

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2009-033

March 31, 2010

**REGION 3 CALGARY AND AREA CHILD AND FAMILY
SERVICES AUTHORITY**

Case File Number F3796

Office URL: www.oipc.ab.ca

Summary: Pursuant to the *Freedom of Information and Protection of Privacy Act* (“the Act”), the Applicant requested, on his own behalf and on behalf of his minor children, records held by the Public Body bearing his name and the names of any of his children.

The Public Body determined that the Applicant was a guardian of his minor children, and therefore able to make an access request on their behalf pursuant to section 84(1)(e) of the Act. The Public Body provided responsive records to the Applicant but severed third parties’ personal information from the records pursuant to section 17 of the Act. It noted that interviews between the minor children and caseworkers employed by the Public Body were severed because the release of this information to the Applicant would be an unreasonable invasion of the minor children’s privacy. The Public Body also severed information pursuant to section 27(1) of the Act (privileged information), claiming that identifying information of a person making a report under section 4 of the *Child, Youth and Family Enhancement Act* (“CYFEA”) is privileged information pursuant to section 126.1 of the *CYFEA*.

The Adjudicator accepted that the Public Body’s determination that disclosing the minor children’s personal information found in the interviews with the caseworkers would be an unreasonable invasion of the children’s privacy. As a result, the Adjudicator treated the

information from these interviews as third party personal information even though the Applicant was making an access request on behalf of the minor children.

The Adjudicator found that the Public Body improperly severed information that was not personal information. It also improperly severed information that was personal information but the disclosure of the information was not an unreasonable invasion of the third party's personal privacy.

Further, the Adjudicator found that the Public Body properly severed third parties' personal information pursuant to section 17, including the information from the interviews between the minor children and caseworkers employed by the Public Body.

Finally, the Adjudicator found that the Public Body properly applied section 27 of the Act to the people who made a report to the Public Body under section 4 of the *CYFEA*, with one exception. In that single case, the information was not privileged.

The Adjudicator ordered the Public Body to disclose the information she found was severed contrary to the Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 1(h), 6(1), 6(2), 17, 27, 71, 72, 84(1)(e) ; *Child, Youth and Family Enhancement Act* R.S.A. 2000, c. C-12, ss. 4, 126.1

Authorities Cited: AB: Orders F2000-019, F2006-006, F2008-009, F2008-016.

I. BACKGROUND

[para 1] On May 16, 2006 the Applicant wrote to the FOIP Coordinator responsible for Region 3 Calgary and Area Child and Family Services Authority ("the Public Body") and requested, "...all documentation, whether it [sic] by letter, e-mail, phone, phone log(s), correspondence, associated correspondence, files bearing my name, or the names of my children from Children's Services..." He requested this information from August 1, 2003 to June 1, 2006. The Applicant's letter was received by the Public Body on May 19, 2006.

[para 2] The Applicant's children were minors at the time of the request. The Public Body obtained a copy of a joint interim custody order from the Applicant, to confirm that the Applicant was a guardian of the minor children, prior to releasing any information to the Applicant.

[para 3] By way of letter dated July 24, 2006, the Public Body responded to the Applicant's request. It enclosed 339 pages of information, some of which had been severed pursuant the Act. Specifically, the Public Body cited section 17 (third party personal information), section 27 (privileged information) and section 84(1)(e) (unreasonable invasion of a minor's personal privacy) as the basis for severing the information.

[para 4] On August 15, 2006, the Applicant picked up the severed records. After reviewing the records, the Applicant contacted the Public Body's FOIP Coordinator to discuss concerns he had with the records including missing information and inaccurate information. The Public Body responded to the Applicant's concerns by way of letter dated August 21, 2006.

[para 5] In a letter dated August 16, 2006, the Applicant requested that the Office of the Information and Privacy Commissioner ("this office") review the Public Body's response to his access request. The Applicant also complained of the collection and disclosure of his personal information by another public body. Those complaints were the subject of Orders F2008-029 and F2008-030, issued earlier.

