

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2009-037

April 29, 2010

ALBERTA EMPLOYMENT AND IMMIGRATION

Case File Number F4131

Office URL: www.oipc.ab.ca

Summary: The Applicant submitted an access request to the Public Body under the *Freedom of Information and Protection of Privacy Act* for all records relating to a Third Party's expense claims and government credit cards for a specified period. Prior to granting the Applicant partial access to the records, the Public Body sought the comments of the Third Party in respect of their proposed partial release. The Third Party objected to the proposed release, but the Public Body nonetheless decided to release the records severed to the same extent it had proposed to the Third Party. The Third Party objected and requested a review by the Commissioner, which eventually proceeded to inquiry.

At inquiry, the Commissioner decided that most of the Third Party's personal information related to government expenses that he incurred in his work capacity and that the government satisfied, is to be released, subject to limited severing of personal information such as credit card numbers and expiry dates, bank card numbers, dates of birth, driver's licence information and telephone numbers. As well, the Commissioner decided that, with minor exceptions, the Third Party's personal information related to expenses that were ultimately satisfied privately by or on behalf of the Third Party is to be severed in accordance with previous Orders of this office, and that receipts for such expenses are to be withheld in their entirety. The Commissioner also decided that expenses of a personal nature that were ultimately satisfied by the government are to be treated as though they were government expenses satisfied by the government, and that where it remains unclear as to who satisfied an expense of a personal nature, same is to be treated as an expense that was privately satisfied.

The Commissioner identified specific records of concern and directed the Public Body to review all of the records, with particular attention to those listed in the Order, to ensure that personal information is only released to the Applicant in accordance with his Order. Further, the Commissioner attached an Appendix to the copy of his Order forwarded to the Public Body's FOIP Coordinator only, addressing other minor issues on specific records that the Commissioner is not at liberty to reveal to the Applicant or publicly.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 2, 17, 25, 71, 72.

Orders Cited: AB: Orders 97-002, 99-023, F2007-013, F2008-014, F2008-015, F2008-028.

Court Cases Cited: *University of Alberta v. Pylypiuk*, 2002 ABQB 22.

I. BACKGROUND

[para 1] On January 23, 2007, the Applicant newspaper, by one of its staff writers, requested records from a predecessor of Alberta Employment and Immigration (without distinction, the "Public Body") under the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act" or the "Act"). Specifically, the Applicant requested "[a]ll records, as defined by section 1(q) of [the Act], related to the expense claims and government credit card records of [a third party]" for the period March 2001 to the date of the request (the "Access Request"). The third party (the "Third Party") is a former executive assistant to a former Minister.

[para 2] On February 1, 2007, the Public Body confirmed its understanding of the requested records as being the following categories of records related to the Third Party for the period March 2001 to that date:

- Expense claims and supporting documents,
- Government Credit card statements and supporting documents, and
- Records that support the reimbursement of personal expenses made on items purchased with government credit cards.

[para 3] The Public Body twice extended the time within which to respond to the Access Request and also communicated with the Applicant in respect of fees associated with the Access Request. Neither the time extensions nor fees are at issue in this inquiry.

[para 4] On April 27, 2007 the Public Body wrote to the Third Party to advise him of the Access Request and to seek his position and comments in relation to same. To that correspondence the Public Body attached a copy of the records it had identified as responsive to the Access Request, on which the Public Body had identified the information it proposed to redact prior to granting access to the Applicant.

[para 5] The Third Party, by his legal counsel, responded to the Public Body's letter on May 18, 2007. He objected to disclosure of his personal information in the responsive records as being an unreasonable invasion of his personal privacy under section 17 of the Act. After considering the Third Party's position, the Public Body decided to sever the responsive records in accordance with the attachment to the Third Party's notice of April 27, 2007 prior to disclosing them to the Applicant.

[para 6] The Third Party requested that I review the Public Body's decision to partially disclose records responsive to the Access Request. I authorized mediation but it was unsuccessful and the matter was set down for a written inquiry.

[para 7] Neither the Applicant nor the Third Party provided any submissions or adduced any evidence in this inquiry.

[para 8] In response to the Notice of Inquiry issued in this inquiry, the Public Body submitted an exchangeable written initial submission as well as an *in camera* copy of the records at issue on which information that the Public Body proposed to withhold was highlighted. I note that, in its submission, the Public Body argues that section 17 of the Act applies to the personal information of the Third Party that it has severed and proposed to withhold from the Applicant; its comments as to the inapplicability of section 17 to the Third Party's personal information that it proposes to release, which is the issue in this inquiry, are limited.

