ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2009-047

January 6, 2011

ALBERTA EMPLOYMENT AND IMMIGRATION

Case File Number F3718

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Summary: The Applicant submitted an access request to Alberta Employment and Immigration (the "Public Body") under the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act" or the "Act") for all records from a specified period documenting the engagement of a named individual as a consultant in respect of Bill 27. The Public Body identified nine pages of responsive records. The Public Body released to the Applicant two pages of those responsive records in their entirety, and released the other seven pages after removing some information as non-responsive and severing other information under sections 16, 24 and 27 of the Act. The Public Body also indicated that it was not processing additional responsive records that were already at issue in another inquiry before this Office. The Applicant requested a review of the Public Body's response to the access request, and the review proceeded to inquiry.

The Commissioner returned the review to mediation for a short period of time in order for the parties to agree on the records at issue in the inquiry. The Commissioner also added timelines under section 69(6) as an issue in the inquiry.

At inquiry, applying the Court of Appeal's most recent decision on the issue, the Commissioner found the timelines under section 69(6) to not be in issue. He decided that most but not all of the information removed from the records at issue as non-responsive to the access request was, indeed, not responsive. Information that he found was responsive he ordered the Public Body to release to the Applicant, subject to properly applying any applicable exceptions to disclosure under the Act. He found that no

information was properly severed under section 16, and he ordered all such information to be released to the Applicant. The Commissioner found that section 24 of the Act did not apply to most of the information severed under that provision, and ordered most of that information released. Finally, the Commissioner upheld nearly all of the severing of information in reliance on section 27 of the Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 12, 16, 20, 24, 25, 27, 69, 71, 72; *Personal Information Protection Act*, S.A. 2003, c. P-6.5, s. 50.

Orders Cited: AB: Orders 96-006, 96-007, 96-017, 97-020, 99-002, 2000-010, F2004-026, F2007-013, F2007-032; F2008-018; F2009-018; External Adjudication Order No. 4 (2003).

Court Cases Cited: *Solosky v. The Queen* (1979), [1980] 1 S.C.R. 821; *Blank v. Canada (Minister of the Environment)*, 2001 FCA 374, *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner)*, 2006 ABQB 515; *Business Watch International Inc. v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 10; *Alberta Teachers' Association v. Alberta (Information and Privacy Commissioner)*, 2010 ABCA 26, leave to appeal to S.C.C. granted (to be heard February 16, 2011).

I. BACKGROUND

[para 1] On May 1, 2006, the Applicant 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*, R.S.A. 2000, c. F-25 (the "FOIP Act" or the "Act"). Specifically, the Applicant requested "[a]ll records from the years 2002 and 2003 documenting the engagement of [a third party individual] as a consultant with respect to advice concerning the development of, drafting, enactment, promulgation and implementation of Bill 27 (*The Labour Relations (Regional Health Authorities Restructuring) Amendment Act*)" (the "Access Request"). The third party individual (the "Affected Party") was a lawyer at a law firm in the relevant time period.

[para 2] The Public Body responded to the Access Request by letter dated June 1, 2006. The Public Body identified nine (9) pages of records as being responsive to the Access Request (the "Responsive Records"). The Public Body fully disclosed two (2) of those pages, being pages 0005 and 0009. The Public Body partially disclosed the other seven (7) pages of Responsive Records to the Applicant after redacting portions as non-responsive to the Access Request (without identifying same to the Applicant) and severing portions of them under sections 16(1), 24(1)(b) and 27(1) of the FOIP Act; it is the Public Body's decisions as to the withholding of information on these seven (7) pages of records, stamped for identification as pages 0001, 0002, 0003, 0004, 0006, 0007 and 0008 (the "Records at Issue"), that are at issue in this inquiry. The Public Body further advised the Applicant that it did not process certain other records that were also

responsive to the Access Request, as those other records were previously processed under a separate access request submitted by the Applicant to the Public Body that was, by that time, the subject of another inquiry with this office (the "Additional Records").

[para 3] On June 5, 2006 the Applicant requested a review of the Public Body's response to the Access Request and, subsequently, the Applicant requested an inquiry. The matter was set down for a written inquiry. The Applicant and the Public Body each submitted an initial submission and a rebuttal submission. The Public Body also provided an *in camera* submission, which I accepted as such. Despite invitations to do so, the Affected Party did not provide any submissions for the inquiry.

[para 4] Upon review of the submissions, I became aware that the Applicant took issue with the Public Body's refusal to process the Additional Records, and that the Applicant wished to provide additional submissions in respect of them once they, too, were processed in response to this Access Request. To most efficiently use my office's resources, I returned this review to mediation in order to have the Applicant and the Public Body identify by agreement all of the records they considered to be at issue in this inquiry. As a result, this review returned to inquiry and was restricted to the nine (9) Responsive Records. Seven (7) of the Responsive Records were partially severed before being released to the Applicant by the Public Body in response to the Access Request.

[para 5] Having reviewed the timelines in this case and having considered comments made by the Court in that regard, I then added the application of section 69(6) of the FOIP Act as an issue in this inquiry and sought the submissions of the parties on it.

II. RECORDS AT ISSUE

[para 6] Specifically, the Responsive Records consist of two covering letters from the Affected Party to the Government of Alberta (pages 0005 and 0009), each attaching a Summary of Attached Account (pages 0004 and 0008) along with a statement of account (pages 0001 to 0003 and 0006 and 0007). Because pages 0005 and 0009 of the Responsive Records were disclosed to the Applicant in their entirety, they are not at issue in this inquiry notwithstanding that the parties identified them as being at issue. Accordingly, the Records at Issue consist of seven (7) pages: one Summary of Attached Account (page 0004) along with the attached account (pages 0001 to 0003, inclusive), both dated March 18, 2003, as well as one Summary of Attached Account (page 0008) along with the attached account (pages 0006 and 0007), both dated May 29, 2003.