[para 6] Mediation was authorized but was unsuccessful in resolving this matter. On November 30, 2006, the Applicant requested that an inquiry be held by this office.

[para 7] I received written submissions from the Public Body but I did not receive any submissions from the Applicant. *In camera*, the Public Body also provided me with a complete copy of the records at issue for my review.

II. RECORDS AT ISSUE

[para 8] At issue are the severed and withheld portions of 339 pages of the Public Body's records relating to the Applicant and his four minor children.

III. ISSUES

[para 9] The Notice of Inquiry dated November 19, 2008 lists the issues in this matter as follows:

- A. Is/Are the records/information responsive to the Applicant's access request?
- B. Does section 17 of the Act (third party personal information) apply to the records/information?
- C. Did the Public Body properly apply section 27(1) of the Act (privileged information) to the records/information?

[para 10] The Notice of Inquiry states that I may raise any further issues during the inquiry that I deem appropriate. As the Public Body cited section 84(1)(e) of the Act as a reason for withholding information from the Applicant, I will also comment on the Public Body's application of that section.

IV. DISCUSSION OF ISSUES

Is/Are the records/information responsive to the Applicant's access request?

[para 11] I have reviewed all of the records provided by the Public Body in response to the Applicant's request. All of the records are responsive to the Applicant's broad request of May 16, 2006. On review of the submissions of the Public Body, no information was withheld or severed on the basis that the record or information was not responsive.

[para 12] Therefore the only issues left to determine is if information in the records was severed in accordance with the Act.

Did the Public Body Properly Apply Section 84(1)(e) of the Act?

[para 13] The Applicant applied for access to his own records held by the Public Body and also for the records of his minor children. The Applicant's authority to apply for access to information on behalf of his minor children derives from section 84(1)(e) of the Act, which states:

84(1) Any right or power conferred on an individual by this Act may be exercised

...

(e) if the individual is a minor, by a guardian of the minor in circumstances where, in the opinion of the head of the public body concerned, the exercise of the right or power by the guardian would not constitute an unreasonable invasion of the personal privacy of the minor... .

[para 14] Prior to releasing any information to the Applicant, the Public Body asked the Applicant to prove that he was a guardian of the minor children. The Applicant provided the Public Body with a copy of an interim joint custody order that was in effect at the time of the request. After determining that the Applicant was a guardian of the minor children, the Public Body reviewed the records and severed personal information of the minor children pursuant to section 17 on the basis that it was an unreasonable invasion of the minor children's personal privacy. Specifically, the Public Body stated, "The information relating to your children's interviews with the caseworker was also severed under [section 17]. The information collected during the interviews was done so in confidence. To release this information to you (a guardian) would constitute an unreasonable invasion of the children's personal privacy as per section 84(1)(e) of the FOIP Act."

[para 15] Based on the limited information I have regarding the Applicant's position on this issue, I gather that he feels that he should be given full access to all of the minor children's personal information.

[para 16] The Public Body states that much of the minor children's personal information was disclosed to the Applicant; however other information provided by the minor children in interviews with the Public Body's employees was severed pursuant to section 17 (which I will address below) because of section 84(1)(e). The Public Body submits that several factors were considered including, "the context the information was provided in, such as in interviews with the child, information conveyed about them by other third parties, and intertwined information."

[para 17] Section 84(1)(e) contains a limitation relative to a guardian's ability to access a minor's records and information. It allows a guardian to make a request on behalf of the minor, but requires a public body to determine if access to the minor's records or information would be an unreasonable invasion of the minor's personal privacy. Only in instances where, in the opinion of the public body, it is not an invasion of the minor child's personal privacy, may the guardian exercise the right to access this information or records on the child's behalf. On my reading of section 84(1)(e) of the Act, once a public body has determined that it is an unreasonable invasion of the minor's personal privacy, the applicant can no longer exercise the right conferred under the Act on behalf of the minor.

