ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2010-012

November 29, 2010

UNIVERSITY OF CALGARY

Case File Number F4636

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Summary: The Applicant requested records from the University of Calgary ("the Public Body") relating to an investigation by a Committee of Investigation regarding a complaint made by the Applicant about her former supervisor. The Public Body refused access to notes made by or for Committee members pursuant to section 4(1)(b) of the Act, severed some information pursuant to section 17, and withheld some records pursuant to sections 24, and 27 of the Act.

The Adjudicator found that the notes made by or for Committee members fell under section 4(1)(b) of the Act; therefore, the Act did not apply to the notes.

The Adjudicator further found that the Public Body properly applied sections 17 and 24 of the Act to the remaining responsive records.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 4(1)(b), 6, 17, 24, 27, 71, 72, and 92 and *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165.

Authorities Cited: AB: Orders 99-013, 99-025, and 99-028 **ONT:** Order P-312 (1992).

Cases Cited: *Minister of National Revenue v. Coopers & Lybrand* 78 DTC 6528 (SCC), *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)* 2010 BCSC 931, and *Pridgen v. University of Calgary*, 2010 ABQB 644.

I. BACKGROUND

[para 1] The Applicant complained about the conduct of a professor, a faculty member at the University of Calgary ("the Public Body"), who supervised her while she was attempting to complete a master's thesis. The complaint was investigated by a Committee of Investigation ("the Committee") which was appointed by the Public Body. The Committee accepted written submissions from the Applicant and the professor ("the Affected Party"). The Committee also met with and questioned the Applicant, Affected Party, and other witnesses before issuing a final report.

[para 2] On April 4, 2008, the Applicant wrote to the Public Body and requested:

1. The Investigation committee's notes that were taken when I met with them during a June 7, 2007 meeting;

2. [the Affected Party's] formal response letter that was submitted to the Investigation Committee on August 22, 2007;

3. a copy of the [Affected Party's] responses to the Investigation Committee's questions on November 26, 2007; and

4. a copy of all witnesses' responses to questions (from initial and follow-up interviews) asked by the Investigation Committee.

[para 3] The Public Body responded to the Applicant's request on July 31, 2008, denying access to all of the requested records pursuant to section 4(1)(b) of the Act.

[para 4] The Applicant wrote to the Office of the Information and Privacy Commissioner ("this office") on September 17, 2008, requesting a review of the Public Body's response to her access request.

[para 5] Mediation was authorized. Following mediation, the Public Body reviewed the responsive records and released some of the records, with information severed pursuant to section 17(1) of the Act. The Public Body also withheld some records entirely pursuant to sections 4(1)(b), 24, or 27 of the Act.

[para 6] The Applicant requested an inquiry into this matter on May 1, 2009. After reviewing the responsive records, I decided to name the professor who supervised the Applicant's master's thesis as an affected party. I received initial and rebuttal submissions from the Applicant, Public Body and Affected Party. As well, I requested from the Public Body, and received, additional information regarding the authority of the Public Body regarding discipline. Finally, in the course of the inquiry, the Public Body asked to make submissions regarding a recent court case it felt was directly applicable to this inquiry. I gave the parties the opportunity to make submissions on the applicability

of the case, and received argument from both the Public Body and the Applicant in that regard.

II. RECORDS AT ISSUE

[para 7] The records at issue are 131 pages of handwritten notes from Committee members and persons assisting them, and the severed and withheld portions of the Affected Party's response to the Committee dated August 22, 2007, which totaled 114 pages (with attachments).

III. ISSUES

[para 8] The Notice of Inquiry dated March 25, 2010 stated that the issues for this inquiry are as follows:

Issue A: Are the records excluded from the application of the Act by section 4(1)(b) of the Act?

Issue B: Does section 17 of the Act (disclosure harmful to personal privacy) apply to the records/information?

[para 9] In addition, the Public Body appears to have withheld records pursuant to either section 24 (advice) or 27 (information subject to legal privilege) of the Act. I will deal with these issues as well.

[para 10] The Applicant raised the issue that the Public Body had contravened section 92 of the Act and thus committed an offence, but she provided no compelling evidence and no argument relating to this section; therefore, I will not comment on section 92 of the Act in this order.

