision, the OIPC Senior Manager provided further information with respect to some of the above records. In some cases, the attachments or additional information were identified elsewhere in the records that had been produced. In some

cases, the Public Body simply stated that it did not have the attachments or additional information and could not make further inquiries.

The Applicants are of the view that the further information provided in the Decision does not satisfactorily address the Applicants' concerns. In addition, it appears that if the Applicants had not identified the above concerns, the Public Body would never have addressed these discrepancies. This does little to increase the Applicants' confidence in the Public Body's efforts.

…

In the context of the Public Body's obligations under section 10 of the Act, it is important not to lose sight of the fact that the Applicants' initial Request was made in October of 2003. Although the Public Body initially declined to provide any records due to the ongoing prosecution, the prosecution came to an end, either by a stay or withdrawal of the charges, by September 2005. Since then, the Public Body has had three and a half years in which to properly address the Request. It is now 2009 and the Applicants have yet to receive any sufficient assurance that the Request has been dealt with in a fair and comprehensive manner.

Perhaps most troubling is the March 31, 2009 "release and reconsideration" of approximately 1000 additional records (or parts thereof). It thus appears that it took the Public Body five and a half years and the imminent threat of a written inquiry to determine that these records could be released.

Furthermore, upon reviewing the records that have now been released, it appears obvious to the Applicants that many of those records were not properly withheld under any valid exception to disclosure in the Act. For example, and without attempting to be exhaustive:

(a) documents 001073, 000174 and 000175 were initially released with partial severance under section 17(1) however, there dos not appear to be any information therein that was validly subject to that exception;
(b) documents 000330, 000334 and 000337 were initially released with partial severance under section 17(1), however, there does not appear to be any information therein that was validly subject to that exception; and
(c) document 000311, which has now been released, was not listed in either the first or second release of the Edmonton Documents.

This recent and unexpected turn of events simply serves to reinforce the Applicants' concerns in this matter.

[para 11] From references in their submissions, I understand the Applicants to refer to the findings of the mediator assigned by this office to mediate the issues between the parties when they refer to "the Decision".

[para 12] In rebuttal, the Public Body states:

1. OIPC advised the Applicants, in its letter dated January 21, 2008, that this attachment can be found at page 000027 of the Calgary First Release.

2. Document 001476 is a letter dated August 16, 2004 from Government Services to the Crown Prosecutor's office. There were 8 items identified in that letter. Items 1, 3, 4, 6, and 7 were addressed on page 16, issue 4,(b) of the OIPC's letter of January 21, 2008 to the Applicants [Tab 11 of the Applicants' Open Submission].

Item 2: The Public Body cannot identify the pages that pertain to this point without breaching the individual's privacy.
Item 5 appears to be a confirmatory statement rather than an attachment. Documents that may pertain to this point are found at pages 2198 – 2203 and were withheld in their entirety by the Public Body under section 17.
Item 8 is a statement of a witness found at page 2206 – 2207 which formed part of the Calgary Second Release…

3. …

4. As stated in point 7 of document 001491, the typed notes were probably included in the disclosure package which the Applicants would have received. Pages 2164 to 2171 of the Calgary Second Release are "typed" records from the AFSRB. Some clearly identify [an individual] as the author. The Public Body cannot verify whether these are the records referenced in document 001491.

5. Two separate and distinct actions were performed on the records in question. First, the Public Body removed information as non-responsive if it pertained to investigations related to the Applicants' clients. The OIPC advised the Applicants of this in the January 21, 2008 letter. Second, if the parts of the documents that pertained to the Applicants' clients contained personal information the disclosure of which would be an unreasonable invasion of the individual's privacy, the Public Body severed that personal information pursuant to s. 17.

   The Applicants are incorrect in their assertion in their brief that: "in regards to document 001493, information has been withheld (non-responsive) on the basis that the information discloses personal information.

6. There is no reference on page 2107, which can be found in the Calgary Second Release, to a written statement made by [a former employee of the Applicants].

7. The word fine was the term used in this record [002108]. The source of this statement may not have known the correct terminology. The only records the Public Body has pertaining to the sum of $25000 is the settlement agreement discussed between the AFSRB and the Applicants. Any records pertaining to this settlement agreement have been released to the Applicants.

8. Document 002144 only states that the July 29, 2002 letter from [an individual] references that 3 other employees received reprimand letters. In addition, the July 29, 2002 letter (pages 37 – 38) which can be found in the Calgary First Release, only states that 3 other employees received reprimand letters. These reprimand letters were not attached to the July 29 letter. However, the Applicants were advised in the OIPC letter of January 21, 2008 that two letters issued to employees dated July 19, 2002 were found at pages 28 and 29 – 34 of the Calgary First Release. The Public Body can only presume that these are 2 of the 3 employees referenced in [the] letter.

9. Document 002150 is a record originating from Arbor Memorial Services dealing with Staff Performance Awards. Unless these specific documents were provided to the Public Body, there is no expectation that the Public Body would have copies of these records. Further, the Applicants were advised in the January 21, 2008 letter that the Brand Yu Standards could be found at pages 31 – 34 of the Calgary First Release.

10. There is no indication in this document [002174] whether the voluntary disclosure was verbal or written. The document simply states that on June 20, 2002, [an employee] of Arbor Memorial Services Inc. informed the AFSRB of irregularities. Document 002144 also states that [the employee] contacted the AFSRB to request an emergency meeting to discuss the irregularities, suggesting that this was verbal as opposed to written. By letter dated June 19,

[para 13] In addition, the Public Body argues that I should not draw a negative inference from its decision to release records following its initial response to the Applicants and argues that it disclosed records it considered non-responsive in an effort to resolve outstanding issues. The Public Body also states that it has attempted to provide as much detail as possible in its submissions to explain its application of section 17, 24, and 27 to the information in the records, without disclosing the information it seeks to withhold.

[para 14] I agree that a negative inference cannot be drawn from the fact that the Public Body decided to release additional records. This action does not mean that the Public Body's initial decisions were unreasonable or unsupportable; only that it changed its position at a later date.

[para 15] I acknowledge that the Applicants' access request was originally made in 2003; however, I also note that section 4(1)(k) applied to the records the Applicants requested at the time of the request, given that they related to an ongoing prosecution. As the FOIP Act does not apply to records that are subject to section 4(1)(k), the Applicants had no right of access to those records, and the Public Body had no duty to assist the Applicants, until section 4(1)(k) ceased to apply in 2005. I also note that once the Public Body began processing the request, it extended the time for responding to the request appropriately, given the large volume of records requested, and kept the Applicants apprised of the Public Body's progress in relation to the search. The Public Body's responses of August 31, 2006, September 22, 2006, March 15, 2007 and March 2, 2007 detail the records that were being provided to the Applicants and its reasons for withholding some of the information in the records under sections 17, 24, and 27 of the FOIP Act. I understand that the Public Body responded to the Applicants on four occasions because of the number of records requested and the fact that they were located in several offices in both Edmonton and Calgary.

[para 16] In support of their arguments that the Public Body has not conducted an adequate search for responsive records, the Applicants point to records that they consider to be missing. In turn, the Public Body has explained what it did to locate these records and why it believes that these records have already been provided to the Applicants, do not exist, cannot be located, or were withheld under the FOIP Act. I am satisfied with the Public Body's explanations in relation to the Applicants' challenges.

[para 17] The Public Body's initial responses to the Applicants do not address all the questions set out in Order F2007-029 to establish what kind of search it conducted. However, its submissions and subsequent correspondence with the Applicants do address all these questions. While section 10(1) requires a public body to respond to an applicant openly, accurately, completely, and the Public Body's responses of August 31, 2006, September 22, 2006, March 2, 2007, and March 15, 2007 do not meet this duty with

respect to describing the search it performed, I find that the Public Body subsequently met this duty and I will not order it to provide further explanation of the search it conducted.

In addition, to setting the requirements for a Public Body to establish that it has conducted an adequate search for responsive records, the Commissioner stated the following in his discussion of the requirements of section 10:

> Section 10 establishes the quality of a response required by the Act, while section 11 establishes the timing of the response, and section 12 establishes the formal content requirements of a response. A failure to comply with section 10 does not necessarily mean that a Public Body has contravened sections 11 or 12. However, if a Public Body fails to meet the requirements of section 12, the response will, in most cases, fail to meet the requirements of completeness, openness and accuracy under section 10.