[para 7] In this inquiry, I have before me two versions of the Responsive Records: one copy as redacted and provided to the Applicant in response to the Access Request and a second unredacted copy submitted to me *in camera*. On both versions, the imprecise placement of provisions of the Act cited as authority for severing made it very unclear as to what authority the Public Body actually relied upon in severing specific pieces of information. Further, although the information ultimately severed from the Responsive Records replicates the information identified as to be severed on the *in camera* unredacted Responsive Records, in some cases the statutory provisions cited to

the Applicant as authority do not mirror the provisions identified *in camera*; where that is the case, I have reviewed the authority cited to the Applicant as being the response of the Public Body to the Access Request, of which the Applicant requested a review and inquiry. These and other factors made it very challenging and time-consuming to identify and then review the decisions of the Public Body.

[para 8] Many of my findings in this order relate to specific time entries severed, in whole or in part, from the statements of account that are included in the Records at Issue. In those instances, for ease of reference and so as not to disclose any information that the Public Body withheld from the Applicant, I will assign a numerical reference to the time entry, in which the first number refers to the page on which the time entry is found, and the second number refers to what number the time entry would be if you counted the time entries on that page in order of appearance. By way of example: time entry 7-2, being the second time entry appearing on page 0007 of the Records at Issue, was fully disclosed to the Applicant with the exception of the amount of the associated fee; time entry 2-1, being the first time entry on page 0002, was partially severed prior to release to the Applicant; and time entry 3-15, being the fifteenth time entry on page 0003, was withheld from the Applicant in its entirety. Moreover, where I refer to the service description in relation to a particular time entry, I am referring to the description of services provided by the Affected Party that forms part of that time entry; for instance, the service description associated with time entry 3-6, which was fully disclosed to the Applicant, reads: "Review revised briefing document."

III. ISSUES

[para 9] The Notice of Inquiry sets out four issues in this inquiry:

1. **Did the Public Body correctly identify some information in the records as non-responsive to the request?**

2. **Does section 16(1) (business interests) of the Act apply to the records/information?**

3. **Did the Public Body properly apply section 24(1)(b) (advice) of the Act to the records/information?** In its initial submission, the Public Body claims that sections 24(1)(a) and (e) also apply to the records/information.

4. **Did the Public Body properly apply section 27(1) (privileged information) of the Act to the records/information?**

[para 10] Further, as mentioned above, I identified the application of section 69(6) to the timelines in this review as an issue in this inquiry. I will address that issue briefly below as a preliminary issue.

IV. DISCUSSION OF THE ISSUES

Preliminary Issue: Timelines under section 69(6) of the FOIP Act

[para 11] The 90-day deadline for completion of this review passed without the issuance of an extension in accordance with section 69(6) of the Act. As such, based on earlier jurisprudence, most notably the Court of Queen's Bench decision in *Business Watch International Inc. v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 10, I posed a series of questions to the parties reflecting what I understood at the time to be the legal test under section 69(6), so as to analyze whether the apparent breach of the timelines resulted in my loss of jurisdiction to complete this inquiry.

[para 12] The Applicant and the Public Body responded via a joint letter, stating that "…[they] are not raising any concerns relating to the potential loss of jurisdiction in this matter by [my] office" and that they would not provide submissions on this issue. The Affected Party did not respond.

[para 13] When the Court of Appeal subsequently released its decision in *Alberta Teachers' Association v. Alberta (Information and Privacy Commissioner)*, 2010 ABCA 26 (the "ATA Decision"), it established a new test under section 50(5) of the *Personal Information Protection Act*, S.A. 2003, c. P-6.5, which I have since applied to challenges to timelines under section 69(6) of the FOIP Act. The ATA Decision states, at paragraph 35, that a breach of the time rules gives rise to the "presumptive consequence" of "termination of the inquiry process at the time the objection is made".

[para 14] In June of 2010, the Supreme Court of Canada granted my application for leave to appeal the ATA Decision. Argument will be heard by the Supreme Court in February of 2011.

[para 15] Although the time rules may have been breached in this review, none of the parties to this inquiry have objected to such breach. Accordingly, although I earlier identified this as an issue in this inquiry, I now find that it is a non-issue and that the analysis from the ATA Decision does not apply. Accordingly, it is unnecessary for me to make any findings in this regard.

Burden of Proof

[para 16] Section 71 of the FOIP Act establishes the burden of proof in an inquiry. Section 71(1) states: "If the inquiry relates to a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part of the record." Therefore, in this inquiry, the Public Body bears the burden of proof on a balance of probabilities in respect of all severing of the Records at Issue.

Issue 1: Did the Public Body correctly identify some information in the records as non-responsive to the request?

[para 17] In Order 97-020 and again in Order 99-002, the former Commissioner interpreted "responsiveness" as anything reasonably related to an applicant's access request. In Order 97-020, he went on to explain that, in responding to an access request, the first step of the public body is to determine what records, in whole or in part, are responsive to the request. The public body then removes from responsive records any information that is non-responsive to the applicant's access request; as stated at paragraph 88 of Order 97-020, "…The removal of non-responsive information or records is not severing." Finally, the public body may apply exceptions to disclosure under the Act to sever responsive information, and, as required by section 12(1)(c)(i), must identify the provision in the Act relied upon in doing so. As well, the former Commissioner found that he had, and hence I have, jurisdiction to determine whether portions of records removed on the basis that they were not responsive are responsive or not.

[para 18] All of the submissions of the Applicant and the Public Body on the issue of non-responsiveness relate to whether or not any records in addition to the Responsive Records are, in fact, responsive to the Access Request. Such records may or may not be limited to the Additional Records referenced above. However, the Applicant's and Public Body's subsequent confirmation that only the Responsive Records are at issue in this inquiry renders all such submissions moot.

[para 19] Further, it appears that portions of the *in camera*, unredacted copies of Records 0002, 0003 and 0007 were identified as non-responsive, although in some cases the specific information identified as such is unclear due to the Public Body's imprecise placement of notations. Moreover, those potentially non-responsive excerpts were ultimately removed from the redacted version of the Responsive Records provided to the Applicant in response to the Access Request, but were not identified as non-responsive; rather, either they are not labelled at all or it is unclear as to whether they are not labelled or they are labelled as having been severed on other authority under the Act (based on the imprecise placement of authority references). I have done my best with the versions of the Responsive Records before me to ascertain what information was likely removed as non-responsive to the Access Request and to decide, in the absence of relevant submissions by the Public Body on this issue, whether, in each case, its removal is permitted by the FOIP Act.