II. RECORDS AT ISSUE

[para 9] The Public Body submitted three volumes of records at issue (the "Records" or the "Records at issue"), comprised of 858 pages, to me *in camera*. On the Records, the Public Body identified information that it proposes to sever from the Records before disclosing them to the Applicant.

[para 10] The Records consist of photocopies of various documents, including but not limited to: receipts; invoices; credit card receipts and statements; credit card transaction spreadsheets; personal cheques and money orders; tables; accounting and other notes and notations; hard copies of email messages; other correspondence; registration, order and applications forms; meeting/seminar itineraries; travel itineraries; private club chits and statements; calendar entries; government cheques; "cash blotter" forms; expense and learning account claim forms; car rental agreements; and bank currency exchange memos.

III. ISSUES

[para 11] The Notice of Inquiry sets out one issue in this inquiry:

Issue A: Does section 17 of the Act (third party personal information) apply to the records/information?

[para 12] I note that the Public Body withheld portions of the Records at issue under sections 17 and 25 of the Act including, respectively, what appears to be personal information of the Third Party and other individuals and credit card numbers, credit limits and credit card expiration dates. The Third Party did not request a review of that severing and, accordingly, it is not at issue in this inquiry and I will not consider or decide whether portions of the Records are properly withheld under those provisions or otherwise.

IV. DISCUSSION OF ISSUES

Issue A: Does section 17 of the Act (third party personal information) apply to the records/information?

[para 13] To reiterate, in this inquiry I am reviewing the decision of the Public Body to give partial access to Records in response to the Access Request. The information at issue is the personal information of the Third Party that the Public Body proposes to *disclose* to the Applicant; it is not the personal or other information that the Public Body proposes to *withhold* from the Applicant. It follows, then, that the Public Body is to review the Records at issue again and apply the terms of this Order only to such of the Third Party's personal information that it previously proposed to release to the Applicant; my findings herein are not to be applied to information, including personal information of any person, that the Public Body has already redacted from the Records based on considerations not argued before me.

Burden of Proof

[para 14] The burden of proof in this inquiry is governed by section 71 of the Act. That provision states, in part:

71(3) If the inquiry relates to a decision to give an applicant access to all or part of a record containing information about a third party,

(a) in the case of personal information, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy, ...

....

[para 15] The burden of proof to be applied in a section 17 analysis was considered by the Court in *University of Alberta v. Pylypiuk*, 2002 ABQB 22 ("*Pylypiuk*"). First, in considering the interplay between sections 17(4) and 17(5) (previously sections 16(4) and 16(5), and referred to as such by the Court), the Court stated:

[42] 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 a [*sic*] 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).

[43] 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).

Later, at paragraph 61 of that decision, the Court found that because the third parties had *prima facie* established a relevant circumstance to be considered under subsection (5), the burden of proof shifted to the applicant to rebut that circumstance. The Court stated: “This is consistent with s. 67(2) [now section 71(2)] which imposes the burden of proof on the Applicant to establish that disclosure is not an unreasonable invasion of a third party’s personal privacy.”

[para 16] This inquiry relates to the Public Body’s decision to release personal information of the Third Party, as opposed to its decision to withhold it (which was the issue in *Pylypiuk*). Section 71(3)(a) of the Act provides that the Applicant must prove on a balance of probabilities that disclosure of the Third Party’s personal information would not be an unreasonable invasion of his personal privacy. The burden of proof under section 71(3)(a) is on the Applicant, just as it is under section 71(2). Therefore, drawing upon the Court’s comments in paragraphs 38 to 43 and 61 of the *Pylypiuk* decision, I find that, in this inquiry, first I am to determine whether the Public Body has established, on a *prima facie* basis, that section 17 does not apply to the personal information it proposes to disclose; if I find that it has done so, then the issue is decided. However, if after considering section 17 it appears that the factors in section 17(5) weigh in favour of withholding the personal information, then in accordance with section 71(3)(a), the burden shifts to the Applicant to prove that disclosure of the personal information it seeks in the Records would not be an unreasonable invasion of the Third Party’s personal privacy.

[para 17] To reiterate, the Applicant has provided no submission in this inquiry. However, one of the purposes of the FOIP Act is “to provide for independent reviews of decisions made by public bodies under this Act...” [section 2(e)], and it is necessary to review the Records because section 17 is a mandatory (“must”) provision, requiring that personal information not be disclosed if disclosure would be an unreasonable invasion of personal privacy. I find that I may, and that I have enough evidence based on the Records themselves to, make some determinations on the proposed release of the Third Party’s personal information.

Does section 17 of the Act (third party personal information) apply to the records/information?

[para 18] Section 17(1) of the Act reads:

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.