[para 18] The right the Applicant attempted to exercise on behalf of the minor children was their right, under section 6(1) of the Act, to access their own personal information held by the Public Body. The records requested contain information of minor children who became involved with the Public Body after reports indicated that the minor children may be in need of intervention as defined by the *Child, Youth and Family Enhancement Act* ("CYFEA"). In Order F2006-006, an applicant had made a request for records containing both his and his minor son's information. The Adjudicator in that matter stated:

Section 84 refers to "any" and "the" right (i.e., in the singular), and section 6(2) of the Act grants a right of access to "a" record (i.e., in the singular), so I do not believe that a guardian's right of access to information under section 84(1)(e) is "all or nothing." The ability of a guardian to exercise a right of access on behalf of a minor may be determined on a record-by-record basis.

(Order F2006-006 at para 100)

[para 19] Applying this reasoning, it is proper for the Public Body to determine if the disclosure of the minor children's personal information in each individual record to the guardian would be an unreasonable invasion of the minor children's personal privacy. If the Public Body determines that it would be, then the minor children are treated as third parties and their information is subject to section 17 of the Act.

[para 20] The Public Body determined that it would be an unreasonable invasion of the minor children's personal privacy to allow the Applicant access to information created during interviews with the minor children conducted by caseworkers employed by the Public Body. Given the nature of the information in these records, I find the Public Body's determination in this regard was reasonable. Therefore, by operation of section

84(1)(e) of the Act, the minor children's information consisting of notes of interviews with caseworkers is subject to section 17 of the Act.

Does Section 17 of the Act Apply to the Records/Information?

1. Was the information severed personal information?

[para 21] Implicit in any analysis of section 17 of the Act is the fact that information severed pursuant to section 17 must be personal information. Section 1(n) of the Act defines personal information as follows:

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

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

(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;

[para 22] Much of the information severed by the Public Body fits squarely into sections 1(n)(i), (iii), (vi), (vii), (viii) and (ix). There was also information that was severed that is not in the enumerated list in section 1(n) of the Act but is nonetheless personal information. This information consists of contextual information that identifies an individual, personal activities and statements conveying emotion (Similar information was held to be personal information in Order F2006-006, at para 73).

[para 23] However, the Public Body also severed information that is not personal information. Specifically, this includes contact information for public bodies and organizations and other information which is not information about an identifiable individual. As this information was not personal information, it was not properly severed by the Public Body.

[para 24] I find that there is information that is not personal information on pages 0004, 0006, 0008, 0010, 0012, 0017, 0021, 0047, 0049, 0050, 0051, 0089, 0103, 0104, 0105, 0107, 0108, 0109, 0110, 0136, 0138, 0140, 0142, 0144, 0149, 0153, 0187, 0194, 0217, 0219, 0221, 0223, 0225, 0230, 0234, 0279, 0285, 0302, 0304, 0306, 0310, 0315 and 0319.

2. Would disclosure of the third party personal information be an unreasonable invasion of the third party's personal privacy?

[para 25] Section 17(4) of the Act sets out situations where disclosure of third party personal information is presumed to be an unreasonable invasion of the third party's personal privacy. The presumptions relied on by the Public Body are as follows:

17(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

(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,

...

(d) the personal information relates to employment or educational history,

...

(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,

(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,

... .

[para 26] In addition to section 17(4) of the Act, the Public Body must also take into consideration factors raised in section 17(5) of the Act when deciding if it will disclose a third party's personal information. Section 17(5) states:

17(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 27] The Public Body also states in its submission that, "...the sensitive nature of the personal information that was provided should be considered primary, and [the Public Body] has accordingly severed the information." The sensitivity of information is not listed as a factor to consider; however, section 17(5) of the Act is not an exhaustive list. I believe that the sensitive and confidential nature of information is an appropriate factor for the Public Body to consider. (Order F2006-006 at para 106)

i. Information about the Applicant's spouse and relatives:

[para 28] Personal information regarding the Applicant's spouse and adult relatives of the Applicant's spouse ("adult relatives") is found throughout the records. The majority of third party information severed was that of the Applicant's spouse. There is no indication that she or any of the adult relatives consented to disclosure of their personal information. So, the Public Body must look at these third parties' personal information, in context, to determine if it should disclose or sever the information in the records.