[para 18] For the reasons set out below in my analysis of the issues regarding the Public Body's application of sections 24 and 27(1)(a) and (b), and its decisions regarding unresponsive records; I find that the Public Body has not provided an open, accurate, or complete response to the Applicants in relation to its decisions to withhold records. For the reasons, set out below, I will therefore order the Public Body to meet its duty to assist the Applicants by responding openly, accurately, and completely to them by explaining the provisions of the Act it has applied to withhold information and providing its reasons for doing so.

Issue B: Are records excluded from the application of the FOIP Act by section 4?

[para 19] The Public Body argues that section 4(1)(l)(ii) of the Act applies to record 1551:

> The Public Body submits that the record being withheld is, on its face, a record made from information in the office of the Registrar of Motor Vehicle Services and is therefore appropriately withheld under s. 4(1)(l)(ii).

[para 20] Section 4(1)(l) states:

> *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:*
>
> *(l) a record made from information*
> *(i) in the Personal Property Registry,*
> *(ii) in the office of the Registrar of Motor Vehicle Services,*
> *(iii) in the office of the Registrar of Corporations,*
> *(iv) in the office of the Registrar of Companies,*
> *(v) in a Land Titles Office,*
> *(vi) in an office of the Director, or of a district registrar, as defined in the Vital Statistics Act, or*

(vii) in a registry operated by a public body if that registry is authorized or recognized by an enactment and public access to the registry is normally permitted;

[para 21] Having reviewed the record, I am satisfied that this record was made from information in the office of the Registrar of Motor Vehicle Services and meets the requirements of section 4(1)(l)(ii) of the FOIP Act. As a result, the FOIP Act does not apply to this record.

Issue C: Does section 17 of the Act (information harmful to the personal privacy of a third party) apply to the information in the records?

[para 22] Section 1(1)(n) defines personal information under the Act:

(n) "personal information" means recorded information about an identifiable individual, including
- *(i) the individual's name, home or business address or home or business telephone number,*
- *(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*
- *(iii) the individual's age, sex, marital status or family status,*
- *(iv) an identifying number, symbol or other particular assigned to the individual,*
- *(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
- *(vi) information about the individual's health and health care history, including information about a physical or mental disability,*
- *(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*
- *(viii) anyone else's opinions about the individual, and*
- *(ix) the individual's personal views or opinions, except if they are about someone else;*

Personal information under the FOIP Act is information about an identifiable individual that is recorded in some form.

[para 23] Section 17 states in part:

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

…

(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

(b) the disclosure is likely to promote public health and safety or the protection of the environment,

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

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,

(e) the third party will be exposed unfairly to financial or other harm,

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

(g) the personal information is likely to be inaccurate or unreliable,

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and

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

[para 24] Section 17 does not say that a public body is *never* allowed to disclose third party personal information. It is only when the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy that a public body must refuse to disclose the information to an applicant under section 17(1). Section 17(2) (not reproduced) establishes that disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.

[para 25] When the specific types of personal information set out in section 17(4) are involved, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. To determine whether disclosure of personal information would be an unreasonable invasion of the personal privacy of a third party, a public body must consider and weigh all relevant circumstances under section 17(5), (unless section 17(3),

which is restricted in its application) applies. It is important to note that section 17(5) is not an exhaustive list and that other relevant circumstances must be considered.

[para 26] In *University of Alberta v. Pylypiuk*, 2002 ABQB 22, the Court commented on the interpretation of what is now section 17. The Court said:

> In interpreting how these sections work together, the Commissioner noted that s. 16(4) lists a set of circumstances where disclosure of a third party's personal information is presumed to be an unreasonable invasion of a third party's personal privacy. Then, according to the Commissioner, the relevant circumstances listed in s. 16(5) and any other relevant factors, are factors that must be weighed either in favour of or against disclosure of personal information once it has been determined that the information comes within s. 16(1) and (4). In my opinion, that is a reasonable and correct interpretation of those provisions in s. 16. Once it is determined that the criteria in s. 16(4) is (sic) met, the presumption is that disclosure will be an unreasonable invasion of personal privacy, subject to the other factors to be considered in s. 16(5). The factors in s. 16(5) must then be weighed against the presumption in s. 16(4).

[para 27] The Public Body explains the following in relation to its application of section 17:

> The Public Body concedes that it incorrectly withheld some personal information in the records pursuant to section 17 in the Edmonton releases to the Applicants. For example, the Public Body incorrectly withheld names of the Applicants' employees, names of employees of the Public Body acting in their official capacity, and names of individuals that were in the Applicants' own documents. The Public Body has conscientiously endeavoured to correct all such errors and respectfully submits that, as a result of the further releases, the Applicants are now in receipt of all the personal information that was incorrectly withheld.
> …
> Section 17 was not applied identically in the severing of the Edmonton records and the Calgary records. In Edmonton, the Public Body applied only s. 17(1) and did not specify which, if any, subsections under s.17(4) were being applied to the relevant records. However, for similar information in Calgary, the Public Body applied [sections] 17(4)(b), 17(4)(g)(i) and (ii). The lack of consistency is due to the fact that the FOIP coordinator who initially began responding to the access request left the Public Body and several individuals with limited FOIP experience, continued processing the Edmonton records. However, due to delay caused by the prosecutions, the Calgary records were processed later by experienced FOIP staff at a more detailed level.
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> …
>
> In determining whether a disclosure of personal information would be an unreasonable invasion of a third party's privacy, the public body must consider all the relevant circumstances. Section 17(5) lists a number of considerations that the public body must take into account; however, that list is not exhaustive… If the public body determines, upon consideration of all the circumstances, that disclosure of the personal information would be an unreasonable invasion of the third party's personal privacy, then the public body must refuse to disclose.
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> With regards to the records withheld under sections 17(4)(b), 17(4)(g)(i) and 17(4)(g)(ii), the Public Body applied the consideration listed in s. 17(5)(e). In Order 98-007 and F2008-009, the OIPC held that the focus of this subsection is whether there is unfair exposure to harm based on the factual circumstances of the matter.

[para 28] The Applicants argue the following:

> The fact that the Public Body has very recently considered and released a large number of records previously withheld under section 17(1) leads the Applicants to further question whether the Public Body has correctly applied section 17(1) in the context of the Request. In addition, the Applicants are concerned that this issue may not have been properly addressed during the course of the section 65 review and the resulting Decision.
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> As a result, the Applicants respectfully request that a careful review be conducted to ensure that section 17(1) has been properly applied in the circumstances.
>
> In addition, section 17(5) of the Act makes it clear that in coming to a conclusion that disclosure of personal information constitutes an unreasonable invasion of privacy under subsections (1) and (4), the Public Body must consider all of the relevant circumstances, including those specifically enumerated in section 17(5).
>
> Perhaps the most notable of these enumerated circumstances is found in section 17(5)(a), which requires the Public Body to consider whether the disclosure "is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny". The Commissioner has held that this provision recognizes that, in some cases, the desirability of public scrutiny of the internal workings of a public body will prevail over he protection of personal privacy…
>
> The Applicants have not been provided with any indication that the Public Body properly considered all of the relevant circumstances before making its decisions under section 17(1) and (4), nor was this issue addressed in the Decision. The Applicants respectfully request that he Commissioner consider whether the Public Body complied with its obligation under section 17(5) to consider all relevant circumstances before making its decisions with respect to the section 17(1) and (4).

[para 29] As the Public Body notes, its application of section 17(1) is inconsistent. I note that in many cases, personal information that should arguably have been withheld under section 17(1) appears to have been disclosed inadvertently to the Applicants. I also accept that the Public Body disclosed additional information to the Applicants once it determined that information had been improperly withheld under section 17(1).