[para 19] Because section 17 is mandatory, if it applies, the Public Body must refuse to disclose the personal information. There are two criteria under section 17:

- (a) the information must be “personal information” of a third party, and
- (b) the disclosure of the personal information must be an unreasonable invasion of the third party's personal privacy.

Is the information “personal information” of the Third Party?

[para 20] Personal information is defined in section 1(n) of the Act, which reads:

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;*

The provision provides that personal information “includes” the enumerated categories of information; personal information is not limited to such categories, however.

[para 21] Only personal information of the Third Party, which the Public Body proposed to release to the Applicant in response to the Access Request, is at issue in this inquiry. The information of the Third Party that appears in the Records includes but is not limited to: name; date of birth; driver's licence number; bank card number; position/title; business address, phone number and email address; signature; user ID and password; personal cheque and banking information; credit card transaction information related to expenses satisfied by the Government of Alberta; and credit card transaction information related to (personal) expenses of the Third Party not ultimately satisfied by the Government of Alberta.

[para 22] I considered some similar information in Orders F2008-014 and F2008-015. In Order F2008-014, in which the records at issue included credit card statements, photocopies of cheques and correspondence, I found the following to be personal information of a third party whose government credit card personal expense records had been requested: name, dates on which the third party used the government credit card for personal expenses, the vendor names, the locations, the amounts of the purchases and the transaction identifiers. In Order F2008-015, in which the records at issue included copies of credit card statements, I found the following to be personal information of a third party whose government credit card personal expense records had been requested: name, dates on which the third party used the government credit card for personal purposes, the amount of each such purchase and information related to the vendor names, locations and other transaction identifiers.

[para 23] Upon review of the Records at issue, I find that all of the pieces of information listed in paragraph 21 above come within the statutory definition of personal information of the Third Party for the purposes of this inquiry. Further, I find that scattered throughout the Records at issue is other miscellaneous personal information of the Third Party.

[para 24] The Records at issue also contain what appears to be information about other individuals who may or may not be identifiable on the face of the Records. Such information, then, may or may not be personal information of those individuals as defined in section 1(n) of the Act. That said, in this case specifically given the context in which such information was recorded in the Records at issue—namely, as part of the Third Party's expenses incurred on his government credit card or documentation submitted to the government by the Third Party in support of such expenses or in repayment of personal expenses or alternatively, in respect of some of the later Records at issue, as part of his expense claims submitted for reimbursement in part or in their entirety by the government—I find that such information is personal information of the Third Party. By this, I mean that, for example, a telephone number or address of another identifiable individual (that is, not the Third Party) is clearly that individual's personal information; however, where that telephone number or address is recorded in these Records and is responsive to this Access Request by virtue of the fact that the Third Party called that telephone number or travelled to or from that address and then submitted that telephone number or address on documentation related to his expense claim or government credit card, the fact that the Third Party phoned that telephone number or

travelled to that address is the Third Party's personal information. That said, I emphasize that my finding that such information of, potentially, other individuals is also personal information of the Third Party is limited to the specific circumstances of this genre of access request and this nature of records.

Would the disclosure of the Third Party's personal information be an unreasonable invasion of his personal privacy?

[para 25] Section 17(2) of the FOIP Act lists the instances in which disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. It states, in part:

17(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

...

(e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council,

(f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body,

....

[para 26] Section 17(4) of the Act sets out scenarios in which an unreasonable invasion of personal privacy is presumed. It reads, in part:

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

...

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

...

(e.1) the personal information consists of an individual's bank account information or credit card information,

(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 27] Sections 17(1) and 17(4) must be read in conjunction with section 17(5), which provides, in part:

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,*

...

- (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...*

....

[para 28] The Third Party provided no submissions in this inquiry; however, in May of 2007 he objected in writing to the disclosure proposed by the Public Body in response to the Applicant's Access Request. At that time, he argued that, although none of the circumstances in either of sections 17(2) and 17(4) apply, sections 17(5)(e), 17(5)(f) and 17(5)(h) outweigh any element of public scrutiny under section 17(5)(a) and that, accordingly, disclosure of his personal information would constitute an unreasonable invasion of his privacy. The Public Body rejected the Third Party's arguments in respect of his personal information that it proposes to release to the Applicant.