[para 11] Finally, the majority of the Applicant's submissions focused on what she perceives as procedural unfairness on the part of the Committee in handling her complaint. This inquiry is not the correct forum to determine if the Committee's procedures are proper. This inquiry is limited to the application of the Act; therefore, I will not comment on the Committee's treatment of the Applicant or on its procedures, except where that has a bearing on whether the records fall under section 4(1)(b) of the Act.

IV. DISCUSSION OF ISSUES

A: Are the records excluded from the application of the Act by section 4(1)(b) of the Act?

[para 12] Section 4(1)(b) of the Act states:

> *4(1) This Act applies to all records in the custody or under the*

control of a public body, including court administration records, but does not apply to the following:

> *(b) a personal note, communication or draft decision created by or for a person who is acting in a judicial or quasi-judicial capacity including any authority designated by the Lieutenant Governor in Council to which the Administrative Procedures Act applies;*

[para 13] The Public Body states that the handwritten notes of the Committee members taken during the hearing of the Applicant's complaint fall under section 4(1)(b) of the Act. As well, it has withheld records under this section which are handwritten notes of persons assisting the Committee by taking notes of the proceedings for use by Committee members in making their decision.

[para 14] For section 4(1)(b) of the Act to apply, the records must be a personal note, communication or draft decision and they must be created by or for a person acting in a judicial or quasi-judicial capacity.

i. Are the records a personal note, communication or draft decision?

[para 15] After reviewing the records withheld by the Public Body pursuant to section 4(1)(b) of the Act, and taking into account the evidence provided by the Public Body, I find that the records in question are personal notes that were taken by Committee members or persons assisting Committee members at the various meetings with witnesses, for the sole purpose of assisting the Committee members in making findings relating to the merits of the Applicant's complaint.

ii. Were the notes created by or for a person acting in a quasi-judicial capacity?

[para 16] The more problematic issue is whether the Committee was acting in a quasi-judicial capacity during the course of the investigation into the Applicant's complaint.

[para 17] The Applicant argues that the Committee was not acting in a quasi-judicial capacity. In support of her position, the Applicant relies on an e-mail she received from the Chair of the Committee prior to the hearing, in which the Chair states, "[t]his is not a legal hearing".

[para 18] The Chair's statement was in response to the Applicant's complaint that she could not find legal representation and felt that she should have representation at the hearing, since the Affected Party was being represented. I do not interpret the Chair's comment as a statement by her that the Committee was not acting in a quasi-judicial manner. In any event, as the Public Body points out in its brief, what is relevant in a discussion of whether a record falls within section 4(1)(b) is whether the notes were

being taken by or for a person who was in fact acting in a quasi judicial capacity, not whether the person believed he or she was acting in a quasi-judicial capacity or not.

[para 19] The Public Body relied on *Minister of National Revenue v. Coopers & Lybrand* ("*MNR*"), a Supreme Court of Canada decision from 1978, which was cited in Order 99-025 issued by this office. In that decision, the Supreme Court set out the following non-exhaustive list of factors to be used in evaluating whether an entity is acting in a quasi-judicial capacity:

> 1. Is there anything in the language in which the function is conferred or in the general context in which it is exercised which suggests that a hearing is contemplated before a decision is reached?
>
> 2. Does the decision or order directly or indirectly affect the rights and obligations of persons?
>
> 3. Is the adversary process involved?
>
> 4. Is there an obligation to apply substantive rules to many individual cases rather than, for example, the obligation to implement social and economic policy in a broad sense?

[para 20] The Supreme Court was careful to point out that there is no one factor that is determinative of whether an entity is acting in a quasi-judicial capacity, nor will one factor not being met necessarily result in a determination that an entity is not acting in a quasi-judicial capacity. I will examine each factor in detail below.

> *1. Is there anything in the language in which the function is conferred or in the general context in which it is exercised which suggests that a hearing is contemplated before a decision is reached?*

[para 21] My understanding of the process which led to the Committee's report is that there was an initial review of the Applicant's complaint to see if further action was warranted, and a determination as to what procedure should be followed. The former Dean of Graduate Studies met with the Applicant and determined that there should be a full investigation pursuant to "Option 3" of the "Guidelines for Administrators When Acting on Concerns about Conduct" ("Option 3") which provides guidelines for administrators at the Public Body when responding to concerns.

[para 22] Option 3 is a set of recommended procedures for dealing with a serious allegation in which a complainant is willing to make a formal complaint and when the process could result in disciplinary consequences. Option 3 states:

> Further investigation may involve any or all of the following:
>
> 1. Further written submissions from the parties;

2. Oral communications with one or both parties, with the opportunity for the other party to hear what has been said and to respond as well;
3. Written or oral communication with other witnesses;
4. Investigation of documentary or other evidence.