[para 30] Contrary to the Public Body's submissions, section 17(1) is the correct provision to apply when withholding information that would be an unreasonable invasion of a third party's personal privacy to disclose to an applicant. Section 17(4) creates a rebuttable presumption that harm would result from disclosure. However, I find that citing the relevant provisions of section 17(4) that the Public Body considered applicable was appropriate, given that this practice conveys the Public Body's reasons for deciding that it would be an unreasonable invasion of a third party's personal privacy to disclose the information it withheld.

[para 31] Having reviewed the information in the records, I am satisfied that section 17(4)(g) applies to the personal information withheld by the Public Body. Consequently, there is a presumption that disclosing the personal information the Public Body withheld would be an unreasonable invasion of the personal privacy of third parties.

[para 32] The Applicants argue that section 17(5)(a) may be a factor that applies to the information withheld and may rebut the presumption in section 17(4)(g). In Order

F2008-009, the Adjudicator reviewed decisions addressing section 17(5)(a) and said at paragraphs 64 and 65:

> A factor weighing in favour of disclosure of the personal information of third parties is that disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny, under section 17(5)(a) of the Act. For the section to apply, there must be evidence that the activities of the public body have been called into question, which necessitates the disclosure of personal information to subject the activities of the public body to public scrutiny (Order 97-002 at para. 94; Order F2004-015 at para. 88).
>
> In determining whether public scrutiny is desirable, the following may be considered: (1) whether more than one person has suggested that public scrutiny is necessary; (2) whether the applicant's concerns are about the actions of more than one person within the public body; and (3) whether the public body has previously disclosed a substantial amount of information or has investigated the matter in issue (Order 97-002 at paras. 94 and 95; Order F2004-015 at para. 88). However, it is not necessary to meet all three of the foregoing criteria in order to establish that there is a need for public scrutiny (*University of Alberta v. Pylypiuk* at para. 49). What is most important to bear in mind is that the reference to public scrutiny of government or public body activities under section 17(5)(a) requires some public component, such as public accountability, public interest or public fairness (*University of Alberta v. Pylypiuk* at para. 48; Order F2005-016 at para. 104).

[para 33] In *Pylypiuk, supra*, the Court commented on the first part of the test for public scrutiny, referred to in Order F2008-009:

> In addition, having referred to no evidence or analysis regarding why the University's activities should be subject to public scrutiny, the Commissioner then moved on to his three part test. Pylypiuk did not meet the first part of that test. While it may not be necessary to meet all three parts of the test, the analysis should demonstrate some rationale as to why one person's decision that public scrutiny is necessary is sufficient to require disclosure, particularly where that person's rights are not affected by the disclosure under s. 16(5)(c).

[para 34] In the present case, the Applicants have not explained why they believe the personal information withheld from the records, such as the names of clients of funeral homes and their contact information, would subject the activities of the Public Body to public scrutiny, or how disclosure of this information would serve a public interest. There is no evidence before me to support a finding that disclosing the personal information withheld by the Public Body would have the effect of subjecting the activities of the Public Body to public scrutiny, or that doing so in this case would serve the public interest. While there are several applicants in this case, that fact alone does not make the personal information in the records to be a matter of public interest. I find that section 17(5)(a) has no application in this case.

[para 35] As noted above, the Public Body argues that section 17(5)(e) applies to the information it withheld, and weighs against disclosure. It also argues that this provision was considered when it withheld personal information from the records. The Public Body notes that previous orders of this office have decided that this provision is intended to require consideration of whether the unfair exposure to harm is based on the facts of the matter. Section 17(5)(e) applies to personal information, which, if disclosed, could result in a third party being exposed unfairly to financial or other harm. There is also no

evidence that the Public Body actually considered section 17(5)(e) when it determined that section 17(1) applied. Despite its reference to facts, the Public Body has not presented me with facts that would lead me to conclude that disclosing the personal information it has withheld would cause a third party to be exposed unfairly to harm. There is simply no evidence that any of the parties would be exposed unfairly to financial or other harm if the personal information that has been withheld from the records is disclosed.

[para 36] As noted above, section 17(4)(g) creates a rebuttable presumption that a third party's personal privacy would be unreasonably invaded if information contemplated by this provision is disclosed to an applicant. If section 17(4)(g) applies to information, and the presumption this provision creates is not rebutted, it is unnecessary for the Public Body to establish that a provision of section 17(5) applies and weighs in favour of withholding the information. So long as no factors outweigh the presumption in section 17(4)(g), the Public Body must withhold personal information under section 17(1). In the present case, I find that there are no factors weighing in favour of disclosure of the personal information withheld from the records. I therefore confirm the decision of the Public Body to withhold the personal information of third parties from the records.

Issue D: Did the Public Body properly apply section 24 of the Act ("advice") to the information in the records?

[para 37] The Public Body's submissions state that it withheld records 2780 – 81 and records 2883 – 84 on the basis of sections 24(1)(a) and (b) of the FOIP Act. These provisions state:

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

[para 38] In Order 96-006, the former Commissioner established a test to determine whether information is advice, proposals, recommendations, analyses or policy options within the meaning of section 24(1)(a) He said:

> Accordingly, in determining whether section 23(1)(a) [now section 24(1)(a)]will be applicable to information, the advice, proposals, recommendations, analyses or policy options ("advice") must meet the following criteria.

> The advice should:
> 1. be sought or expected, or be part of the responsibility of a person by virtue of that person's position,
> 2. be directed toward taking an action,
> 3. be made to someone who can take or implement the action.

The three part test adopted by the former Commissioner in Order 96-006 recognizes that the purpose of section 24(1)(a) is to protect the decision making process of public bodies from interference and second-guessing. The three-part test emphasizes that information that is advice, proposals, recommendations, analyses and policy options must be directed toward actions of public bodies before section 24(1)(a) apples.

[para 39] Records 2780 – 81 and 2883 – 2884 are copies of the same document: a memo dated March 5, 2003.

[para 40] The Public Body notes that the intent of section 24 is to protect the deliberative process. It also makes the following argument in relation to the application of section 24:

> The Public Body submits it is evident from the content of the records on their face that they are of advice under section 24(1)(a) and / or comprised of consultations and deliberations as contemplated by section 24(1)(b)(i) and were withheld appropriately.

[para 41] The Applicants argue that they are unable to make specific arguments, given that they are unaware of the contents of records 2780 – 81 and 2883 – 2884. However, they note that sections 24(1)(a) and (b) are discretionary exceptions. They also note that a Public Body must exercise discretion in relation to whether information that is subject to a discretionary exception should be withheld. Previous orders of this office have determined that a public body's exercise of discretion is reviewable.

[para 42] Having reviewed the records in question, I am satisfied that the information they contain can be categorized as advice or recommendations developed for the Public Body for the purposes of section 24(1)(a).

[para 43] As the Commissioner has said in earlier orders, the exercise of discretion under a particular exception in the Act is to have regard to the purposes for the exception In Order F2004-026, he said:

> In my view a Public Body exercising its discretion relative to a particular provision of the Act should do more than consider the Act's very broad and general purposes; it should consider the purpose of the particular provisions on which it is relying, and whether withholding the records would meet those purposes in the circumstances of the particular case. I find support for this position in orders of the British Columbia Information and Privacy Commissioner. Orders 325-1999 and 02-38 include a list of factors relevant to the exercise of discretion by a public body. In addition to "the general purposes of the legislation (of making information available to the public) the list includes "the wording of the discretionary exception and the interests which the section attempts to balance". It strikes me as a sound approach that the public body must have regard to why the exception was included, and whether withholding the information in a given case would meet that goal.

The purpose of section 24(1), for example, is to enable public bodies make sound decisions by enabling them to seek advice in confidence, free from interference, harassment, and second-guessing when they make decisions regarding potential courses of action.

[para 44] The Public Body argues the following:

> After careful consideration, the Head of the Public Body exercised the discretion afforded him in refusing to disclose records exempted by section 4(1)(l)(ii), excepted by section 17, excepted by section 24(1), maintaining legal privilege as contemplated by section 27(1) and in determining that certain records were not responsive to the Applicant's request.

It may be that the head of the Public Body considered the purpose of section 24(1) and the consequences to the Public Body's deliberative process when discretion was exercised to withhold records under section 24(1)(a); however, this is not set out in its submissions. I note also that the Public Body's responses to the Applicants do not contain its reasons for withholding information under section 24(1)(a), although section 12 of the Act requires a Public Body to provide reasons for applying exceptions in its response to an Applicant.