[para 29] Although its initial submission is almost entirely focussed on defending the proposed severing of the Records at issue, the Public Body makes a few comments that apply to the information it proposes to disclose to the Applicant. The Public Body contends that the severed information is personal information, but is silent as to whether

or not the information it proposes to disclose is personal information. After quoting section 17(1) of the Act, the Public Body states:

The Public Body submits that the Third Party's name and all information on the "amounts" charged to the Third Party's credit card, including the dates of those transactions, should be disclosed to the Applicant. The Public Body submits that the names of all Government of Alberta Employees that are clearly acting in their professional capacity be released to the Applicant. The Public Body submits that vendor information should be disclosed for all government transactions but should not be disclosed for personal expenses where the money was repaid by the Third Party. The Public Body submits that by releasing all information relating to the "amounts" charged to the Third Party's government credit card that it has met public scrutiny. The Public Body submits that disclosing the personal information of the Third Party such as the vendor or the nature of a personal purchase would not enhance public scrutiny and would be an unreasonable invasion of the Third Party's personal privacy. The Public Body accepts the Third Party's concern that the Third Party will be exposed unfairly to financial or other harm. The Public Body submits that the receipts for personal expenses contain detailed information that if disclosed would be an unreasonable invasion of personal privacy.

The Public Body indicates in its initial submission that the subject-matter and Records at issue are similar, and in some cases identical, as between this inquiry and Order F2008-015. Although Order F2008-015 had not been released at the time the Public Body was processing this access request, the Public Body submits that its determinations as to redaction and disclosure of personal information in response to this Access Request are in accordance with my "reasoning and decisions" in that Order. The Public Body concludes by submitting "that it has met public scrutiny by disclosing the amounts of all credit card and expense claim transactions while still protecting the personal privacy of the Third Party by refusing to disclose all particulars of the personal expenses" and "that it has met the balance of providing a right of access to Records while still protecting personal privacy".

Government Expenses Charged by the Third Party and Satisfied by the Government

[para 30] In Order F2007-013, I found that the presumption of unreasonable invasion of personal privacy under sections 17(4)(g)(i) and (ii) of the FOIP Act was overcome under section 17(5) because the personal information in question was that of individuals who were acting in their capacity as public officials; as such, I held that the release of their personal information was not an unreasonable invasion of their personal privacy. I adopt the same reasoning and conclusion in respect of the bulk of the Third Party's personal information at issue in this inquiry insofar as that personal information relates to work-related expenses that the government satisfied.

[para 31] Moreover, I find that section 17(5)(a) is a relevant circumstance that weighs heavily in favour of disclosure of the Third Party's personal information in relation to his expenses satisfied by the government. In this respect, I adopt (without repeating) my findings in Orders F2008-014 and F2008-015 notwithstanding that both of those Orders addressed personal expense records of a third party generated while he was

using a government credit card; I find that the arguments in support of the application of section 17(5)(a) are equally if not more compelling in respect of government expenses. Specifically, I find that the three criteria set out by the former Commissioner in Order 97-002 are fulfilled, in that: (i) other people beyond the Applicant, including the Auditor General and the government itself (which now engages in some proactive disclosure in respect of expense accounts) have decided the public scrutiny of government expenses is necessary; (ii) disclosure will speak to concerns about not only the Third Party's credit card use, but also accounting and approval processes in respect thereof; and (iii) my understanding is that, although there may have been some level of disclosure in respect of the Third Party's use of his government credit card for personal expenses, such disclosure did not approach the extent contemplated in response to this Access Request and did not encompass government expenses as opposed to personal expenses. Further, I find that public scrutiny of the use of public funds in this case has, at the very least, a public accountability component as required by Justice Gallant's decision in *Pylypiuk*. Section 17(5)(a) weighs heavily in favour of disclosure of this category of the Third Party's personal information, and is not outweighed by other circumstances raised by the Third Party in opposition to disclosure or any others including, most fundamentally, his refusal of consent to disclosure.

[para 32] Accordingly, subject to my findings below in respect of specific categories of personal information, based on a consideration of the Records themselves, I find that disclosure of the Third Party's personal information implicated in his work-related expenses that the government satisfied would not be an unreasonable invasion of his personal privacy and I intend to order that such Third Party personal information be released to the Applicant.

[para 33] Notwithstanding the foregoing and for the reasons set out below, I find that the following pieces of information should not be disclosed to the Applicant even where they appear in the context of work-related expenses that the government satisfied: credit card numbers and expiry dates, bank card numbers, dates of birth, driver's licence information and telephone numbers. I find that the Applicant has not met its burden under section 71(3)(a) in respect of these types of personal information and I cannot find that their disclosure is authorized based on my consideration of the Records alone.