[para 20] The reference lines on the Responsive Records indicate "General Labour Advising". It appears to me that there are five (5) categories of information that appear to have been removed from certain pages of the Records at Issue as being non-responsive to the Access Request (which relates only to Bill 27, as distinct from other matters in respect of which the Affected Party appears also to have been advising): (1) information that, on its face, is non-responsive; (2) information that appears likely to be non-responsive but in respect of which there is still some uncertainty; (3) information that appears, on its face, equally likely to be responsive or non-responsive; (4) information

that appears to be responsive, at least arguably; and (5) information that appears to relate to legal work, as opposed to technical consultation, in respect of Bill 27.

[para 21] First, there is information that is clearly non-responsive, as it *prima facie* refers to an unrelated matter. Information severed from the following time entries falls within this category: 2-12 in its entirety, 2-13 in its entirety, 2-21 in its entirety, the second portion of the service description for 7-3, 7-7 in its entirety and 7-8 in its entirety. Because these time entries specifically reference subject-matters distinct from and unrelated to Bill 27, I find that the Public Body has met its burden in respect of this information simply by virtue of the service descriptions themselves, and I intend to confirm the Public Body's removal of that information as non-responsive to the Access Request.

[para 22] Second, the name of a particular individual, who is referenced in one of the time entries I have just confirmed is not responsive to the Access Request, appears in other allegedly non-responsive time entries within the Records at Issue. Those other time entries indicate action taken by the Affected Party but not the subject-matter in relation to which such action was taken. However, nothing before me implicates the said individual in any way with Bill 27. As such, given the surrounding context on the face of the Records at Issue themselves, I find it more likely than not that this information is not responsive to the Access Request, and I intend to confirm the Public Body's removal of the following time entries as non-responsive: 2-18, 7-1, 7-5 and 7-6.

[para 23] Third, the Public Body identified as non-responsive other time entries also indicating action taken by the Affected Party but not identifying the subject-matter of such action. These particular entries all reference a particular individual (being a different person than I refer to above) with whom the Affected Party had significant contact in relation to various matters, including but clearly not limited to Bill 27. Although I am unable to determine with certainty whether or not time entries 3-1, 3-2, 3-15 and 3-16 are responsive or not, I am prepared to accept that, more likely than not, the Public Body properly identified them as non-responsive given that it released as responsive some similar time entry descriptions; based on this observation, I assume that the Public Body had some basis on which it removed or released essentially the same information in relation to different dates. Accordingly, I intend to confirm the Public Body's removal of the aforementioned time entries as being non-responsive to the Access Request.

[para 24] Fourth, there are three time entries that were removed by the Public Body as non-responsive but that, in the context of surrounding responsive information, I find to be responsive. The first such time entry is 2-3. It appears very likely to me that time entry 2-3 is, in a way, the culmination or conclusion of a subset of time entries consisting of time entries 3-16, 3-17, 2-1 and 2-2; given that the Public Body identified time entries 3-17, 2-1 and 2-2 as responsive to the Access Request, I must conclude that time entry 2-3 is similarly responsive. The second such time entry is 2-8. Given the Public Body's decision that the first portion of the service description for 2-7 is responsive, I can only conclude that time entry 2-8 is equally responsive. The third such time entry is 2-17.

Comparing its content to that of time entries 2-19 and 2-20, both of which the Public Body identified as responsive, I must similarly conclude that time entry 2-17 is equally responsive to the Access Request. Therefore, given the surrounding, related information in the Records at Issue, I find that the Public Body has not discharged its burden by proving on a balance of probabilities that time entries 2-3, 2-8 and 2-17 are not responsive to the Access Request, and I intend to order the Public Body to release time entries 2-3, 2-8 and 2-17 to the Applicant in response to the Access Request, subject to properly applying any applicable exceptions to disclosure under the Act.

[para 25] Finally, time entries 7-3 (except for the second portion of the service description, which I have addressed above) and 7-4, which the Public Body removed as non-responsive, sound to me as though they may relate to legal work, as opposed to technical consultation, in respect of Bill 27. As such, having regard to the terms of the Access Request, my initial instinct suggests to me that this information was correctly identified as non-responsive. However, in its initial submission, the Public Body refers to "[a] similar request for records" that it received on January 19, 2005, to which no responsive records were found. At my request, my Registrar of Inquiries sought clarification regarding such previous request and, in response, the Public Body advised that the text of the January 19, 2005 access request stated:

> The request is for account information. All records, from the years 2002 and 2003 documenting the engagement of any outside (non-government) legal counsel and/or law firm by the Department, the Minister, or Minister's staff, with respect to legal advice concerning the development of, drafting, enactment, promulgation and implementation of Bill 27 and the Regulations thereto. The records sought include all communications with outside counsel including but not limited to, tender documents, retainer agreements, invoices for services rendered, and receipts. Records sought also include any records showing the extent to which any advice or information received from outside counsel was shared with third parties, including but not limited to other Government Departments and/or agencies, Administrative Tribunals or Regional Health Authorities.
>
> (emphasis added)

If time entries 7-3 (but for the second portion of the service description) and 7-4 are not relating to legal advice and were not responsive to the January 19, 2005 access request, then I can think of nothing else to which they could relate other than advice provided by a consultant, which renders those entries responsive to the Access Request. I therefore find that the Public Body has not proven on a balance of probabilities that this information is not responsive to the Access Request, and I intend to order the Public Body to release time entries 7-3, exclusive of the second portion of the service description, and 7-4 to the Applicant in response to the Access Request, subject to properly applying any applicable exceptions to disclosure permitted by the FOIP Act.

Issue 2: Does section 16(1) (business interests) of the Act apply to the records/information?

[para 26] The Public Body relied on section 16(1) of the FOIP Act to sever portions of the Records at Issue. The responsive information severed under section 16(1) includes the following:

- Billing rate;
- Hours, fees, disbursements, tax amounts and other charges billed;
- Total amounts payable by the Government to the Affected Party; and
- The amounts paid by the Government to the Affected Party in satisfaction of his accounts, and the Account Codes and other unknown coding applied to such payments.