[para 29] Neither the Applicant's spouse nor the adult relatives were named as affected parties, so I do not have the benefit of knowing their position on the possible disclosure of their personal information. That being said, with a few exceptions which I will explain below, I find that the Public Body properly severed these third parties' personal information. As I do not intend to order disclosure of this personal information, except in very limited instances where their personal privacy was not unreasonably invaded, I did not regard it as necessary to hear from these third parties in order to make my determination.

[para 30] Given that the Applicant and his spouse were not estranged when they first came into contact with the Public Body, there are records in the Public Body's file that treat them jointly, as parents of the minor children. Examples of this are agreements in which they were both parties, interviews in which both were present and assessment reports concerning their ability to parent appropriately. Although the Applicant's spouse's name and signature and an interviewer's opinion about her are her personal information, I do not think that disclosing it would be an unreasonable invasion of the Applicant's spouse's personal privacy as she and the Applicant were acting and being treated jointly as parents of the minor children (A similar conclusion was reached in relation to similar information in Order F2006-006 at para 87). I order that this information, found on pages 0030, 0031, 0032, 0033, 0073, 0079, 0080, 0081, 0082, 0093, 0094, 0106, 0113, 0160, 0161, 0162, 0163, 0171, 0177, 0178, 0179, 0180, 0195, 0196, 0241, 0242, 0243, 0244, 0252, 0258, 0259, 0260, 0261, 0280 and 0281 be disclosed.

[para 31] On the other hand, the records contain personal information of the Applicant's spouse that was provided to the Public Body following her separation from the Applicant. The records indicate that the separation was followed by a serious custody dispute. Under these circumstances, unlike those in Order F2006-006 (at para 83-84), I find that it was appropriate for the Public Body to sever the Applicant's spouse's basic personal information to which a presumption under section 17(4) of the Act applies. I do not think that the presumptions under section 17(4) of the Act are outweighed by section 17(5) considerations in this regard.

[para 32] As well, I find that it was appropriate, given the nature of the records, for the Public Body to sever the personal information of the adult relatives. This information fits within the terms of section 17(4)(a) and section 17(4)(g) of the Act, and therefore it is subject to a presumption that releasing it would be an unreasonable invasion of the

personal privacy of these persons. I do not find that this presumption is outweighed by section 17(5) considerations with respect to this information.

[para 33] There is also a significant amount of personal information of the Applicant's spouse and of the adult relatives that was provided by the Applicant himself. From his complaint letter and dealings with the Public Body following his access request, I gather that the Applicant feels that this information should be disclosed to him. Section 1(n)(viii) of the Act defines personal information of an individual as including others' opinions about the individual. The Applicant's opinions about his spouse and the adult relatives are not his personal information; they are the personal information of these third parties, and the Public Body was correct in severing it from the records.

[para 34] The Applicant also provided information to the Public Body that is not necessarily an opinion about his spouse or the adult relatives, but is information regarding the medical history and criminal history of these third parties, which the Applicant claims is factual.

[para 35] The fact that this information was provided by the Applicant himself is a factor to be considered in support of disclosure under section 17(5)(i) of the Act. However, this must be weighed against other factors, including the reliability and accuracy of the information (section 17(5)(g) of the Act) and the sensitivity of the information. That the Applicant already knows this personal information, is not necessarily a relevant factor (Order F2006-006 at para 91). Weighing these factors, I find that the Public Body properly severed from the records the information regarding the third parties that the Applicant originally supplied.

[para 36] There are also records which consist of statements and other documents relating to an incident which occurred in the United States. All of this information was withheld. I find that all of the statements and other records from the various authorities in the United States are law enforcement records as defined by section 1(h) of the Act. Therefore the third party information contained within the records is part of an identifiable law enforcement record, and, according to section 17(4)(b) of the Act, the disclosure of this information is presumed to be an unreasonable invasion of a third party's personal privacy. I find no factors under section 17(5) of the Act that outweigh this presumption.