Credit card number and expiry date, bank card number

[para 34] Although nearly every appearance of the card number and expiry date of the government credit card issued in the Third Party's name has been severed under section 25 of the FOIP Act ("Disclosure harmful to economic and other interests of a public body"), in cases when it was not, I find that release is presumed to be an unreasonable invasion of the Third Party's personal privacy under section 17(4)(e.1) and that such presumption is not rebutted by any other relevant circumstances under section 17(5). Accordingly, I direct the Public Body to review the Records at issue again, including but not necessarily limited to Records 0065, 0138 (receipt on the bottom, left-hand side), 0173, 0208 (receipt on the top, right-hand side), 0211 (receipt on the bottom, right-hand side), 0223 (top receipt), 0454, 0469 (bottom receipt), 0519 (receipt on the

top, right-hand side), 0602 (both bottom receipts), 0654, 0679 (middle receipt on top), 0735 (receipt on the left-hand side), 0765 (receipt on the bottom, left-hand side) and 0790, to ensure that all such personal information is severed from the Records prior to their release.

[para 35] Where the Third Party's bank card number has been recorded on a Record because he used his bank card to make a direct payment (Interac) purchase, I find that its release is presumed to be an unreasonable invasion of the Third Party's personal privacy under section 17(4)(e.1) and that such presumption is not rebutted by any other relevant circumstances under section 17(5). I therefore order that the Third Party's bank card number is not to be released to the Applicant in any instance.

Date of birth, drivers' licence numbers and expiry dates, issuing province

[para 36] There are some instances in Records relating to vehicle rentals when the Public Body has not proposed to sever what appears to be sensitive personal information. For example, on Record 0244, the Third Party's driver's licence number, the province that issued his licence and his licence expiry date (year presumably mistyped) have not been severed; also on Record 0244, an additional third party driver's name along with his/her driver's licence number, the province that issued his/her licence and his/her licence expiry date have not been severed. As well, on Record 0263, the Third Party's driver's licence number, his licence expiry date, the province that issued his licence and his date of birth have not been severed; each of these appear one line below where indicated on the pre-printed form. I find that disclosure of this personal information is presumed to be an unreasonable invasion of personal privacy under section 17(4)(g) and, further, that its disclosure could unfairly expose the Third Party and other drivers to a risk of identity theft, thereby engaging section 17(5)(e). I order the Public Body to review the Records at issue again, including but not limited to Records 0244 and 0263, to ensure that all such personal information is severed from the Records prior to release.

Telephone numbers (and, conversely, addresses)

[para 37] The Public Body proposes to release a significant number of telephone numbers scattered throughout the Records, but it has also severed many telephone numbers from the Records. The proposed severing is inconsistent in respect of very many of the telephone numbers: often the Public Body proposes to release a particular phone number on one or more of the Records at issue and to withhold the same phone number on one or more other Records. Given my finding at paragraph 24 above that the fact that the Third Party phoned or otherwise utilized and recorded the telephone number and submitted it on documentation related to his expense claim or government credit card renders such use and recording of it the personal information of the Third Party, I have considered its proposed release in the context of this inquiry.

[para 38] I am cognizant that the "third party" for the purposes of the section 17 analysis in this inquiry is the Third Party himself. I also concede that some of the telephone numbers appear likely to be business phone numbers for government

employees or Ministers, past or present, which I would normally be inclined to order released (Orders F2007-013 and F2008-014). However, because telephone numbers belonging to other, possibly identifiable, individuals are the personal information of those individuals in addition to being the personal information of the Third Party in the context before me, as discussed above, I deem it incumbent upon me to consider the potential impact on those individuals as a relevant circumstance under section 17(5). Specifically, I find that the following circumstances are plausible and would support my finding that the proposed disclosure of telephone numbers appearing in the Records at issue would be an unreasonable invasion of personal privacy: the risk of harassment of these individuals, or others to whom the telephone numbers—whether personal or business—have been reassigned [section 17(5)(e) – “other harm”]; where personal telephone numbers were called by the Third Party and recorded in the Records at issue, the individuals to whom those numbers belong would not have intended that, by virtue of their personal relationship with the Third Party, their personal telephone numbers would be collected by the Public Body and disclosed in response to the Access Request [related to but not encompassed by section 17(5)(f)]; the telephone numbers may no longer “belong” to the same individuals [section 17(5)(g)]; and, rightly or wrongly, the individual’s reputations may be unfairly damaged by virtue of having been implicated with the Third Party [section 17(5)(h)]. Considering these factors combined with the fact that, in a great number of cases, I cannot identify from the numbers themselves or the names with which they are associated on the Records whether they are business or personal, I find that telephone numbers in the Records at issue may be of a private nature (Order 99-023) and, given my uncertainty, I find that the burden of proof has not been met in respect of them and that section 17 applies to them (Order F2008-028). Accordingly, I direct that none of the telephone numbers appearing in the Records at issue are to be released to the Applicant. The exception to my decision that no telephone numbers are to be disclosed to the Applicant is that business vendors’ phone numbers pre-printed on receipts or invoices that the Third Party submitted in support of his credit card charges that the government satisfied are not personal information; as such, section 17 does not apply to them. Because the Public Body has proposed to disclose very many telephone numbers in the Records, I will not point out each such telephone number but rather issue a general order to the Public Body to re-review each of the Records and sever each telephone number not fitting within the exception.