[para 23] When it was determined that the matter would proceed under Option 3, the Committee requested and received written submissions from the parties and heard oral submissions from the parties (which I believe the Public Body refers to as the 'hearing') and from other witnesses. The Committee then drafted a penultimate report and provided it to the parties, and gave them an opportunity to respond to the report. After all of the information the Committee felt it needed had been gathered, the Committee issued a final report.

[para 24] The language of Option 3 does not seem to contemplate a traditional hearing in the same manner a court might hear evidence, with parties giving evidence under oath and being subjected to direct and cross examination. However, it does clearly contemplate a hearing of sorts at the investigation stage (involving written and oral submissions), though it does not make it mandatory.

[para 25] In this matter a hearing was held, which is a factor that supports the argument that the Committee was acting in a quasi-judicial capacity.

2. Does the decision or order directly or indirectly affect the rights and obligations of persons?

[para 26] Page 6 of the Committee's report states:

> The appropriate resolution, whether disciplinary or not, is not the responsibility of the Committee of Investigation, but of the administrative officer, in this case the Provost and Vice-President (Academic).

[para 27] Although the Committee could not "resolve" the dispute between the parties (which I take to mean that they could not impose a penalty on the Affected Party), it did make factual findings based on the evidence before them and, as a result of those findings, concluded that the Affected Party was in violation of certain "…written policies or clear expectation of the University of Calgary."

[para 28] The Committee investigated and made findings which were then passed to the Provost to decide on the appropriate resolutions. As Option 3 states:

> If [the Provost] is not the investigator, the investigator will give [the Provost] the final report, plus all other documentation. [The Provost] must review it thoroughly and may ask for further information before deciding on an appropriate resolution, whether disciplinary or not. [The Provost] should meet with both the concerned person and the respondent, giving each the opportunity to respond to the report, before making a decision on the appropriate outcome. [The Provost] should also document thoroughly all steps taken and the reasons for the final decision.

[para 29] My understanding is that the report, with all of its findings, was accordingly provided to the Provost who imposed some sort of "resolution" on the Affected Party, the details of which I was not made aware.

[para 30] Based on the initial and rebuttal submissions of the Public Body, it was not clear if the Provost had the authority to discipline the Affected Party. Therefore, I asked the Public Body if the Provost had this authority and, if so, the source of the authority. The Public Body directed me to article 20 of the Collective Agreement between the Faculty Association (of which the Affected Party is a member) and the Public Body. The relevant section of the Collective Agreement states:

> In any case where a Dean or other senior administrative officer considers that the conduct or performance of an academic staff member in his or her Faculty or area of responsibility warrant discipline, the Dean or other senior administrative officer may take action as considered appropriate in the circumstances.
>
> Disciplinary action is defined as: a counselling letter, a written warning or reprimand, a suspension without pay, or a recommendation for dismissal.

[para 31] The Public Body argues that since a copy of the report was put on the Affected Party's personnel file and it could be referred to if concerns are raised in the future, this directly affects the Affected Party's rights. On this basis it might be correct to say that the findings of the Committee directly affected the rights of the Affected Party.

[para 32] According to the procedures under Option 3, the report is sent to the Provost, who is a "senior administrative officer" as defined in the Collective Agreement. After reviewing the Committee's report and according to the Collective Agreement, as quoted above, the Provost could discipline the Affected Party, if appropriate. As a result, even if the Committee's decisions did not directly affect the rights of the Affected Party, they did indirectly affect his rights, as its findings are then reviewed by the Provost and taken into consideration when determining what disciplinary action should be taken, if any. If the Committee had decided that there was no evidence to support the Applicant's complaints, presumably, the Provost would not have imposed discipline. Therefore, the Committee's decision affected the rights of the Affected Party at a minimum indirectly, and accordingly, this factor weighs in favour of a finding that the Committee was acting in a quasi-judicial capacity.

3. Is the adversary process involved?

[para 33] The Committee had to investigate and decide factual issues on which the parties were not in agreement. As the parties were not in agreement on any of the issues, in order to determine what happened, the Committee heard the Applicant's and the Affected Party's versions of events and their respective arguments, as well as, interviewing other witnesses. After hearing both sides and gathering the facts, the Committee made its own findings. Therefore this was an adversarial process.