[para 37] The personal information in the law enforcement records is so intertwined with the non-personal information, that I find it is not possible to sever the personal information so as to enable disclosure of the remaining records, as contemplated by section 6(2) of the Act. Thus I find that the Public Body properly withheld these records in their totality.

ii. Information about the Applicant

[para 38] The Public Body also severed the Applicant's personal information pursuant to section 17 of the Act. For instance, there are opinions given by third parties about the

Applicant that were severed. While the opinions about the Applicant are his personal information pursuant to section 1(n)(viii), the identity of the third party giving the opinion is that person's personal information. (Order F2006-006 at para 115)

[para 39] In this matter, the opinions about the Applicant are intertwined with contextual information that, if disclosed, would identify the third party who gave the opinion. In instances where the opinion about the Applicant is so intertwined with this type of contextual information, the Public Body must decide whether to provide all of the information to the Applicant, including the information that would reveal the identity of the third party, or withhold all of the information, including the Applicant's personal information. (Order 2000-019 at para 76) Here, the Public Body chose to withhold all of the information.

[para 40] Given the context of the opinions, I find that disclosing the opinion, even with the third party's personal information severed, would reveal the identity of the third party who gave the opinion, as well as information regarding the third party's emotional state. In this matter, disclosing the identity of the third party giving the opinion would be an unreasonable invasion of the third party's personal privacy, due to the sensitive and confidential nature of the information (which was provided in the context of custody disputes and matters dealing with child protection services). (Order F2006-006 at para 117). Therefore, I find that the Public Body was correct in severing this information.

[para 41] On the other hand, the Public Body also severed the Applicant's personal information that would not identify a third party's personal information if disclosed. This information, found on pages 0017, 0021, 0023, 0116, 0117, 0125, 0153, 0155, 0206, 0230, 0234, 0236, 0267, 0268, 0290, 0291, 0292, 0315, 0319 and 0321 was not properly severed and I find that it should be disclosed to the Applicant.

iii. Information about the Applicant's minor children

[para 42] In addition to the Applicant's spouse's personal information, the records also contain personal information regarding the minor children. As I explained above, these minor children are to be treated as third parties in situations in which the disclosure of their personal information to the Applicant would be an unreasonable invasion of their personal privacy. The Public Body found that this would be the case if the minor children's interviews with caseworkers were disclosed to the Applicant. Therefore, insofar as their interviews with caseworkers are concerned, I will treat the minor children as third parties.

[para 43] The Public Body severed all information relating to the interviews with the minor children by the caseworkers. In includes even general information such as their names, addresses and the people living with them. This is not confidential or sensitive information. I find that disclosing this information would not be an unreasonable invasion of the minor children's personal privacy, and that this information on pages 0089, 0091, 0128, 0187, 0209, 0271, 0294, 0329 and 0335 should be disclosed.

[para 44] The interviews also contained the minor children's opinions and their version of events, which may or may not be accurate. I find that this is the minor children's personal information, that was supplied in confidence, and that this gives rise to a presumption under section 17(4)(g) of the Act that disclosure of this information would be an unreasonable invasion of the minor children's personal privacy. Given the importance of making sure that in situations where the Public Body needs to intervene, children are able to communicate with caseworkers confidentially, I find that there are no factors in section 17(5) of the Act that outweigh the presumption in section 17(4)(g).

[para 45] Although notes of the interviews contain some information that is not personal information of a third party, and some information that is personal information but disclosure of the information would not be an invasion of the third party's personal privacy, this information is so intertwined in with the minor children's personal information that the children's information could not be severed as contemplated by section 6(2) of the Act. I find that severing all of the information from the minor children's interviews, except for general information which can be easily and properly disclosed, was appropriate.