[para 39] The Records at issue contain a significant number of addresses and location coordinates that appear in various contexts, but predominantly on receipts for taxi fares that were charged to the Third Party’s government credit card and were satisfied by the government, whether or not the travel appears to have been related to his employment. I find that, without more, location coordinates, meaning typically a street and avenue without the specific building number, are not personal information as defined in section 1(n) of the Act and, as such, section 17 does not apply to them. As per my finding at paragraph 24 above, I find that the fact that the Third Party travelled to or from, or otherwise utilized, and recorded the address and submitted it on documentation related to his expense claim or government credit card renders such use and recording of it the personal information of the Third Party; however, I find that addresses merit different treatment than phone numbers under section 17. Although the finding is most

clear where the address appears as a pick-up or drop-off location in the context of the Third Party's cab fares paid by the Public Body, I find that section 17(5)(a) applies as discussed above. In addition, another relevant circumstance in support of their disclosure is the fact that, unlike telephone numbers (and email addresses, for instance) that tend to be tied to a person in the long-term and are not typically determined by physical location, addresses are permanently associated with a geographical location regardless of who or what occupies that location at any particular point in time. This also weighs in favour of their disclosure not being an unreasonable invasion of those individuals' or the Third Party's personal privacy. Having made this finding, the burden of proof on the Applicant under section 17 does not apply in respect of addresses recorded on the Records.

[para 40] The exception to my decision that all addresses that the Public Body has proposed to disclose are to be disclosed, is any instance where the address in question is linked to an identifiable individual on the face of the Record itself and it is not clear both that such address is a work or business address and that such identifiable individual was acting in a work capacity; I find that the burden has not been met for such addresses and, if the Public Body proposes to disclose any such addresses, I hereby order it not to do so.

Expenses Satisfied Privately by or on behalf of the Third Party

[para 41] In Orders F2008-014 and F2008-015 I addressed, in part, personal information of a third party related to that third party's personal expenses incurred on his government-issued credit card. In those Orders, I found that the third party's personal information included his name and his credit card transaction information insofar as they related to his personal expenses, including the date, vendor, location, amount of purchase and transaction identifiers. In those Orders, I found that sections 17(4)(d) and (f) did not apply, that section 17(4)(e.1) applied to the credit card information, and that section 17(4)(g) applied. Further, I found that, of all of the circumstances listed in section 17(5), only paragraph (a) applied, and only in respect of the third party's name and the dates and amounts of the personal expense transactions. I found there to be insufficient evidence to substantiate the applicability of sections 17(5)(e) and (h), and I found sections 17(5)(f) and (g) to not apply. I also found that the third party's refusal to consent to disclosure of his personal information in response to the access request was another relevant circumstance weighing against disclosure.

[para 42] Ultimately, in Orders F2008-014 and F2008-015, I ordered the public body to disclose the third party's name, the dates on which he used the credit card for personal purposes and the dollar amounts of such personal purchases; I ordered the public body not to disclose the names and locations of the vendors from which the personal purchases were made and the other transaction identifiers in respect of such purchases. I also found that information such as template headings, template information commonly found on credit card statements, date stamps and fax headers and footers were not the third party's personal information.

[para 43] Subject to my findings herein in respect of specific pieces of personal information, I adopt and endorse the reasoning and findings from Orders F2008-014 and

F2008-015 in respect of the Third Party's personal information relating to the expenses which he, or someone on his behalf, ultimately satisfied; I order the Public Body to release to the Applicant Records, or portions thereof, relating to the Third Party's personal expenses after ensuring that its proposed release of the Third Party's personal information thereon is in accordance with those Orders. In particular, but without limiting the scope of review of the proposed severing, I note that the Public Body has failed to sever very many of the vendor locations (i.e. city names) of reimbursed expenses on several Records, and I hereby order it to do so prior to release of the Records to the Applicant; in this regard, the Records to which I refer include, but are not necessarily limited to, Records 0423-0425, 0449-0450, 0463-0464, 0487-0489, 0510-0511, 0524-0525, 0541-0542, 0579-0582, 0613-0614, 0615-0618, 0812, 0813-0814, 0815-0816 and 0817-0818. It also appears to me that the 31st expense listed on Record 0613 and the expense listed on line number 92 of Record 0656 were likely personal expenses that were reimbursed and, if so, I order that they and any related Records/entries be properly severed as such in accordance with this Order.