[para 45] As a result, while I find that section 24(1)(a) applies to records 2780 – 81 and 2883 – 2884, I am unable to tell how the Public Body exercised its discretion. As there is no evidence that the Public Body withheld this information for an improper purpose or fettered its discretion in any way when it decided to withhold information under section 24(1)(a), I will not order it to reconsider its decision. However, I will order the Public Body to make a new response to the Applicant in which it provides its reasons for withholding information under section 24(1)(a), as required by section 12 of the Act. I will leave it to the Public Body to determine the degree of specificity it will include in the new response.

Issue E: Did the Public Body properly apply section 27 of the Act (privileged information) to the information in the records?

[para 46] According to its submissions, the Public Body withheld records 1470 – 73 under section 27(1)(a) on the basis that they are subject to solicitor client-privilege. It submits that it withheld records 17 – 21, 26 – 30, 68 – 71, 81 – 82, 107 – 108, 195 – 196, 344, 360, 707, 1047 – 1048, 1115, 1117 – 18, 1121 – 1122, 1312, 1352 – 1353. 1359, 1544 – 1545 and 2925 – 2927 on the basis of section 27(1)(b)(ii).

[para 47] Section 27 of the FOIP Act is a discretionary exception to disclosure. It states, in part:

> *27(1) The head of a public body may refuse to disclose to an applicant*
>
> *(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege,*

> *(b) information prepared by or for*
>
> > *(i) the Minister of Justice and Attorney General,*
> > *(ii) an agent or lawyer of the Minister of Justice and Attorney General, or*
> > *(iii) an agent or lawyer of a public body,*
> >
> > *in relation to a matter involving the provision of legal services…*

[para 48] The Public Body explained its application of section 27 to the information in the records as follows:

> The Public Body relies on section 27(1)(a) (to the Calgary records) or 27(1)(b)(ii) (to the Edmonton records) to withhold the following records either in their entirety or in part:
>
> Edmonton Records (withheld under s. 27(1)(b)(ii)
>
> Pages: 17 – 21, 26 – 30, 68 – 71, 81 – 82, 107 – 108, 195 – 196, 344, 360, 707, 1047 – 1048, 1115, 1117 – 18, 1121 – 1122, 1312, 1352 – 1353. 1359, 1544 – 1545, 2925 – 2927
>
> Calgary Records (withheld under s. 27(1)(a)
>
> Pages 1470 - 1473

[para 49] The Public Body originally elected not to provide the records it withheld under section 27(1)(a) and (b) for the inquiry on the basis that they were subject to solicitor-client privilege in accordance with the solicitor-client privilege protocol of this office. As I found that the Public Body's evidence did not establish that the records were subject to solicitor-client privilege, and because a public body bears the burden of establishing that an exception to disclosure applies, I asked the Public Body to provide me with the records so that I could have the benefit of the evidence in the records when making my final determination as to whether the provisions of section 27 apply to them.

[para 50] The Public Body has not withheld records 17 – 21, 26 – 30, 68 – 71, 81 – 82, 107 – 108, 195 – 196, 344, 360, 707, 1047 – 1048, 1115, 1117 – 18, 1121 – 1122, 1312, 1352 – 1353. 1359, 1544 – 1545 and 2925 – 2927 under section 27(1)(a), but on the basis that the records contain information prepared by a lawyer of the Minister of Justice and Attorney General in relation to a matter involving the provision of legal services under section 27(1)(b).

[para 51] I note that the solicitor-client protocol applies only when the Public Body has applied section 27(1)(a) to records on the basis that the information they contain is subject to solicitor-client privilege. As the Public Body did not apply section 27(1)(a) to records 17 – 21, 26 – 30, 68 – 71, 81 – 82, 107 – 108, 195 – 196, 344, 360, 707, 1047 – 1048, 1115, 1117 – 18, 1121 – 1122, 1312, 1352 – 1353. 1359, 1544 – 1545 and 2925 – 2927, it is unclear why it considered it appropriate to follow the solicitor-client protocol in relation to these records. Given that the Public Body initially withheld from the inquiry

the records to which it applied section 27(1)(b) under the solicitor-client privilege protocol of this office, I must consider whether the Public Body erroneously applied section 27(1)(b) to protect information it believed to be subject to solicitor-client privilege, or whether its withholding of information under the solicitor-client privilege protocol was intended as the late application of section 27(1)(a) to the information to which it had already applied section 27(1)(b).

[para 52] The Public Body makes the following argument in relation to its application of section 27(1)(b) to information in the records:

> Section 27(1)(b) applies to information prepared by or for the Minister, an agent or lawyer of the Minister or an agent or lawyer of a Public Body in relation to a matter involving the provision of legal services. In Order F2003-017 the IPC stated at paragraph 15:
>
> Section 27(1)(b)(iii) has a broader scope than section 27(1)(a). It applies to "any law-related service performed by a person licensed to practice law" … Although I cannot disclose information that the Public Body is entitled to withhold, I can say that the contents of the record … satisfy me that the information in these records was prepared by legal counsel for the Public Body within the meaning of section 27(1)(b)(iii).

[para 53] In a letter of April 7, 2009, the Adjudicator originally assigned to the inquiry stated the following:

> The Protocol applies only to records over which solicitor-client privilege is claimed. It does not apply to records over which a public body has not claimed solicitor-client privilege, but has instead applied exceptions to disclosure found elsewhere under section 27 of the Act. I note that the Public Body applied section 27(1)(b)(ii) alone to certain records, yet did not submit a copy of those records.

[para 54] In response, the Public Body stated the following in its submissions entitled "Supplementary Open Submission":

> The Public Body relies on section 27(1)(a) (Calgary) and 27(1)(b)(ii) (Edmonton) to withhold the following records either in their entirety or in part…
>
> …
>
> The Public Body properly applied either section 27(1) or 27(1)(b)(ii) to the records. The [named individual] was a solicitor with Alberta Justice throughout the relevant period. It is shown on the face of these records that these records either are subject to a type of legal privilege, namely solicitor-client privilege, or contain information prepared by or for a lawyer of the Minister of Justice and Attorney General in relation to legal services.

I find that this response indicates that the Public Body applied section 27(1)(a) to information in some of the records from Calgary, and section 27(1)(b) to the information in some of the records from Edmonton, but not both exceptions simultaneously. Further, it is clear from this response that the Public Body was aware that section 27(1)(b) applies to information prepared by or for a lawyer of the Minister of Justice and Attorney General in relation to the provision of legal services. Finally, this response does not indicate an attempt to apply section 27(1)(a) to records to which section 27(1)(b) was applied.

[para 55] In its submissions entitled "Supplementary Submission Respecting Paragraphs 22 – 31 of the Applicants' Rebuttal Submission" the Public Body made the following statement:

> The Public Body confirms that, although the Records or portions of Records withheld pursuant to s. 27(1)(b)(ii) are information prepared by or for an agent or lawyer of the Minister of Justice and Attorney General in relation to a matter involving the provision of legal services, for all Records or portions of Records for which s. 27(1)(b)(ii) has been invoked, the Records or portions of Records are also caught within the narrower scope of a claim of solicitor-client privilege.

This statement indicates that the Public Body is aware that it has applied only section 27(1)(b) to information in some of the records but that the information in the records may also be subject to a claim of solicitor-client privilege.

[para 56] In my letter of September 9, 2009 to the parties, I wrote:

> In relation to all the information in the records, the Public Body has not established that the information in the records over which it asserts solicitor-client privilege entails the seeking or giving of legal advice from counsel in counsel's capacity as a legal advisor.

I requested that the Public Body provide evidence to establish a factual foundation for withholding information under solicitor-client privilege.

[para 57] In its submissions entitled "Supplementary Submission In Response to the Adjudicator's Question posed September 9, 2009", the Public Body states:

> The Public Body submits that the Adjudicator has clear and ample evidence supporting the Public Body's claim of solicitor-client privilege in respect to the Records or portions of Records, as applicable, and further that the Public Body has clearly shown its continued consideration of the objects and purposes of the Act in its exercise of discretion to withhold records under section 27(1)(a) or 27(1)(b)(ii).