[para 46] As well, the Public Body severed the minor children's personal information that was not part of the interviews. With the exception of the information in the interviews, the Applicant's request should be treated as a request by the minor children for their own personal information, pursuant to section 84(1)(e) of the Act. Therefore, this is not a third party's personal information, and should not have been severed by the Public Body. I order the Public Body to disclose this information found on pages 0004, 0006, 0008, 0010, 0012, 0023, 0024, 0077, 0086, 0087, 0123, 0126, 0138, 0140, 0142, 0144, 0155, 0156, 0175, 0184, 0185, 0203, 0204, 0205, 0207, 0217, 0219, 0221, 0223, 0225, 0231, 0236, 0237, 0256, 0265, 0266, 0267, 0269, 0289, 0292, 0302, 0304, 0306, 0310, 0321, 0322, 0326, 0327 and 0333 to the Applicant.

iv. Other third party information:

[para 47] In addition to personal information of the Applicant's spouse, minor children and adult relatives, the records contain personal information of other third parties, including those that were contacted as part of the Public Body's investigation following a report that the children may be in need of intervention. Given the nature of the investigation, and the fact that it is important to encourage people contacted by the Public Body for information regarding the child in need of intervention to be open and honest, it was appropriate to sever the personal information of these individuals where it fits within the terms of section 17(4) of the Act. It is important that these third parties be able to share their views with the Public Body in confidence. (Order F2006-006 at para 93)

[para 48] I find that where the Public Body contacted third parties as a part of its investigation, the personal information falls under section 17(4)(g) of the Act, as their names are accompanied by other personal information such as their occupations. I find that there are no factors under section 17(5) of the Act that outweigh the presumption that arises under section 17(4).

[para 49] However the Public Body also severed names, business addresses and phone numbers of individuals acting in their representative or official capacity with organizations, who are not public bodies. Also, these individuals were not contacted by the Public Body to assist in its investigation. Previous orders issued from this office have found that the disclosure of this information is not an unreasonable invasion of the personal privacy of such third parties. (Order F2008-009 at para 89; Order F2008-016 at para 93) I also find that disclosure of the names, business addresses and phone numbers of employees found on pages 0021, 0073, 0103, 0112, 0153, 0171, 0194, 0234, 0279 and 0319 of the responsive records would not be an unreasonable invasion of their personal privacy, and will order that the Public Body disclose this information to the Applicant.

Did the Public Body properly apply section 27(1) of the Act to the Records/Information?

[para 50] Section 27 of the Act states:

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

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

...

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

... .

[para 51] The Public Body severed some information in the responsive records pursuant to section 27 of the Act. It submits that legal privilege attaches to persons who make a report under section 4 of the CYFEA which states:

4(1) Any person who has reasonable and probable grounds to believe that a child is in need of intervention shall forthwith report the matter to a director.

....

[para 52] Section 126.1 of the CYFEA states:

126.1(1) Despite section 126(1), the name of a person who makes a report to the director under section 4 or 5 and information that would identify that person is privileged information of the person making the report and is not admissible in evidence in any action or proceeding before any court or an Appeal Panel or before any inquiry without the consent of the person.

...

(3) *If there is a conflict or inconsistency between subsection (1) and the Freedom of Information and Protection of Privacy Act, subsection (1) prevails.*

[para 53] As I will explain below, I find that it is appropriate to disclose some of the information severed by the Public Body pursuant to section 27 of the Act. To provide full reasons to the Public Body for my decision, it is necessary to reveal to it the identity of one of the persons that made a report under section 4 of the *CYFEA*. Therefore, in order to provide my rationale for ordering disclosure to the Public Body, while protecting the identity of the reporter, I will make only general comments regarding section 27 of the Act below. I will only provide an addendum to this Order with my detailed reasons for ordering disclosure of the reporter's identity to the Public Body. In the event that the Public Body applies to have the Court judicially review my findings regarding section 27 of the Act, I will provide a copy of the addendum to the Court.

[para 54] Order F2006-006 states that a report made prior to the enactment of the *CYFEA* is still a report under section 4 of the *CYFEA* (Order F2006-006 at para 31). Therefore, there is no issue that some of the reports in the records were done under the predecessor legislation, the *Child Welfare Act*. Order F2006-006 also states that section 4 of the *CYFEA* deals only with the initial reports of a child in need of intervention and not the subsequent investigation. Therefore, the information that was severed pursuant to section 27 of the Act is only the information that would identify the name of the person who made a report under section 4 of the *CYFEA*.