[para 27] Section 16(1) is a mandatory exception to disclosure under the Act. It states:

> ***16(1)*** *The head of a public body must refuse to disclose to an applicant information*
>
> *(a) that would reveal*
>
> *(i) trade secrets of a third party, or*
>
> *(ii) commercial, financial, labour relations, scientific or technical information of a third party,*
>
> *(b) that is supplied, explicitly or implicitly, in confidence, and*
>
> *(c) the disclosure of which could reasonably be expected to*
>
> *(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,*
>
> *(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,*
>
> *(iii) result in undue financial loss or gain to any person or organization, or*
>
> *(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.*

I note that Section 16(3) stipulates circumstances in which sections 16(1) and 16(2) do not apply. Notably, section 16(3)(a) provides that section 16(1) does not apply if the third party consents to the disclosure of the information. There is no evidence before me

that the Public Body sought the Affected Party's consent or that the Affected Party consented on his own initiative or otherwise.

[para 28] As confirmed by Order 2000-010, and cited by the Public Body, for section 16(1) [then section 15(1)] to apply to the information, the requirements of each of paragraphs (a), (b) and (c) must be satisfied; it is a three-part test.

[para 29] In its initial submission, the Public Body submits that the information withheld under section 16 is financial information of the Affected Party [section 16(1)(a)(ii)] that was supplied explicitly in confidence in that it was marked "Personal and Confidential" [section 16(1)(b)], the disclosure of which could reasonably be expected to harm significantly the competitive position or interfere significantly with the negotiating position of the Affected Party [section 16(1)(c)(i)]. The Public Body offers no elaboration, further explanation or defence of its position, or any evidence in support of it, in either its initial or rebuttal submissions.

[para 30] Although in its initial submission the Applicant concedes that some of the information withheld under section 16(1) may meet the criteria of that section, it states: "…Much of the information withheld…appears to deal with the fees being paid to [the Affected Party]. The Applicant believes that the consulting fees paid by the Government are established by a tariff schedule. If this is, in fact, the case, we do not believe that the amounts paid [the Affected Party] can properly be withheld under the provisions of Section 16(1)." However, the existence of a tariff or schedule for consulting fees is neither substantiated nor refuted in the evidence or argument before me in this inquiry.

[para 31] The Account Codes and other unknown coding applied to payments by the Government in satisfaction of the Affected Party's accounts, which appear on pages 0001 and 0008 of the Records at Issue are not, and would in no way reveal, any information of the Affected Party that is caught by section 16(1)(a). As such, section 16(1) does not apply to it, and I intend to order its release to the Applicant in response to the Access Request.

[para 32] In *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner)*, 2006 ABQB 515, the Court stated the following in respect of the evidentiary requirements to discharge the burden of proof as to whether sections 20 and 25 of the FOIP Act applied:

> In my view, the Privacy Commissioner's requirement for an evidentiary foundation withstands a somewhat probing examination. As discussed, the scope and intention of FOIPP presumes access to information, subject only to limited exceptions, and the responsibility for establishing an exception rests with the party resisting access to the information.
>
> The requirement of some cogent evidence permits the Privacy Commissioner to discharge his duty of balancing competing interests and policy considerations by rationally assessing the likelihood of reasonable expectations of harm. To suggest that requiring some evidence is unreasonable means that access to information could be

> denied based solely on hypothetical possibilities, and that only the most preposterous theoretical risks could be rejected by the Commissioner.

Further, the Court agreed that the following were required to establish the "harm exception" under those provisions:

> i. a clear cause and effect relationship between the disclosure and the harm alleged;
> ii. the harm that would be caused by the disclosure constitutes damage or detriment to the matter and not simply hindrance or minimal interference; and
> iii. the likelihood of harm is genuine and conceivable.

Although in that case the Court was reviewing a decision under sections 20 and 25 of the FOIP Act, in Orders F2007-032 and F2008-018 both the evidentiary requirements and the test applicable to the "harm exception" were applied in analyses under section 16.

[para 33] Even if I accept, for the sake of argument and without actually deciding, that the requirements of sections 16(1)(a) and 16(1)(b) are *prima facie* satisfied in respect of the information severed under section 16 (with the exception of the Account Codes and other coding I addressed above), the Public Body has presented no evidence whatsoever to support a finding that disclosure of this information "could reasonably be expected to…harm significantly the competitive position or interfere significantly with the negotiating position of the [Affected Party]"; indeed, no evidence was submitted under any of the three parts of the test to be met to establish the "harm exception". Notably, the Affected Party has not presented any evidence in this regard either; I would assume that, if the Affected Party felt that he would suffer harm as a result of the release of this information, he would have argued so in the course of this inquiry, rather than remaining silent. In the absence of cogent—or any—evidence, I am unable to find that the requirement of section 16(1)(c)(i) is met, nor do I find that any of section 16(1)(c)(ii), (iii) or (iv) applies. I therefore find that the Public Body has not proven on a balance of probabilities that the remaining information severed under section 16, as listed above, is, in fact, excepted from disclosure under that provision, and I intend to order the Public Body to release it to the Applicant in response to the Access Request.

Issue 3: Did the Public Body properly apply section 24(1)(b) (advice) of the Act to the records/information?

[para 34] The Public Body also relied on section 24(1)(b) of the FOIP Act to sever portions of pages 0002 and 0003 of the Records at Issue.

[para 35] Section 24(1) is discretionary in that a public body may refuse to disclose information to which it applies. Section 24(1)(b) states:

> ***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*
>
> …

(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 36] In its initial submission, the Public Body advocates for the reasoning applied in respect of the corresponding Ontario and B.C. provisions, adopted by the former Alberta Commissioner in Order 96-006. At pages 8-9 of Order 96-006, the former Commissioner states in respect of section 24(1)(a), [formerly section 23(1)(a)]:

> Ontario Order M-457 discusses a section of the Ontario legislation that is similar to Alberta's section 23(1)(a). The objective of Ontario's section, which speaks of "advice and recommendations", is "to protect the free flow of advice and recommendations within the deliberative process of government decision- or policy-making". Ontario Order M-457 also states that an action plan and a formalised manner of proceeding are usually the hallmarks of this decision- or policy-making process. In interpreting a similar section in British Columbia, the Commissioner there has stated that advice and recommendations must contain more than mere information, and "must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process" (British Columbia Order P-597). I adopt this reasoning.
>
> However, Alberta's section 23(1)(a) is broader than the provisions in either Ontario or British Columbia, and includes not only "advice and recommendations", but also "proposals, analyses and policy options". Therefore, I must apply criteria that reflect the uniqueness of section 23(1)(a).
>
> Accordingly, in determining whether section 23(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 preceding excerpt is significantly more extensive than that quoted in the Public Body's initial submission. The Public Body also quotes briefly from paragraph 42 of Order 96-007: "…if the Minister acts on advice or recommendation, disclosure would divulge the basis for the action."