[para 58] This paragraph indicates that the Public Body is aware that it has applied either section 27(1)(a) or 27(1)(b) to the information in the records, but not both provisions simultaneously.

[para 59] As noted above, in its earlier rebuttal submissions, the Public Body argued that by virtue of applying section 27(1)(b), solicitor-client privilege was being invoked. However, there is no evidence that the Public Body understood that it was applying section 27(1)(a), which is the statutory provision that enables a Public Body to withhold privileged information from records, when it applied section 27(1)(b). Solicitor-client privilege is a common-law principle. Information is not withheld under the FOIP Act on the basis of common-law principles, but only if an exception to disclosure under the FOIP Act applies to the information.

[para 60] The Public Body has given evidence that it applied section 27(1)(b) and considered the principles of this provision when it did so. There are circumstances where

information subject to solicitor-client privilege may also fall under section 27(1)(b); however applying section 27(1)(b) and the principles behind this provision, or invoking solicitor-client privilege does not mean that the Public Body has applied section 27(1)(a) and its principles to the records.

[para 61] In my decision of January 18, 2010 under the solicitor-client privilege protocol, I found that the Public Body had not established that the information it had withheld under the solicitor-client privilege protocol was subject to solicitor-client privilege and requested that it provide the records for the inquiry, which it did.

[para 62] As described above, the Public Body made specific arguments in relation to its application of section 27(1)(b) to the information in the records and cited Order F2003-017 in support of its arguments that it had properly applied this provision. Further, it is firm throughout its submissions that section 27(1)(b) was applied to records 17 – 21, 26 – 30, 68 – 71, 81 – 82, 107 – 108, 195 – 196, 344, 360, 707, 1047 – 1048, 1115, 1117 – 18, 1121 – 1122, 1312, 1352 – 1353. 1359, 1544 – 1545 and 2925 – 2927, while section 27(1)(a) was applied to only records 001470 – 001473. The Public Body was advised in a letter by the Adjudicator previously assigned to this inquiry in the letter dated April 7, 2009 that applying section 27(1)(b)(ii) alone to the records did not amount to a claim of solicitor-client privilege. My correspondence of September 9, 2009 to the parties explains the conditions precedent giving rise to solicitor-client privilege. These conditions precedent are not the same as those set out in section 27(1)(b)(ii). Finally, I note that the Public Body drew to my attention case law on the subject of solicitor-client privilege, in addition to orders of this office relating to the application of section 27(1)(b).

[para 63] When the Public Body was informed in the letter of April 7, 2009 that it had not applied solicitor-client privilege to the records to which it had applied section 27(1)(b)(ii), it did not advise this office or the Applicants that it also intended to apply solicitor-client privilege or section 27(1)(a) to the information in these records, but stated that it had properly applied both sections 27(1)(a) and 27(1)(b)(ii) to the information it withheld.

[para 64] In Order F2008-016, the Adjudicator was faced with a situation where a Public Body withheld information under one provision, but its arguments implied that it had really withheld information in accordance with another provision. She said:

> Although sections 27(1)(b) and 27(1)(c) were not explicitly referred to on the responsive documents or in the EPS' submissions, I find that the substance of the EPS submissions allows me to find that it took into consideration all appropriate elements of sections 27(1)(b) and 27(1)(c) when severing the records, even though the EPS ultimately decided to sever under a provision of the Act that was not correct. Since the principle the EPS used to withhold these records (the confidential seeking of advice or consultations with lawyers employed at the Ministry of Justice) fits within section 27(1)(c), I see no reason to deprive the EPS of its ability to apply section 27(1)(c) at this point.

[para 65] The circumstances of this case are dissimilar to those faced by the Adjudicator in Order F2008-016, in that I found, in my decision of January 18, 2010 regarding the solicitor-client privilege protocol, that the Public Body had not established

through its evidence and arguments that the information in the records to which it applied section 27(1)(b) was subject to solicitor-client privilege. While the arguments and evidence of the Public Body arguably may be construed as supporting the application of section 27(1)(b) to the information to which it applied this provision, given that it supported a finding that information had been prepared by a lawyer for Alberta Justice for the purpose of providing legal services, the arguments and evidence did not support the application of section 27(1)(a). Having reviewed the principles the Public Body applied, as the Adjudicator did in Order F2008-016, I find that it did not apply, or did not clearly intend to apply section 27(1)(a) to the information to which it applied section 27(1)(b). However, it is clear that the Public Body is asserting privilege over the information in those records.

[para 66] I have decided that I will not make a decision at this time regarding whether section 27(1)(a) applies to the information the Public Body has withheld under section 27(1)(b), now that I have the benefit of the information in the records. I have jurisdiction to review decisions that the head of the Public Body has made under the FOIP Act, as opposed to decisions the head has not made under the FOIP Act. However, I also have jurisdiction to determine whether the Public Body has complied with its duties to an applicant in responding to a request for access to information and to make an order accordingly.

[para 67] The Public Body has asserted solicitor-client privilege over the information it withheld under section 27(1)(b). However, the head of the Public Body has not made a decision as to whether section 27(1)(a) applies to this information. While the representative of the Public Body argues that information should be withheld on the basis of solicitor-client privilege, the representative does not have the authority to apply section 27(1)(a) to the information in the records; that power exists solely in the head of the Public Body. The head of a public body also has duties under section 12 of the Act to communicate to an Applicant the provisions on which he or she relies to exclude information from disclosure and to provide reasons. Further, he or she has a duty to respond to an Applicant openly, accurately, and completely under section 10. Consequently, if the head of a public body intends to withhold information on the basis of privilege, he or she must apply section 27(1)(a) to the information and communicate this decision and its reasons in a response to an applicant.

[para 68] As I find that some of the information to which the Public Body applied section 27(1)(b) does not meet the requirements of section 27(1)(b), but may meet the requirements of section 27(1)(a), I will order the Public Body to comply with its duties under section 10 of the Act by responding to the Applicants openly, accurately and completely in relation to that information, and to state the provision of the Act on which it relies to withhold privileged this information, if it chooses to do so, and its reasons for doing so, as required by section 12 of the Act.

Section 27(1)(a)

[para 69] The Public Body relies on section 27(1)(a) to withhold records 001470, 001471, 001472, and 001473. It argues that these records are subject to solicitor-client privilege.

[para 70] The test to establish whether communications are subject to solicitor-client privilege is set out by the Supreme Court of Canada in *Canada v. Solosky* [1980] 1 S.C.R. 821. Speaking for the Court, Dickson J. (as he then was) said:

> … privilege can only be claimed document by document, with each document being required to meet the criteria for the privilege--(i) a communication between solicitor and client; (ii) which entails the seeking or giving of legal advice; and (iii) which is intended to be confidential by the parties.

[para 71] I find that the information contained in records 001470 – 001473 meets the requirements for solicitor-client privilege established by the Supreme Court of Canada in *Solosky*. The records indicate that they were sent from a client to a solicitor in order to obtain legal advice in relation to an issue that had arisen. Further, from the subject matter of the legal advice, it is clear that the communication was intended to be confidential. There is nothing to suggest that the record was sent to anyone else or intended to be viewed by anyone else other than the client's solicitor. I therefore find that these records are subject to solicitor-client privilege and that section 27(1)(a) of the FOIP Act applies to them.

Section 27(1)(b)

[para 72] Section 27(1)(b)(ii) refers to information prepared by an agent or lawyer of the Minister of Justice and Attorney General.

[para 73] In Order F2008-021, I said:

> It follows, then, that the person contemplated by the provision who is preparing the information, is doing so for the purpose of providing legal services, and therefore must be either the person providing the legal service or a person who is preparing the information on behalf of, or, at a minimum, for the use of, the provider of legal services, who is, in this case, an Alberta Justice lawyer.

In this paragraph, "for the use of" does not refer to information sent to the lawyer or agent so that the lawyer or agent may provide the sender with legal services. Rather, it refers to information prepared by someone acting under the direction of the lawyer or agent, so that the lawyer or agent may provide legal services.