[para 55] I note that pursuant to section 126.1(1) of the *CYFEA*, the legal privilege that attaches to identifying information of the reporter under section 4 is that person's privilege. It is not the privilege of the Public Body.

[para 56] Also of note, the *CYFEA* speaks of the privilege attaching to a "person" who made the report, rather than to an "individual". Therefore, where the "person" making the report is acting in the course of his or her employment with an organization (and therefore on behalf of the organization), privilege also attaches to the information that would identify the organization (Order F2006-006 at paras 58 to 61).

[para 57] Based on these reasons and those in the addendum to this Order, I find that the Public Body properly applied section 27 of the Act to the information identifying persons who were reporters within the terms of section 4 of the *CYFEA*, where those persons were a public body or were acting on behalf of a public body, however, I find that the Public Body incorrectly applied section 27 of the Act to some of the identifying information and find that the severed information on pages 0017, 0018, 0019, 0022, 0024, 0126, 0149, 0150, 0151, 0154, 0155, 0156, 0205, 0206, 0207, 0230, 0231, 0232, 0235, 0237, 0267, 0269, 0290, 0291, 0292, 0315, 0316, 0317, 0320, 0322, 0332 and 0333 should be disclosed to the Applicant, subject to any information that ought to be severed under section 17.

V. ORDER

[para 58] I make this Order under section 72 of the Act.

[para 59] For clarity as to what information I have ordered disclosed, I will provide a copy of the responsive records to the Public Body only, in which I will identify the information, originally severed by the Public Body, that I find is to be disclosed. I will also keep a copy of these pages on file in this office. Should this matter be judicially reviewed, I will provide a copy of these pages to the Court, as an addendum to this Order.

[para 60] Except as ordered below, I find that the Public Body properly severed or withheld information in the responsive records from the Applicant pursuant to sections 17 and 27 of the Act.

[para 61] I find that the Public Body improperly severed the information on pages 0004, 0006, 0008, 0010, 0012, 0017, 0021, 0023, 0024, 0030, 0031, 0032, 0033, 0047, 0049, 0050, 0051, 0073, 0077, 0079, 0080, 0081, 0082, 0086, 0087, 0089, 0091, 0093, 0094, 0103, 0104, 0105, 0106, 0107, 0108, 0109, 0110, 0111, 0112, 0113, 0116, 0117, 0123, 0125, 0126, 0128, 0136, 0138, 0140, 0142, 0144, 0149, 0153, 0155, 0156, 0160, 0161, 0162, 0163, 0171, 0175, 0177, 0178, 0179, 0180, 0184, 0185, 0187, 0194, 0195, 0196, 0203, 0204, 0205, 0206, 0207, 0209, 0217, 0219, 0221, 0223, 0225, 0230, 0234, 0236, 0237, 0241, 0242, 0243, 0244, 0252, 0256, 0258, 0259, 0260, 0261, 0265, 0266, 0267, 0268, 0269, 0271, 0279, 0280, 0281, 0285, 0289, 0290, 0291, 0292, 0294, 0302, 0304, 0306, 0310, 0315, 0319, 0321, 0322, 0326, 0327, 0329, 0333 and 0335 of the responsive records pursuant to section 17 of the Act. I order the Public Body to disclose this information to the Applicant.

[para 62] I find that the Public Body improperly applied section 27 of the Act to the information on page 0017, 0018, 0019, 0022, 0024, 0126, 0149, 0150, 0151, 0154, 0155, 0156, 0205, 0206, 0207, 0230, 0231, 0232, 0235, 0237, 0267, 0269, 0290, 0291, 0292, 0315, 0316, 0317, 0320, 0322, 0332 and 0333. I order the Public Body to disclose this information to the Applicant.

[para 63] I further order the Public Body to notify me, in writing, that it has complied with the Order, within 50 days of receiving a copy of the Order.

Christina Gauk, Ph.D.
Director of Adjudication