[para 44] One minor exception to the foregoing must be made in respect of personal, reimbursed expenses incurred by the Third Party while travelling for work and appearing on itemized hotel folios. The government satisfied these hotel charges in full, with the exception of these personal expenses, which the Third Party either satisfied directly at the time (that is, the Third Party paid the hotel for them directly) or he or someone on his behalf reimbursed the government after-the-fact. Notwithstanding that previous Orders have found that vendor names and locations where personal expenses satisfied by or for a third party are not to be disclosed, on these Records the vendor names and locations are common both to the personal expenses satisfied by or for the Third Party and to the work-related expenses satisfied by the government. In weighing the competing interests between protection of the Third Party's personal privacy in respect of his personal expenses (in which context the vendor names and locations would not be disclosed) and my preceding findings applicable to government expenses satisfied by the government (in which context the vendor names and locations would be disclosed), I find that the considerations in support of disclosure of the latter outweigh those in support of severing the former. This means that, when the Third Party incurred personal expenses that are itemized in hotel folios or similar Records, the vendor (i.e. hotel) names and locations where those personal expenses were incurred are to be released notwithstanding that those discrete personal expenses were satisfied by or on behalf of the Third Party.

[para 45] Further, in particular, I note that a hand-written notation on Record 0289 of the Records indicates that a cash payment was made to cover the cost of several items. I direct the Public Body to review that Record and ensure that all descriptions of items for which the Third Party paid cash are severed from the Record before it is released to the Applicant.

[para 46] Insofar as the Records in this inquiry include receipts for personal, reimbursed expenses submitted by the Third Party in support of his credit card statements, the Public Body submits that their disclosure would be an unreasonable invasion of the Third Party's personal privacy. I find that the Applicant has not met its

burden of proof in respect of the Third Party's personal expense receipts and, as such, I order the Public Body to ensure that all of the Third Party's personal expense receipts are severed in their entirety from the Records prior to release to the Applicant. For example, although I am not entirely certain, it appears to me that a charge recorded on Record 0504 (receipt on the bottom, left-hand side) and perhaps (although less clearly) on Record 0531 (receipt on top, left-hand side) may have been repaid by the Third Party and, if so, those receipts should be severed in their entirety prior to release of those Records to the Applicant.

"Personal" Expenses Never Satisfied Privately by or on behalf of the Third Party

[para 47] My review of the Records at issue has left me uncertain, in some instances, as to whether or not certain of the Third Party's expenses identified as personal in nature were, in fact, satisfied by the government—a distinction that is critical to the proper application of my findings set out above. I am confused by the manner in which repayments in either direction (that is, reimbursement by the Third Party where he charged a personal expense on his government credit card or reimbursement of the Third Party where he personally paid an expense and then sought reimbursement from the government) were sometimes made, tracked and applied, and it seems possible that, ultimately, some of the Third Party's personal expenses may not have been satisfied on his behalf in full. I note that the Public Body implies as much when it draws a distinction in its submission as between repaid personal expenses and those that were not repaid, stating: "...The Public Body submits that vendor information should be disclosed for all government transactions but should not be disclosed for personal expenses *where the money was repaid by the Third Party...*" (emphasis added).

[para 48] Notwithstanding my findings set out above in respect of the Third Party's personal information related to his personal expenses that he, or someone on his behalf, evidently satisfied, I order that disclosure of the Third Party's personal information in the context of his personal expenses that clearly were not satisfied by or for him is to be governed by my findings and directions above in respect of legitimate government expenses charged by the Third Party and satisfied by the government. I find that public scrutiny in respect of them is highly desirable under section 17(5)(a) (based on my preceding discussion in respect of that provision). Accordingly, disclosure in respect of them is authorized under the FOIP Act. However, I order that the Third Party's personal expenses in respect of which reimbursement is unclear be treated as personal expenses satisfied by or for him as per above. Again, this is subject to my findings and directions in respect of specific pieces of personal information within each of those categories.

Non-Responsive Record(s)

[para 49] Finally, I note that the Public Body erroneously identified as a Record at issue in this inquiry at least one document, and possibly two documents, that I find is or are not, in fact, responsive to the Access Request. Record 0835 is a Learning Account Claim Form; as such, it is not properly characterized as a record "related to the expense claims and government credit card records" of the Third Party to which the Applicant

requested access. Further, I am unable to determine whether Record 0828 relates to the learning account claim documented in Record 0835; if so, I find that Record 0828 is also non-responsive to the Access Request. Accordingly, I order the Public Body not to release Record 0835 to the Applicant in response to the Access Request and to review Record 0828 again in order to determine whether or not it is responsive to the Access Request.