[para 74] In Order F2008-028, the Adjudicator commented on the meaning of the phrase "by or for" appearing in section 27(1)(b). He said:

> I find that the substantive information on pages 305-311 was prepared for a lawyer of a public body in relation to a matter involving the provision of legal services, and therefore falls within section 27(1)(b)(iii). However, this is not because the information was sent to a solicitor, as the fact that information was destined to go to someone does not necessarily mean that it was prepared by or for that person. Under other sections of the Act, it has been concluded that, for a

> record or information to be created "by or for" a person, the record or information must be created "by or on behalf of" that person [Order 97-007 at para. 15, discussing what is now section 4(1)(q) of the Act; Order 2000-003 at para. 66, discussing what is now section 4(1)(j); Order 2008-008 at para. 41, discussing section 24(1)(a)]. Here, I find that the substantive content of pages 305-311 was prepared "for" the lawyer who received the information because the covering letter indicates that the sender of the information was specifically asked to provide input.

Information "prepared for an agent or lawyer of the Minister of Justice and Attorney General" then, is information prepared on behalf of an agent or lawyer so that the agent or lawyer may provide legal services. Information sent to an agent or lawyer of the Minister of Justice and Attorney General in circumstances where the sender is seeking to obtain legal services, is not captured by section 27(1)(b), as the information is not prepared on behalf of the agent or lawyer.

[para 75] It also follows that section 27(1)(b) does not cover the situation where a person, even a person who is one of the persons listed in subclauses i – iii, creates information that is connected in some way with the provision of legal services but is not created for that purpose. For example, section 27(1)(b) does not apply to information that merely refers to or describes legal services without revealing their substance.

[para 76] In Order F2003-017, the Adjudicator stated the following:

> Section 27(1)(b)(iii) has a broader scope than section 27(1)(a). It applies to "any law-related service performed by a person licensed to practice law": see Order 96-017. Although I cannot disclose information that the Public Body is entitled to withhold, I can say that the contents of the record, the letterhead found on the unnumbered page preceding page 12, the date of that record, and the record following it, satisfy me that the information in these records was prepared by legal counsel for the Public Body within the meaning of section 27(1)(b)(iii).

While the Adjudicator indicates that section 27(1)(b) is broader than section 27(1)(a), which may be interpreted as implying that section 27(1)(a) is incorporated into section 27(1)(b), the Adjudicator may instead be saying that one need not establish privilege under section 27(1)(b), because "law-related service" does not necessarily entail the giving of legal advice. His decision in this case was based on his finding that the information in question was prepared by legal counsel for the Public Body. I do not interpret this order as suggesting that information is subject to section 27(1)(b) if it is not prepared by or on behalf of an agent or lawyer.

[para 77] Although section 27(1)(b) may apply in some instances to records that are subject to solicitor-client privilege, it does not follow that section 27(1)(b) applies to all records that are subject to solicitor-client privilege. Determining whether section 27(1)(b) applies does not involve consideration of whether information is subject to privilege, but involves inquiring whether a person listed in subclauses 27(1)(b)(i – iii) prepared the record, and whether the record was prepared for the purpose of providing legal services. Information that meets the requirements of section 27(1)(a) can meet the requirements of section 27(1)(b), if the information is prepared by a person listed in subclauses 27(1)(b)(i – iii); information meeting the requirements of section 27(1)(b) will not meet the

requirements of section 27(1)(a) unless it is established that the information is subject to legal privilege.

[para 78] While solicitor-client privilege applies to information created by the client for the purpose of seeking legal advice, section 27(1)(b) will not apply to information created by the client, unless the information created by the client contains information prepared by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services, and then, only to that information.

[para 79] In relation to the application of section 27(1)(b) to information in the records, I make the following findings.

[para 80] Records 000017 and 000018 were prepared by a lawyer of Alberta Justice. Their contents indicate that these records were prepared for the purpose of providing legal advice to the lawyer's client. As a result, I find that these records were prepared in relation to a matter involving the provision of legal services and meet the requirements of section 27(1)(b).

[para 81] Record 000019 contains two emails. The Public Body withheld an email dated Thursday, October 10, 2002 at 12:53 PM from this record. The information withheld under section 27(1)(b)(ii) from record 000019 was created by an employee of the Public Body. The information indicates that it was not prepared on behalf of a lawyer of Alberta Justice, but was prepared on behalf of the Public Body and sent to the lawyer. The email does not contain information prepared by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services. As a result, I find that section 27(1)(b) does not apply to this record.

[para 82] Records 000020 and 000021 contain a handwritten draft of records 000017 and 000018. I find that these drafts were prepared by a lawyer for Alberta Justice for the purposes of providing legal services to the Public Body. I therefore find that section 27(1)(b) applies to these records.

[para 83] Records 000026 – 000027 contain two emails. The first email, dated April 10, 2001 9:48 AM was created by a lawyer. The contents of the email indicate that it was created for the purpose of providing legal services to the Public Body. I therefore find that section 27(1)(b) applies to this email. However, the second email, dated April 03, 2001 at 11:20 AM was not created by a person listed in subclauses 27(1)(b)(i – iii) or for the purpose of providing legal services. Further, it does not contain information of this kind. I therefore find that this email is not subject to section 27(1)(b).

[para 84] Records 000028 and 000029 contain four emails. The first email, dated Friday, November 24, 2000 at 8:49 AM, was created by a lawyer for Alberta Justice for the purposes of providing legal services. I therefore find that section 27(1)(b) applies to this email. The second email, dated November 22, 2000, at 3:14 PM was not created by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services. I therefore find that section 27(1)(b) does not apply to this email. The third email, dated

Wednesday, November 22, 2000 at 3:13 PM was created by a lawyer for Alberta Justice for the purpose of providing legal services, in this case, determining when the legal services were to be provided. I therefore find that section 27(1)(b) applies to this email. The fourth email, dated Wednesday, November 22, 2000 at 3:02 PM, was not created by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services. I therefore find that section 27(1)(b) does not apply to this email.

[para 85] Record 000030 contains three emails and handwritten notes. The first email dated November 22, 2000, at 3:14 PM was not created by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services. I therefore find that section 27(1)(b) does not apply to this email. The second email, dated Wednesday, November 22, 2000 at 3:13 PM, was created by a lawyer for Alberta Justice for the purpose of providing legal services, in this case, determining when the legal services were to be provided. I therefore find that section 27(1)(b) applies to this email. The third email dated Wednesday, November 22, 2000 at 3:02 PM, was not created by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services and does not contain information of this kind. I therefore find that section 27(1)(b) does not apply to this email. The handwritten notes do not indicate who created them and the Public Body has not provided any evidence to establish authorship of the notes. However, having reviewed the contents of the notes, the only logical conclusion that I can draw from them is that they are the notes of the lawyer for Alberta Justice and that these notes form the groundwork of the email of Friday, November 24, 2000 at 8:49 AM, which I have already found to be subject to section 27(1)(b). I therefore find that the handwritten notes are also subject to section 27(1)(b), as they were created in order to provide legal services to the Public Body.

[para 86] Records 000068 and 000069 contain two emails. The first email is dated Tuesday, April 10, 2001 9:48 AM and was created by a lawyer from Alberta Justice. The contents of this email indicate that it was prepared for the purpose of providing legal services to the Public Body. I therefore find that this email is subject to section 27(1)(b). The second email, dated April 03, 2001 at 11:20 AM was not created by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services and does not contain information of this kind. I therefore find that section 27(1)(b) does not apply to this email.

[para 87] Records 000070 and 000071 are duplicates of records 000028 and 000029. They contain four emails. The first email, dated Friday, November 24, 2000 at 8:49 AM, was created by a lawyer for Alberta Justice for the purposes of providing legal services. I therefore find that section 27(1)(b) applies to this email. The second email, dated November 22, 2000, at 3:14 PM, was not created by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services. I therefore find that section 27(1)(b) does not apply to this email. The third email, dated Wednesday, November 22, 2000 at 3:13 PM was created by a lawyer for Alberta Justice for the purpose of providing legal services, in this case, determining when the legal services were to be provided. I therefore find that section 27(1)(b) applies to this email. The fourth email, dated Wednesday, November 22, 2000 at 3:02 PM, was not created by a person listed in

subclauses 27(1)(b)(i – iii) for the purposes of providing legal services and does not contain information of this kind. I therefore find that section 27(1)(b) does not apply to this email.