[para 37] The Public Body then argues:

> The entire consultation process was considered. The Public Body applied section 24(1)(b) to protect the consultations or deliberations involving employees of a public body and third parties which lead to the decision making process and the contents of draft legislation. The Minister acted on the advice and recommendations and disclosure would divulge the basis for the action taken.

[para 38] After bare assertions denying the applicability of all paragraphs of section 24(2), the Public Body quotes from two other orders related to access requests regarding Bill 27, being Orders F2007-013 and F2004-026. First, the Public Body quotes paragraph 124 of Order F2007-013. There, the information at issue consisted of the advice, consultations and deliberations regarding options considered; as such, in order to permit government officials to consider options and act without constant public scrutiny, I upheld the severing of that information under sections 24(1)(a) and 24(1)(b). Second, the Public Body excerpts paragraph 89 of Order F2004-026:

> I find, therefore, that the Public Body is entitled to withhold under section 24(1)(a) and 24(1)(b) only the records or parts of them that reveal substantive information about the matter or matters on which advice was being sought or given (Bill 27), or about which the consultations or deliberations were being held. The remainder of the information cannot be withheld under section 24(1)(a) or (b). The latter includes the names of correspondents, dates and, in many cases, subject lines, as well as documents or parts of documents that express the fact that advice is being sought or given or that information is being conveyed, without revealing any substantive content. A great many of the documents include such information.

Although much of what is severed from the Records at Issue based upon section 24(1)(b) appears, on its face, to fall within the latter category of information that I referred to in Order F2004-026, the Public Body maintains that it "reveal[s] substantive information about the consultations or deliberations being held in relation to Bill 27 on matters which [*sic*] advice, proposals, analysis and recommendations were developed for a member of the Executive Council, the Minister of Alberta Employment and Immigration (formerly Human Resources and Employment) and some contain the contents of draft legislation." The Public Body goes on to submit, without any supporting argument beyond that quoted above insofar as it also discusses section 24(1)(a), that the relevant information at issue may also be excepted from disclosure under sections 24(1)(a) and 24(1)(e).

[para 39] The Applicant begins its initial submission by pointing out that its copy of the severed Records at Issue indicates that information was severed under section 24 without specifying which subsection was applied, but that it assumes only section 24(1)(b) was applied (as was indicated in the Public Body's covering letter responding to the Access Request).

[para 40] Like the Public Body, the Applicant quotes Order F2004-026 in its initial submission. Specifically, the Applicant excerpts paragraph 71, which states:

> In my view, section 24(1) does not generally apply to records or parts of records that in themselves reveal only any of the following: that advice was sought or given, or that consultations or deliberations took place; that particular persons were involved in the

> seeking or giving of advice, or in consultations or deliberations; that advice was sought or given on a particular topic, or consultations or deliberations on a particular topic took place; that advice was sought or given or consultations or deliberations took place at a particular time. There may be cases where some of the forgoing [*sic*] items reveal the content of the advice. However, that must be demonstrated for every case for which it is claimed.

The Applicant surmises from the short length of the information withheld under section 24 that much, if not all, of it falls within those parameters and was not properly withheld.

[para 41] The Public Body's rebuttal submission in respect of this issue simply indicates that the Applicant was told by letter that section 24(1)(b) was applied. The Applicant's rebuttal submission, meanwhile, presents a concern over an ambiguity in the meaning of "substantive information" as argued by the Public Body. Referring to Order F2004-026, including the reference to the Federal Court of Appeal decision in *Blank v. Canada (Minister of the Environment)*, 2001 FCA 374, the Applicant posits that "Order F2004-026 makes it perfectly clear that ['substantive information'] means information about the substance, or content of advice, etc." After reiterating that, given its brevity, most of the information severed under section 24 appeared unlikely to constitute substantive information, the Applicant states:

> A second and related concern is this: both the latter order and the Court of Appeal decision suggest that it is the content of advice, etc. that may be withheld, and that the topic or subject matter being addressed cannot be withheld. In the case in point, we believe that this should extend not just to the broad topic (i.e., Bill 27) but to more specific information, if that is in fact part of what is being withheld. If the records withheld include references to specific areas addressed by Bill 27 (for example, Mental Health severance, or non-union worksites in Health Regions), we believe that these subtopics should not be withheld under the provisions of section 24.
>
> In other words, we read Order F2004-026 to mean that it is the substance or contents of consultations, deliberations, advice, and so on, that may be withheld. The fact that the latter occurred, the identity of public employees who took part, the time, form and topic of the consultations, etc. should not be withheld.

[para 42] The Applicant concludes this portion of its rebuttal submission by pointing out that the Public Body asserts the application of section 24(1)(e) for the first time in its initial submission; indeed, the same appears to be true in respect of section 24(1)(a), although the Applicant does not say so. The Applicant states that it "has nothing to say on this issue, and relies on the Commissioner to evaluate the propriety of raising this issue at this late date, as well as the validity of the argument."

[para 43] Although not directly referred to by either the Public Body or the Applicant, the former Commissioner stated as follows in respect of section 24(1)(b), [formerly section 23(1)(b)], in Order 96-006, which was upheld on judicial review:

> The next issue is whether section 23(1)(b)(i) ("consultations or deliberations") apply [*sic*] to the Records. In the broadest sense this section could be used to withhold any

> discussion whatsoever between any of the parties named in the section. If this were so, there would be very little access to any information under the Act. This cannot be right given the purpose of the Act which is stated in section 2 to be "...to allow any person a right of access ... subject to limited and specific exemptions as set out in this Act,". When I look at section 23 as a whole, I am convinced that the purpose of the section is to allow persons having the responsibility to make decisions to freely discuss the issues before them in order to arrive at well-reasoned decisions. The intent is, I believe to allow such persons to address an issue without fear of being wrong, "looking bad" or appearing foolish if their frank deliberations were to be made public. Again, this is consistent with Ontario and British Columbia. I therefore believe that a "consultation" occurs when the views of one or more officers or employees is sought as to the appropriateness of particular proposals or suggested actions. A "deliberation" is a discussion or consideration, by the persons described in the section, of the reasons for and against an action. Here again, I think that the views must either be sought or be part of responsibility of the person from whom they are sought and the views must be sought for the purpose of doing something, such as taking an action, making a decision or a choice.