4. Is there an obligation to apply substantive rules to many individual cases rather than, for example, the obligation to implement social and economic policy in a broad sense?

[para 34] The Public Body argues that this factor weighs in favour of a finding that there was a quasi-judicial process because there is an obligation (found in Option 3) to apply the rules of natural justice and fair hearing principles.

[para 35] Given the submissions of the Public Body, I believe that our interpretations of this factor differ. I interpret this factor to mean that if there are substantive rules that are applied to each set of facts in individual cases that it is more likely a quasi-judicial process as opposed to a process in which the obligation is only to implement a general policy in a broad sense.

[para 36] Applying my interpretation, the rules of natural justice and fair hearing principles, while important, are not the rules to which this factor refers; rather, it is the rules that govern the actions of academic staff employed by the Public Body. In this case, the Committee applied the written policies or clear expectations of the Public Body such as the *Faculty of Graduate Studies Guidelines Governing the Supervisory Relationship* and *Code of Professional Ethics* to the facts.

[para 37] For instance, the *Faculty of Graduate Studies Guidelines Governing the Supervisory Relationship* require a supervisor to, "assist the student with the selection and planning of a suitable and manageable research topic with due consideration of the resources necessary for completion of the research project." The Committee found that the Affected Party, "…provided confusing guidance with regard to the topic…" As well, the *Code of Professional Ethics* states that, "Academic staff should encourage the free exchange of ideas between themselves and students." The Committee found that, "[The Affected Party] did not encourage [the Applicant] to engage the ideas of experts whose opinions challenged the assumptions of his contract research." These Committee findings were provided to the Provost, who, according to Option 3 and the Collective Agreement as quoted above, could impose discipline as he deemed it appropriate.

[para 38] I find that the committee did have an obligation to apply substantive rules to the individual case before it. Therefore, this factor weighs in favour of a finding that the Committee was acting in a quasi-judicial capacity.

iii. Conclusion on the application of section 4(1)(b) of the Act

[para 39] The Public Body provided me with the recent Court of Queen's Bench decision of *Pridgen v. University of Calgary,* 2010 ABQB 644 ("Pridgen") in support of its contention that the Committee was acting in a quasi judicial capacity. At the request of the Public Body I allowed the parties to comment on the applicability of the Pridgen case to this inquiry. On review of the further submissions in this regard, I am not convinced that the Pridgen case is applicable to this inquiry as in Pridgen the Court was

examining the actions of a different Committee who may be subject to a different process and different rules than the Committee in this inquiry. In any event, after examining the factors set out in *MNR*, I find that the Committee was acting in a quasi-judicial capacity when the notes were made.

[para 40] I find further support for my position in a recent ruling of the British Columbia Supreme Court in *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)* ("*PHSA*"). In that decision, the Court was asked to judicially review a finding of a delegate of the British Columbia Information and Privacy Commissioner, in which the delegate found that an investigator, investigating a complaint under the direction of the public body, was not acting in a quasi-judicial capacity. On the basis of this finding, the delegate concluded that the responsive records in question were not excluded from the British Columbia *Freedom of Information and Protection of Privacy Act* pursuant to the British Columbia equivalent to section 4(1)(b) of the Act.

[para 41] In coming to the conclusion that the investigator was not acting in a quasi-judicial capacity, the delegate considered the following factors (among others):

- The investigator was not empowered to adjudicate the dispute between the complainant and the doctor involved, but could gather evidence, make findings of fact and make recommendations to a body who could then act on the investigator's recommendation, if it chose to.

- The investigator did not have a process that approximated the court's process.

- The investigator did not conduct a hearing, because the parties addressed the investigator separately in written and oral submissions.

[para 42] The Court disagreed with the delegate's conclusions. It found that the investigator was acting in a quasi-judicial capacity. The Court stated:

> In this instance, the investigator was charged with more than the mere accumulation of evidence and findings of fact. The investigator was required to look at the evidence available to her from a number of sources, assess and weigh the evidence, and formulate an opinion as to whether or not the facts as she found them supported the conclusion that Dr. Cimolai had contravened the Health Centre's human rights policy. It was most improbable that any other person involved in the discipline process would alter or reverse her determination in that regard. Rather, the responsibilities of others involved in the disciplinary process were to assess the consequences that should flow from the contraventions which had been identified by the investigator.
>
> (*PHSA* at para 34)

[para 43] The Court went on to state:

> While no hearing in the formal sense of the word was undertaken, the method of investigation and the method of inquiry undertaken by the investigator afforded all interested persons the opportunity to state their position and to respond, both in writing and in person before her, to the statements of others that were adverse in interest. The determination affected Dr. Cimolai directly.
>
> (*PHSA* at para 40)

[para 44] The Court in *PHSA* also cited case law supporting its position that investigations can be part of a quasi-judicial process (see *PHSA* at paras 42 and 43).