[para 88] Records 000081 and 000082 and records 000107 and 000108 are copies of the same memorandum. The memorandum was created by a lawyer for Alberta Justice for the Public Body. The contents of the memorandum indicate that it was prepared for the purpose of providing legal services to the Public Body. I therefore find that these records are subject to section 27(1)(b).

[para 89] Records 000195 and 000196 are the notes of an employee of the Public Body. The Public Body withheld two notes from these records under section 27(1)(b). These notes contain reference to the name of a lawyer of Alberta Justice, but do not contain information prepared by the lawyer for Alberta Justice. I find that these notes were not created by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services and do not contain information of this kind. I therefore find that section 27(1)(b) does not apply to these notes.

[para 90] Record 000344 contains an email created by an employee of the Public Body. I find that this email was not created by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services and does not contain information of this kind. I therefore find that section 27(1)(b) does not apply to this email.

[para 91] Record 000360 contains four email messages, two of which the Public body withheld under section 27(1)(b). The email dated Thursday, June 05, 2003 at 10:31 AM was created by a lawyer for Alberta Justice. Its content indicates that the email was prepared for the purpose of providing legal services to the Public Body. I therefore find that this email is subject to section 27(1)(b). The email dated Thursday, June 05, 2003 at 9:25 AM was not created by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services and does not contain information of this nature. I therefore find that section 27(1)(b) does not apply to this email.

[para 92] Record 000707 contain the notes of an employee. These notes document discussions with employees of the Public Body and reference a lawyer for Alberta Justice. These notes were not created by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services. Further, in relation to the references to the lawyer for Alberta Justice, the notes do not refer to information *prepared* by the lawyer in relation to a matter involving the provision of legal services or contain information of this nature. I find that record 000707 does not contain information subject to section 27(1)(b).

[para 93] Record 001047 is an email created by a lawyer for Alberta Justice. The contents of the email indicate that it was prepared by the lawyer for the purpose of providing legal services to the Public Body. I therefore find that the information in this record is subject to section 27(1)(b).

[para 94] Record 001048 contains an email created by an employee of the Public Body. The Public Body withheld portions of this email under section 27(1)(b). The withheld portions refer to the name of a lawyer and to a Crown prosecutor generally; however, the withheld portions do not contain information prepared by a lawyer or a Crown prosecutor for the purpose of providing legal services. Rather, it references legal services without revealing their substance. I therefore find that section 27(1)(b) does not apply to the information withheld by the Public Body from this record.

[para 95] Record 00115 contains portions of three emails. The Public Body withheld an email dated Monday, October 27, 2003 at 8:44 AM under section 27(1)(b). The email withheld was not created or prepared by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services and does not contain information of this kind. I therefore find that section 27(1)(b) does not apply to this email.

[para 96] Records 001117 and 001118 contain four emails. The Public Body withheld an email dated Monday, October 27, 2003 under section 27(1)(b). The email withheld was not created or prepared by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services and does not contain information of this kind. I therefore find that section 27(1)(b) does not apply to this email.

[para 97] Records 001121 and 001122 contain five emails. The Public Body applied section 27(1)(b) to an email dated October 27, 2003 at 8:44 AM. The email withheld was not created or prepared by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services and does not contain information of this kind. I therefore find that section 27(1)(b) does not apply to this email.

[para 98] Record 001312 is a memorandum created by an employee of the Public Body. The Public Body withheld a sentence from the memorandum under section 27(1)(b). The sentence withheld was not created or prepared by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services and does not contain information prepared for this purpose. I therefore find that section 27(1)(b) does not apply to this email.

[para 99] Records 001352 and 001353 contain two emails. The Public Body withheld both emails under section 27(1)(b). These records are duplicates of records 000068 and 000069. The first email is dated Tuesday, April 10, 2001 9:48 AM and was created by a lawyer from Alberta Justice. The contents of this email indicate that it was prepared for the purpose of providing legal services to the Public Body. I therefore find that this email is subject to section 27(1)(b). The second email, dated April 03, 2001 at 11:20 AM was not created by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of providing legal services, nor does it contain information of this kind. I therefore find that section 27(1)(b) does not apply to this email.

[para 100] Record 1359 contains an email that also appears on records 000026 and 000027. The Public Body withheld this email under section 27(1)(b). The email was not created or prepared by a person listed in subclauses 27(1)(b)(i – iii) for the purposes of

providing legal services and does not contain information of this kind. I therefore find that section 27(1)(b) does not apply to this email.

[para 101] Records 001544, 001545, 002925, 002926, 002927, are duplicates of records 000017 and 000018. Records 000017, 000018 were prepared by a lawyer of Alberta Justice. Their contents indicate that these records were prepared for the purpose of providing legal advice to the lawyer's client. I found that these records were prepared in relation to a matter involving the provision of legal services and meet the requirements of section 27(1)(b) and it follows that the same holds true for records 001544, 001545, 002925, 002926, and 002927.

[para 102] For the reasons above, I find that the Public Body correctly applied section 27(1)(b) to records 000017, 00018, 000020, 000021, the email dated April 10, 2001 9:48 AM on records 000026 – 000027, the email dated Friday, November 24, 2000 at 8:49 AM on records 000028 – 000029 and on records 000070 and 000071, the email dated Wednesday, November 22, 2000 at 3:13 PM on records 000028 – 000029 and 000030, the notes appearing on record 000030, the email dated Tuesday, April 10, 2001 at 9:48 AM on records 000068 – 000069 and 001352 – 001353, the memorandum appearing on records 000081, 000082, 000107, 000108, 001544, 001545, 002925, 002926, 002927, the email dated Thursday, June 05, 2003 at 10:31 AM on record 000360, and record 001047. I find that section 27(1)(b) does not apply to the remainder of the information to which the Public Body applied this provision. However, as the Public Body has asserted privilege in relation to this information, I will order it to determine whether section 27(1)(a) applies to this information, and to communicate this decision in a response to the Applicant for the purposes of sections 10 and 12 of the FOIP Act.

Exercise of Discretion

[para 103] As noted above, Public Body argues that it exercised its discretion to withhold information by considering the following:

> After careful consideration, the Head of the Public Body exercised the discretion afforded him in refusing to disclose records exempted by section 4(1)(l)(ii), excepted by section 17, excepted by section 24(1), maintaining legal privilege as contemplated by section 27(1) and in determining that certain records were not responsive to the Applicant's request.

While maintaining legal privilege is a purpose of section 27(1)(a), and I find that the Public Body properly exercised its discretion in relation to this provision, section 27(1)(b) does not require information to be subject to legal privilege. However, from its arguments, I understand that the Public Body applied section 27(1)(b) to withhold information in order to protect the confidentiality of legal services it received from Alberta Justice. I therefore find that this was an appropriate application of its discretion in relation to section 27(1)(b).

Issue F: Did the Public Body properly identify and withhold records as unresponsive to the access request?

[para 104] As noted above, the Applicants requested records meeting the following criteria:

> We request copies of complete records relating to the Applicants in your control or custody which may or may not have resulted in charges being laid against any or all of the Applicants, and specifically:
>
> (a) all interviews, notes of interviews, audio or visual recordings of interviews or transcriptions of interviews, the subject matter of which were the Applicants, or any of them;
> (b) all information and documents received from any former employee, employee, affiliate, consultant, contractor, or agent of the Applicants or any of them;
> (c) all correspondence between any governmental department, agency or board and the Applicants, or any of them, including email correspondence;
> (d) all correspondence between any governmental department, agency or board and any employee or agent of the Applicants, or any of them, including email correspondence;
> (e) all correspondence between any governmental department, agency or board, including email correspondence,
> (f) all documents collected or relied upon in respect of an investigation relating to the Applicants;
> (g) copies of any policies or protocols relevant to the investigation, whether or not resulting in a prosecution, involving the Applicants, or any of them;
> (h) copies of any complaints, letters, notices or comments in relation to the Applicants;
> (i) all documents or records considered prior to, subsequent to, or in the course of any investigation relating to any or all of the Applicants;
> (j) all news releases, inter-departmental memos and notes relating to any or all of the Applicants; and
> (k) all records, documents, and files in the possession of, or created by or through, the Alberta Funeral Services Regulatory Board, or any employee, agent or contractor in that capacity.