In the subsequent paragraph, he held that provision not to apply to any of the following: interrogations of employees not expressing any opinions and not discussing or considering any matter; descriptions of incidents, or staff and manager summaries of information; and an officer's summary of information that did not express a view as to the appropriateness of a particular proposal or suggestion action. Later, he states: "…I cannot accept that the bare recitation of facts, without anything further, constitutes either 'advice etc.' under section 23(1)(a) [now section 24(1)(a)] or 'consultations or deliberations' under section 23(1)(b) [now section 24(1)(b)]."

[para 44] Five time entries on page 0002 and seven time entries on page 0003 of the Records at Issue have been severed under section 24.

[para 45] Some of the information severed under section 24 merely identifies meeting participants in a general way based on where they worked. Order F2004-026 states that section 24(1) will generally not apply to information revealing "that particular persons were involved in the seeking or giving of advice, or in consultations or deliberations"; the severed information I refer to does not even go that far, in that no individuals are named. It does not reveal any substantive information about what was discussed by the participants. As such, I find that section 24(1)(b) does not apply to the information severed from time entries 2-1, 2-2 and 3-17. I intend to order the Public Body to release the information severed from time entry 3-17 to the Applicant in response to the Access Request; I intend to do the same in respect of time entries 2-1 and 2-2 only if I find below that section 27 also does not apply to the information severed from those time entries.

[para 46] Likewise, the information severed from time entries 3-12 and 3-13 does not reveal, and cannot reasonably be expected to reveal, any substantive content of consultations or deliberations. Instead, that information merely indicates that, as of the date of those time entries, it was anticipated that further meetings, which may or may not constitute consultations or deliberations, would take place (in the case of time entry 3-12). I therefore find that section 24(1)(b) does not apply to the information severed from

time entries 3-12 and 3-13, and I intend to order the Public Body to release that information to the Applicant in response to the Access Request.

[para 47] The Public Body severed time entry 2-20 in its entirety under section 24 (as well as under section 27, discussed below). However, I again find that none of this information could reasonably be expected to reveal the substantive content of consultations or deliberations. The first three pieces of information, which precede the service description for that time entry, confirm that consultations or deliberations took place. I find that the last three words of the service description do not reveal the substance or content of the consultations or deliberations themselves, and that this phrase is tantamount to a subject line, which I held in Order F2004-026 cannot be withheld in most cases. The amount of the Affected Party's fee is clearly outside the scope of section 24(1)(b). For these reasons, I find that section 24(1)(b) does not apply to time entry 2-20, and I intend to order the Public Body to release it to the Applicant in response to the Access Request only if I find below that section 27 also does not apply to it.

[para 48] The last three words of the service description for time entry 3-7 were also severed under section 24. However, the reasoning I applied above in respect of the last three words of the service description for time entry 2-20 applies equally to the information severed from time entry 3-7: namely, that this information indicates a sub-topic similar to a subject line, and not substantive content. I find that section 24(1)(b) does not apply to information severed from time entry 3-7, and I intend to order the Public Body to release that information to the Applicant in response to the Access Request.

[para 49] The Public Body severed information from each of time entries 3-9, 3-11 and 3-14 under section 24 as well. I find that the language of all of the information severed from these three time entries regarding what was reviewed and/or discussed is neutral, meaning that the specific views of the Affected Party and/or his contact(s) within the Public Body and/or the Government are not revealed. The severed information does not reveal any of the reasons or arguments considered in relation to the particular topics, and does not attribute any view or position to any person; it is similar to stating that a consultation took place in relation to global warming, without indicating who, if anyone, argued which side of the issue. In this regard, I find support from definitions found in Order 96-006 for consultation ("when the views of one or more officers or employees is sought as to the appropriateness of particular proposals or suggested actions") and deliberation ("a discussion or consideration…of the reasons for and against an action"). Because of the neutrality of the language, withholding the information in these time entries would not further a policy objective of section 24: fostering candid canvassing of issues and options in closed environment decision-making that permits those involved to share freely without worrying about 'saving face'. Notwithstanding such neutrality, however, I find that, with the exception of the last phrase of the service description for time entry 3-14 (between the semi-colon and the period), the severed information is specific enough that it "could reasonably be expected to reveal…[the substantive content of] consultations or deliberations…", as contemplated by section 24(1)(b) and previous Orders, to a relatively sophisticated and knowledgeable requester. I accept the Public

Body's general submission that it "…applied section 24(1)(b) to protect the consultations or deliberations involving employees of a public body and third parties which lead to the decision making process and the contents of draft legislation. The Minister acted on the advice and recommendations and disclosure would divulge the basis for the action taken." I therefore find that section 24(1)(b) applies to the information severed from time entries 3-9, 3-11 and 3-14 (except for the last phrase of this service description, between the semi-colon and the period), and I intend to confirm the Public Body's decision to sever that information in reliance on section 24(1)(b). However, the last phrase of the service description for time entry 3-14 (between the semi-colon and the period) merely identifies the mode of communication and the other individual involved; as such, based on my earlier reasoning, I find that the Public Body has not met its burden of proof in respect of it, and I intend to order the Public Body to release that information to the Applicant in response to the Access Request.

[para 50] Finally, I agree with the Applicant that it is improper for the Public Body to raise the possible application of sections 24(1)(a) and 24(1)(e) by merely mentioning them at this late stage. I specifically note the Public Body's statement in its rebuttal submission that, in responding to the Access Request, it advised the Applicant in its cover letter attaching the Responsive Records that it had applied section 24(1)(b) in refusing to disclose information. I accepted this review, and it proceeded to inquiry, on the basis of the Public Body's response to the Access Request as communicated to the Applicant. Furthermore, numerous orders of my Office have dealt with the criteria for the late raising of discretionary exceptions to disclosure. The burden is on the Public Body to meet those criteria, which it has not done. Accordingly, I find that the possible application of sections 24(1)(a) and 24(1)(e) is not properly before me; if I am mistaken in this regard, I find that the Public Body has not met its burden to prove that sections 24(1)(a) and 24(1)(e) apply, as mere assertions are inadequate.