V. ORDER

[para 50] I make this Order under section 72 of the FOIP Act. Again, its application is expressly limited to the personal information of the Third Party contained in the Records that the Public Body did not redact previously but, rather, proposes to release to the Applicant in response to the Access Request.

[para 51] I find that the information that the Public Body proposes to release to the Applicant includes personal information of the Third Party.

[para 52] I find that release of the Third Party's personal information relating to expenses he charged in his capacity as a public servant that the government satisfied would not be an unreasonable invasion of the Third Party's personal privacy under section 17 of the Act, and I order the Public Body to release such personal information to the Applicant. Notwithstanding the foregoing, I order the Public Body to sever all credit card numbers, credit card expiry dates, bank card numbers, dates of birth, drivers' licence numbers, provinces that issued such drivers' licences, drivers' licence expiry dates, and telephone numbers (with the exception of pre-printed business vendor phone numbers), in accordance with my explicit directions above, prior to releasing the Records to the Applicant, because I find that the release of same would be an unreasonable invasion of personal privacy even though the personal information relates to government expenses satisfied with public funds. I find that all addresses set out in the Records may be released to the Applicant except insofar as any such address is linked to an identifiable individual on the face of a Record itself and it is not evident both that same is a work or business address and that such individual was acting in a work capacity in his/her association with that address on that Record. I order the Public Body to review all of the Records to ensure that the Third Party's personal information related to government expenses satisfied by the government, which the Public Body proposed to release to the Applicant, does not include any personal information that I have expressly directed it to sever; in particular but without limiting the scope of the Public Body's review of the Records, I direct the Public Body's attention to Records 0065, 0138, 0173, 0208, 0211, 0223, 0244, 0263, 0454, 0469, 0519, 0602, 0654, 0679, 0735, 0765 and 0790.

[para 53] I find that section 17 of the Act applies to most of the Third Party's personal information relating to personal expenses that, ultimately, were satisfied privately by or on behalf of the Third Party, and that its disclosure would be an unreasonable invasion of his personal privacy. I find that Orders F2008-014 and F2008-015 are directly applicable to this category of Records, and I order the Public Body to ensure that the Third Party's personal information relating to such expenses is

severed in accordance with those Orders prior to it releasing Records to the Applicant. Notwithstanding the foregoing, when the Third Party incurred personal expenses that are itemized in hotel folios or similar Records, I order that the vendor (i.e. hotel) names and locations where those personal expenses were incurred are to be released notwithstanding that those discrete personal expenses were satisfied by or on behalf of the Third Party. Further, I find that the release of the Third Party's personal expense receipts would be an unreasonable invasion of his personal privacy and, as such, I order the Public Body to ensure that all such personal expense receipts are severed in their entirety from the Records prior to releasing same to the Applicant. I order the Public Body to review all of the Records to ensure that the personal information related to expenses satisfied privately by or on behalf of the Third Party, which the Public Body intends to release to the Applicant, does not include any personal information that I have expressly directed it to sever; in particular but without limiting the scope of the Public Body's review of the Records, I direct the Public Body's attention to Records 0289, 0423-0425, 0449-0450, 0463-0464, 0487-0489, 0504, 0510-0511, 0524-0525, 0531, 0541-0542, 0579-0582, 0613-0614, 0615-0618, 0656, 0812, 0813-0814, 0815-0816 and 0817-0818.

[para 54] I am unable to determine on the face of the Records themselves whether certain purportedly personal expenses of the Third Party were ever, in fact, reimbursed privately by or on behalf of the Third Party. I order the Public Body to disclose the Third Party's personal information related to his expenses of a personal nature that were not satisfied by him or on his behalf in accordance with paragraph 52 of this Order, as though they were legitimate government expenses satisfied by the government. However, insofar as the Third Party's personal information relates to expenses of a personal nature and it remains unclear as to who ultimately satisfied the expense, I order the Public Body to withhold such personal information in accordance with paragraph 53 of this Order, as though such expenses were satisfied privately by or on behalf of the Third Party.

[para 55] I find that Record 0835 is not encompassed by the terms of the Access Request and therefore I order the Public Body not to release it to the Applicant in response thereto. I order the Public Body to confirm whether or not Record 0828 is related to Record 0835; if they are related then I also order the Public Body not to release Record 0828 to the Applicant as it is similarly not responsive to the Access Request.

[para 56] Attached only to the copy of this Order being forwarded to the FOIP Coordinator for the Public Body is an Appendix addressing particular Records and personal information, the express contents of which render it inappropriate for general release.

[para 57] I further order the Public Body to notify me, in writing, within 50 days of receipt of a copy of this Order that it has complied with it.

Frank Work, Q.C.
Information and Privacy Commissioner