[para 105] The Applicants made the following arguments:

> As a general rule, information or records will be considered responsive to an applicant's request if the information or records are reasonably related to the request: IPC Orders 97-020 and 2001-037. A public Body is obliged to address the applicant's entire request: IPC Order 98-005.
>
> On March 31, 2009, the Public Body purported to reconsider and release certain records that were previously deemed non-responsive. As noted above, the Applicants have serious concerns with respect to the timing of the Public Body's actions. In addition, it appears that the Public Body has only released those records previously deemed to be non-responsive that originated with or were received by the Applicants or that can be released without severing. As a result, it appears that the Public Body may still have further records that it deems to be non-responsive.
>
> The Applicants have no way to determine whether the records excluded by the Public Body as non-responsive are unrelated to the Applicant's request; however, the Applicants have reason to believe that some of the records may be reasonably related to the request. As a result, the Applicants request that the Commissioner review those records to determine whether they should have been disclosed.

[para 106] While the Applicants state that they have reason to believe that the records withheld as unresponsive, are in fact responsive, the Applicants did not explain what this reason was. However, I interpret the Applicants' argument to be that the access request is broad, and that the Public Body has not provided adequate reasons for explaining why

records it initially identified as relating to the access request do not relate to the access request.

[para 107] The Public Body provided the following explanation of its decision to withhold records on the basis that they are not addressed by the Applicants' access request:

> The Public Body submits that it is apparent from the search conducted by the Public Body that the Public Body cast a wide net in determining responsiveness. In Edmonton, the Public Body found records pertaining to the Applicants to be non-responsive if they pertained only to general corporate matters and not the investigations. For example, the Public Body determined that corporate searches, documents dealing with amalgamations and cemetery expansions, and general licensing issues to be non-responsive. For the Calgary records, the Public Body determined that records such as reference letters for certain employees of the Applicants that had no relevance to the investigations or charges were non-responsive.

[para 108] The Public Body did not explain why it believes records pertaining to general corporate matters and corporate searches did not fall within the parameters of the Applicants' access request, given that the Applicants did not restrict their request in this way. In addition, it did not explain why reference letters for certain employees were outside the parameters of the access request. It may be that the records withheld as unresponsive do not have anything to do with decisions to lay charges or not to lay charges, and may not meet any of the requirements of (a) – (k) of the access request; however, the evidence as to whether they do or do not is in the possession of the Public Body and the Public Body has not provided this evidence for the inquiry. I cannot conclude that records are unresponsive unless there is evidence to satisfy me that the information in question does not relate to the Applicants or some of the Applicants and does not relate to charges either being laid or not being laid against the Applicants or some of the Applicants.

[para 109] While the Applicants invite me to make a decision as to whether information withheld as unresponsive is responsive, there is insufficient evidence for me to make this determination. I say this because I simply do not know on what basis the Public Body made its decisions to lay and not lay charges against the Applicants, which, as noted above, is the information requested by the Applicants.

[para 110] In Order F2007-029, the Commissioner explained the requirements of an open, accurate and complete response. He said:

> Section 10 establishes the quality of a response required by the Act, while section 11 establishes the timing of the response, and section 12 establishes the formal content requirements of a response. A failure to comply with section 10 does not necessarily mean that a Public Body has contravened sections 11 or 12. However, if a Public Body fails to meet the requirements of section 12, the response will, in most cases, fail to meet the requirements of completeness, openness and accuracy under section 10.
>
> Consequently, to meet the duty to assist an Applicant, a Public Body must inform the Applicant of all records in its custody or under its control that are responsive to the request, whether access will be granted to those records and when access will be given. If the Public Body intends to sever information from records, it must notify the Applicant not only of the provision of the Act

> on which it relies, but also the reasons for refusal, the name of a contact person, and notice of the right to request review. Further, this response must be full, complete, and accurate.

In this case, the Public Body has not explained why it believes that the Applicants have not requested the information it has withheld as unresponsive. I will therefore order the Public Body to respond to the Applicants and make a decision as to whether the records it has withheld fall within the parameters of the access request. As part of the duty to respond openly, accurately, and completely, the response should contain reasons as to why the Public Body does not believe the Applicants have requested the information. If the Public Body decides that information is unresponsive, then the Applicants may make an access request for that information under section 7 of the Act if they so choose. If the Public Body decides that information is responsive, it must decide whether to give access to the information to the Applicants or withhold it if an exception to disclosure applies. It must also communicate these decisions in accordance with sections 10 and 12 of the FOIP Act.

V. ORDER

[para 111] I make this Order under section 72 of the Act.

[para 112] I confirm that record 1551 is not subject to the FOIP Act by virtue of section 4(1)(l)(ii).

[para 113] I confirm the decision of the head of the Public Body to withhold personal information under section 17(1) of the FOIP Act.

[para 114] I confirm that section 24(1)(a) applies to the information in records 2780 – 81 and 2883 – 2884; however, I require the Public Body to provide its reasons for doing so in a new response to the Applicants in accordance with section 12 of the FOIP Act.

[para 115] I confirm the decision of the head of the Public Body to withhold information from records 001470, 001471, 001472, and 00147 under section 27(1)(a).

[para 116] I confirm the decision of the head of the Public Body to withhold the following information from records 000017, 00018, 000020, 000021, the email dated April 10, 2001 9:48 AM on records 000026 – 000027, the email dated Friday, November 24, 2000 at 8:49 AM on records 000028 – 000029 and on records 000070 and 000071, the email dated Wednesday, November 22, 2000 at 3:13 PM on records 000028 – 000029 and 000030, the notes appearing on record 000030, the email dated Tuesday, April 10, 2001 at 9:48 AM on records 000068 – 000069 and 001352 – 001353, the memorandum appearing on records 000081, 000082, 000107, 000108, 001544, 001545, 002925, 002926, 002927, the email dated Thursday, June 05, 2003 at 10:31 AM on record 000360, and record 001047 under section 27(1)(b).

[para 117] I require the Public Body to meet its duties under sections 10 and 12 of the Act to the Applicants in relation to the following records, which I have found do not contain information subject to section 27(1)(b) by making a new response that includes

its decision regarding the application of section 27(1)(a): the information on record 000019 it withheld under section 27(1)(b), the email dated April 03, 2001 at 11:20 AM on records 000026 – 000027, the email dated November 22, 2000 at 3:14 PM on records 000028 and 000029, the email dated Wednesday, November 22, 2000 at 3:02 PM on records 000028 and 000029, the email dated November 22, 2000 at 3:14 PM on record 000030, the email dated Wednesday, November 22, 2000 at 3:02 PM on record 000030, the email dated April 03, 2001 at 11:20 AM on records 000068 – 000069, the email dated November 22, 2000 at 3:14 PM on records 000070 – 000071, the email dated Wednesday, November 22, 2000 at 3:02 PM on records 000070 – 000071, notes on records 0001895 and 000196, an email on record 000344, the email dated Thursday, June 05, 2003 at 9:25 AM on records 000360, the notes on record 000707, the email on record 001048, the email dated Monday, October 27, 2003 at 8:44 AM on record 00115, the email dated Monday, October 27, 2003 on records 001117 – 001118, the email dated October 27, 2003 at 8:44 AM on records 001121 – 001122, the sentence it withheld from the memorandum on record 001312, the email dated April 03, 2001 at 11:20 AM on records 001352 – 001353, and the email on record 1359.

[para 118] I order the Public Body to make a response to the Applicants in accordance with its duty under section 10 that explains why the Public Body does not believe that the Applicants requested the information it has withheld as "unresponsive". If the Public Body alternatively decides that the information is responsive, the Public Body must include its decisions in relation to that information for the purposes of section 12 of the FOIP Act.

[para 119] I further order the head of the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that the Public Body has complied with the Order.

_____
Teresa Cunningham
Adjudicator