Issue 4: Did the Public Body properly apply section 27(1) (privileged information) of the Act to the records/information?

[para 51] In its response to the Access Request, the Public Body indicated to the Applicant that it had relied on section 27(1) of the FOIP Act to sever information from the Records at Issue. In its initial submission, the Public Body specified that it had applied sections 27(1)(a) and 27(1)(c)(iii). Section 27 is a discretionary provision, the relevant paragraphs of which state:

> ***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,*
>
> …
>
> *(c) information in correspondence between*

…

(iii) an agent or lawyer of a public body,

and any other person in relation to a matter involving the provision of advice or other services by the Minister of Justice and Attorney General or by the agent or lawyer.

[para 52] For section 27(1)(a) to apply, the information must be subject to legal privilege. Types of legal privilege include, but are not limited to parliamentary privilege, litigation privilege and solicitor-client privilege. In its submissions, the Public Body does not identify which type of legal privilege it asserts over the information severed on this basis; rather, its arguments, insofar as I understand them and as discussed below, appear to relate more to the application of section 27(1)(c).

[para 53] As pointed out in External Adjudication Order No. 4 (2003), section 27(1)(c) appears to cast a wide net, although it was narrowed somewhat in Order F2009-018. For section 27(1)(c) to apply as a basis to sever responsive information, specific criteria must be met. First, the information must be in correspondence. Second, in the case of paragraph (iii) specifically, that correspondence must be between an agent or lawyer of a public body and any other person. Third, the information or correspondence must be "in relation to a matter involving the provision of advice or other services by [either] the Minister of Justice and Attorney General or by the agent or lawyer".

[para 54] In its initial submission, based on the definition of "legal advice" enunciated in Order 96-017, the Public Body argues as follows:

> The Public Body considers that information in the records at issue to be confidential and subject to legal privilege under sections 27(1)(a) and (c). The records relate to situations wherein legal advice and correspondence occurred between an agent or lawyer of a public body and the public body.
>
> The information in the records is in respect to advice relating to draft legislation and contains legal consideration. The Public Body based legal privilege on the fact that legal advice was sought from Alberta Justice and formed the discussions between parties. Those discussions included information of a technical nature provided by [name]….

The Public Body also provided argument and evidence on this issue *in camera*, which I have reviewed in careful detail, although I cannot discuss them in detail in this Order.

[para 55] The Applicant, meanwhile, attaches a copy of letter from the Assistant Deputy Minister for the Public Body sent to the Applicant in the context of a separate but related request for review, which states, in part: "It is my understanding that [the Affected Party's] role during the review of the legislation was considered technical rather than legal advice…." On that basis, the Applicant submits that "none of [the Affected Party's] work can attract the protection of solicitor-client privilege"; in its rebuttal submission, the

Applicant "submits that the Public Body should not be permitted to argue in the one case that [the Affected Party] was merely providing 'technical rather than legal advice', while arguing in this Inquiry that [the Affected Party's] correspondence is subject to legal privilege." The Applicant goes on to argue that the terms of section 27(1)(c) are not met on these facts:

> [The Affected Party] was a consultant, not an agent or lawyer for the Public Body.…
>
> …
>
> The correspondence between [the Affected Party] and the Public Body does not, [*sic*] fall under the criteria specified in Section 27(1)(c), and should not be withheld under those provisions of the *Act*. That the Public Body or the Government might have, at some point, asked for legal advice from Alberta Justice is completely irrelevant to this issue. Section 27(1)(c) allows the Public Body to withhold correspondence between specifically defined individuals. It does not provide blanket coverage for any correspondence between any bodies or individuals that might touch on a subject on which Alberta Justice has offered legal advice.

[para 56] The Public Body counters, in its rebuttal submission:

> The Applicant has made an assumption that section 27 was applied based on [the Affected Party's] role. The Public Body submits that the information in the records is in respect to advice relating to draft legislation and contains legal consideration. The Public Body based legal privilege on the fact that legal advice was sought from Alberta Justice and formed the discussions between parties. Those discussions included information of a technical nature provided by [the Affected Party].

[para 57] The Public Body applied section 27 to ten excerpts on page 0002 of the Responsive Records.

[para 58] Despite the Public Body's open and *in camera* submissions, I fail to see how any information in the Responsive Records could be subject to legal privilege such that section 27(1) would apply. *Prima facie*, solicitor-client privilege does not apply, since the Responsive Records are not communications between a solicitor and a client entailing the seeking or giving of legal advice, being the first two of three criteria of solicitor-client privilege as set out in *Solosky v. The Queen* (1979), [1980] 1 S.C.R. 821, discussed in various of my Office's orders; the Public Body has indicated that, in these circumstances, the Affected Party was acting as a consultant providing technical advice, not as a lawyer providing legal advice. Nor do I see any other types of legal privilege that may apply to this information. Although there appears to have been legal advice flowing from Alberta Justice to the Public Body, to reiterate, the Affected Party was not giving legal advice or providing legal services and, accordingly, descriptions of services he rendered of a technical, consultative nature as described in his statements of account could not describe, let alone reflect, legal advice or services. As such, I find that section 27(1)(a) does not apply to any of the information severed from the Records at Issue.

[para 59] Insofar as the application of section 27(1)(c)(iii) is concerned, I find that the Records at Issue are correspondence and, as such, the information severed under section 27 is "information in correspondence"; the first criterion of section 27(1)(c)(iii) is thereby met. I also find that the second criterion is met, namely that the correspondence is between an agent of the Public Body, being the recipient, and any other person, being the Affected Party who sent it. The only remaining question, then, is whether it is "in relation to a matter involving the provision of advice or other services by the Minister of Justice and Attorney General or by the agent or lawyer".