[para 45] Although the Provost has the final decision to make regarding the appropriate resolution, the Provost does not start the investigation again, but reviews the findings of the Committee, speaks with the parties, gathers whatever further information he feels is necessary and makes a decision on the appropriate resolution. As I have no information on what the Provost's decision was regarding the Affected Party, I do not know if that decision was made in accordance with the findings of the Committee. However, on the basis of the information I do have, including the wording of Option 3, I believe that the results of the investigation would be sufficiently significant to make the process to this stage part of a quasi-judicial process. As such, the role of and process followed by the Committee was akin to that of the investigator in *PHSA*; therefore, I find the records containing the notes of Committee members and notes taken by persons on behalf of the Committee are excluded from the Act pursuant to section 4(1)(b) of the Act.

B: Does section 17 of the Act (disclosure harmful to personal privacy) apply to the records/information?

[para 46] Section 17(1) of the Act states:

> *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 47] In order for a public body to properly refuse to disclose information pursuant to section 17 of the Act, the information must be personal information, the disclosure of which would be an unreasonable invasion of the third party's personal privacy.

i. Burden of proof:

[para 48] Section 71 of the Act sets out the burden of proof in inquiries and states:

> *71(1) 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.*
>
> *(2) Despite subsection (1), if the record or part of the record that*

the applicant is refused access to contains personal information about a third party, 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 49] The onus of proof under section 17 of the Act first lies with the Public Body. The Public Body must prove that section 17 applies to the severed information. Once the Public Body has established that section 17 applies, the onus of proof shifts to the Applicant. The Applicant must prove that the disclosure of the third party's personal information would not be an unreasonable invasion of the third party's personal privacy.

ii. Was the information that was severed personal information?

[para 50] In order for section 17 of the Act to apply, the information that was severed must be a third party's personal information.

[para 51] Personal information is defined in section 1(n) of the Act. The applicable portions of section 1(n) of the Act are:

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,
…
(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given…

[para 52] I have reviewed the portions of the responsive records severed pursuant to section 17 of the Act. For the most part, the information severed was names and e-mail addresses of third parties, as well as information about employment and educational history of third parties.

[para 53] There are three records that were completely withheld pursuant to section 17. These records were about the employment history of a third party. Although these records also contained information that was not personal information about a third party, the third party's personal information was so intertwined with the information which was not personal information, that I find that it could not have reasonably been severed pursuant to section 6 of the Act which states:

6(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information

excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

…

[para 54] Therefore, I find that the information severed was either a third party's personal information or was inextricably intertwined with a third party's personal information.

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

[para 55] Section 17(4) of the Act sets out circumstances in which the disclosure of a third party's personal information would be an unreasonable invasion of the third party's personal privacy. The relevant parts of section 17(4) of the Act state:

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,

…

(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 56] As I stated above, some of the information severed relates to employment and educational history of a third party. As well, some of the information severed is third party names and those names appeared with e-mail addresses and information relating to the third party's educational or employment history. Therefore, I find that there is a presumption that disclosure of the third parties' personal information that was severed would be an unreasonable invasion of their personal privacy.

iv. Are there any factors in section 17(5) of the Act that weigh in favour of disclosure?

[para 57] Although there is a presumption that disclosure of the third parties' personal information would be an unreasonable invasion of their personal privacy, it is still necessary to examine the factors listed in section 17(5) of the Act to determine if the third

parties' personal information ought to be disclosed nevertheless. Section 17(5) of the Act states:

> *17(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether*
>
> > *(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,*
> >
> > *(b) the disclosure is likely to promote public health and safety or the protection of the environment,*
> >
> > *(c) the personal information is relevant to a fair determination of the applicant's rights,*
> >
> > *(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,*
> >
> > *(e) the third party will be exposed unfairly to financial or other harm,*
> >
> > *(f) the personal information has been supplied in confidence,*
> >
> > *(g) the personal information is likely to be inaccurate or unreliable,*
> >
> > *(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and*
> >
> > *(i) the personal information was originally provided by the applicant.*

[para 58] None of the parties provided submissions directly related to section 17(5) of the Act. Therefore, I have little evidence on the applicability of the factors listed in section 17(5) of the Act.