[para 60] The Public Body relied on section 27 to sever all of time entry 2-9 except for the associated fee, which was severed under section 16 and is addressed above. The service description for this time entry names an individual whose name appears nowhere else in the Responsive Records or in the Public Body's *in camera* submission. I am unable to discern who this individual is, as well as whether or not he or she worked for the Department of Justice at the relevant time. I also have no information as to the subject-matter to which this time entry relates beyond Bill 27 (in that the Public Body deemed it responsive to the Access Request). Therefore, I find that the Public Body has not met its burden in establishing the applicability of section 27(1)(c)(iii) to this information, and I intend to order the Public Body to release time entry 2-9 to the Applicant in response to the Access Request.

[para 61] The Public Body severed nearly identical information from each of time entries 2-1 (also severed under section 24, discussed above), 2-2 (also severed under section 24, discussed above), and 2-6 and 2-7 under section 27. Notwithstanding that the Public Body did not withhold very similar information located elsewhere in the Records at Issue under section 27, the argument and, especially, evidence submitted to me by the Public Body *in camera* establishes to my satisfaction that, in this specific timeframe, Alberta Justice would be providing and thereafter did provide advice and/or services. Although this severed information does not reveal the substance of such advice or services in any way, it does appear to be in relation to such advice or services, as contemplated by section 27(1)(c). As such, I find that the Public Body has met its burden to prove that section 27(1)(c)(iii) applies to this information, and I intend to confirm the Public Body's decision to sever that information from time entries 2-1, 2-2, 2-6 and 2-7 under section 27(1). Further, I find the Public Body's exercise of discretion in applying this exception to disclosure reasonable in this context and, therefore, I do not intend to order the Public Body to reconsider its decision to apply section 27(1) to this information.

[para 62] Finally, the Public Body relied on section 27 to sever the following five time entries in their entirety, except for the amount of each associated fee: 2-4, 2-10, 2-11, 2-14 and 2-20. Again, on the basis of the Public Body's *in camera* submission, it seems very likely that these services provided by the Affected Party were "in relation to a matter involving the provision of advice or other services by [Alberta Justice]". As above, I find that the Public Body has proven the application of section 27(1)(c)(iii) to this information on a balance of probabilities, and I intend to confirm the Public Body's decision to sever time entries 2-4, 2-10, 2-11, 2-14 and 2-20, with the exception of their respective fees (to which the Public Body did not apply section 27) under section 27(1).

Further, I find the Public Body's exercise of discretion in applying this exception to disclosure reasonable in this context and, therefore, I do not intend to order the Public Body to reconsider its decision to apply section 27(1) to this information.

Conclusion

[para 63] I would simply reiterate in conclusion that, as a result of very imprecise, unclear and, in some cases, seemingly incomplete placement of authorities for severing of information on both the redacted and *in camera* unredacted Records at Issue, a very significant amount of time and effort was expended in this inquiry simply trying to decipher the decisions of the Public Body. Where uncertainty remained despite a very careful and thorough analysis, such doubt was resolved to the best of my ability given the information before me.

V. ORDER

[para 64] I make this Order under section 72 of the FOIP Act.

[para 65] I confirm the removal of the following time entries in their entirety by the Public Body, as I find that such information is not responsive to the Access Request: 2-12, 2-13, 2-18, 2-21, 3-1, 3-2, 3-15, 3-16, 7-1, 7-5, 7-6, 7-7 and 7-8. I also find the second portion of the service description for time entry 7-3 to be non-responsive to the Access Request, and I confirm the Public Body's removal of it on that basis.

[para 66] I find the following time entries in their entirety to be reasonably related to, and therefore responsive to, the Access Request, and I order the Public Body to release them to the Applicant in response to the Access Request, subject to properly applying any applicable exceptions to disclosure under the FOIP Act: 2-3, 2-8, 2-17 and 7-4. I similarly find all of time entry 7-3, other than the second portion of its service description, to be responsive to the Access Request, and I order the Public Body to release it to the Applicant in response to the Access Request, subject to properly applying any applicable exceptions to disclosure under the FOIP Act.

[para 67] I find that section 16 of the FOIP Act does not apply to any of the information severed from the Records at Issue on that basis, and I order the Public Body to release all such information to the Applicant in response to the Access Request, including the Account Codes and other unknown coding appearing on pages 0001 and 0008 of the Records at Issue.

[para 68] I find that the possible application of sections 24(1)(a) and 24(1)(e) of the FOIP Act to information severed from the Records at Issue is not properly before me in this inquiry. If I am mistaken in this regard, I find that the Public Body has not discharged its burden to prove that sections 24(1)(a) and 24(1)(e) apply.

[para 69] I find that section 24(1)(b) of the FOIP Act does not apply to the information that the Public Body severed from the following time entries in reliance on

section 24: 3-7, 3-12, 3-13 and 3-17. I order the Public Body to release this information to the Applicant in response to the Access Request.

[para 70] I find that section 24(1)(b) of the FOIP Act applies to the information severed from time entries 3-9, 3-11 and 3-14 (except for the last phrase of this service description, between the semi-colon and the period), and I confirm the Public Body's decision to refuse the Applicant access to that information on the basis of section 24(1)(b). However, I find that section 24(1)(b) of the FOIP Act does not apply to the last phrase of the service description for time entry 3-14 (between the semi-colon and the period). I order the Public Body to release this information to the Applicant in response to the Access Request.

[para 71] I find that section 27(1)(a) of the Act does not apply to any of the information that the Public Body severed from the Records at Issue.

[para 72] I find that section 27(1)(c)(iii) of the Act does not apply to the information severed on that basis from time entry 2-9. I order the Public Body to release this information to the Applicant in response to the Access Request.

[para 73] I find that section 24(1)(b) of the FOIP Act does not apply, but that section 27(1)(c)(iii) of the Act does apply, to the information severed by the Public Body from the following time entries in reliance on section 27: 2-1, 2-2 and 2-20. I also find that section 27(1)(c)(iii) of the FOIP Act applies to that information that was severed from the following time entries in reliance on section 27: 2-4, 2-6, 2-7, 2-10, 2-11 and 2-14. I confirm the decision of the Public Body to refuse the Applicant access to that information on the basis of section 27(1) which, for clarity, does not include the amounts of any associated fees because, in my understanding of the Public Body's response to the Access Request, it did not rely on section 27(1) of the Act in severing those fees.

[para 74] I further order the Public Body to notify me, in writing and within 50 days of receiving of a copy of this Order, that it has complied with it.

Frank Work, Q.C.
Information and Privacy Commissioner