[para 59] I considered whether section 17(5)(c) of the Act (information relevant to fair determination of the Applicant's rights) could apply on the basis that the information that was severed might be relevant to a determination of the Applicant's rights. However, in order for this factor to apply, the Applicant must prove the following criteria are fulfilled:

> (a) the right in question is a legal right which is drawn from the

> concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds;
>
> (b) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed;
>
> (c) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
>
> (d) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.
>
> (Ontario Order P-312 (1992) quoted in Order 99-028 at para 32)

[para 60] I am not persuaded that all four of these criteria are met in this case. Specifically, I was given no explanation as to how this information might have been required in order for the Applicant to prepare for a proceeding or to ensure an impartial hearing. As well, I have reviewed the severed information. Having regard to the nature of the information that was severed, I do not believe that it would have any bearing on or could have been significant to the outcome of the complaint; likewise, it would not bear on the determination of any right of the Applicant related to her complaint.

[para 61] Therefore, given the lack of evidence or argument I was provided in this regard, I cannot find that section 17(5)(c) of the Act weighs in favour of the disclosure of the third parties' personal information.

[para 62] I also considered whether section 17(5)(f) of the Act (information supplied in confidence) might apply to some of the information severed pursuant to section 17 of the Act. The information that was severed was part of the Affected Party's response to the Committee. It may be possible that the Affected Party was under the impression that his response to the Committee was confidential. However, given that the Affected Party's response was to the penultimate report of the Committee (which was provided to both parties) and was made in an attempt to influence the final report of the Committee which is also given to the parties, I doubt that this information was provided to the Committee in confidence, nor do I have any evidence that this was the case. Therefore, section 17(5)(f) does not apply to this information. However, as there are no factors weighing in favour of disclosure, this conclusion does not affect the outcome.

[para 63] It may also be a valid consideration that the Applicant already knows some of the information that was severed. However, I do not believe that this one factor outweighs the applicable presumptions that disclosure of the third parties' personal information would be an unreasonable invasion of their personal privacy.

[para 64] Taking all factors that appear to be relevant into account, I find that the disclosure of the third parties' personal information would be an unreasonable invasion of their personal privacy and was properly severed by the Public Body.

C: Does section 24 of the Act apply to the records/information?

[para 65] The Public Body applied sections 24 or 27 of the Act to pages 0129 and 0130 of the records.

[para 66] Section 24(1)(b) of the Act 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 67] In order for information to fall under section 24(1)(b) of the Act, consultations and deliberations must be:

> (i) sought or expected, or be part of the responsibility of a person by virtue of that person's position,
>
> (ii) directed toward taking an action, and
>
> (iii) made to someone who can take or implement the action.
>
> (Order 99-013 at para 48)

[para 68] Pages 0129 and 0130 of the responsive records are a copy of an e-mail between employees of the Public Body which summarizes a meeting in which employees of the Public Body consulted with other employees of the Public Body (including the Public Body's legal counsel) regarding the appropriate course of action to be taken with respect to an issue relating to the Applicant. The issue relating to the Applicant was a legal issue. It would, presumably, be the responsibility of the Public Body's legal counsel to provide advice on legal issues. As well, given the advice, it would be the responsibility of one or more of the Public Body's employees included in the e-mail exchange to implement the course of action chosen.

[para 69] I find that disclosing this e-mail would reasonably be expected to reveal consultations involving employees of the Public Body and, therefore, it was properly withheld by the Public Body.

D: Does section 27(1)(a) of the Act apply to the records/information?

[para 70] As I have found that section 24 of the Act applies to the records to which the Public Body also applied section 27 of the Act, it is not necessary for me to make a finding regarding the applicability of section 27 of the Act to the records.

V. ORDER

[para 71] I make this Order under section 72 of the Act.

[para 72] I find that section 4(1)(b) of the Act excludes the application of the Act to pages 0001 – 0021 and 0137-0248 of the responsive records.

[para 73] I find that the Public Body properly applied sections 17 and 24(1)(b) of the Act to the responsive records which are not excluded from the application of the Act by section 4(1)(b) of the Act.

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Keri H. Ridley
Adjudicator