

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2010-030

August 29, 2011

AGRICULTURE FINANCIAL SERVICES CORPORATION

Case File Number F4744

Office URL: <http://www.oipc.ab.ca>

Summary: The Applicant made an access request to the Agriculture Financial Services Corporation (the “Public Body”) under the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”) for the names of Alberta Producers who were issued payments under the Alberta Farm Recovery Plan (AFRP) and Alberta Farm Recovery Plan II (AFRP II) and for the amounts they were issued. The Public Body responded to the request by denying the Applicant access to the information pursuant to sections 16 and 17 of the FOIP Act.

The Adjudicator held that section 17 did not apply to the names of Alberta Producers who were issued financial aid under the AFRP and AFRP II programs and the amounts they were issued under those programs. The Adjudicator held that the disclosure of this information would not be an unreasonable invasion of the third parties’ personal privacy.

The Adjudicator also held that section 16 did not apply to this information. The Adjudicator held that there was insufficient information and evidence that the disclosure of the information at issue could reasonably be expected to significantly harm the competitive position of a third party under section 16(1)(c)(i) or result in similar information no longer being supplied under section 16(1)(c)(ii).

The Adjudicator ordered the Public Body to disclose the information at issue.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c.F-25 ss. 1(n), 1(r), 16, 16(1), 16(1)(a), 16(1)(b), 16(1)(c), 16(1)(c)(i), 16(1)(c)(ii), 16(1)(c)(iii), 16(1)(c)(iv), 17, 72; *Interpretation Act*, R.S.A. 1980, c.I-7, s. 25(1)(p); *Interpretation Act*, R.S.A. 2000, c.I-8, s.28(1)(nn).

Orders Cited: AB: Orders: 96-012, 96-013, 96-018, 96-019, 98-006, 99-018, 99-040, 2000-005, 2000-010, 2001-022, 2001-026, F2002-006, F2010-009; **ON:** Order P-16 (1988).

Cases Cited: *Canada (Information Commissioner) v. Canada (Prime Minister)*, [1992] F.C.J. No. 1054 (Fed T.D.); *International Association of Science and Technology for Development v. Hamza* [1995] A.J. No. 87 (Alta. C.A.); *Michel v. Lafrentz* (1992), 85 Alta. L. R. (2d) 1 (Alta. C.A.)

I. BACKGROUND

[para 1] On July 25, 2008, the Applicant made an access request to the Public Body under the FOIP Act. The Applicant requested the following:

“The names of all Alberta producers who have received payments under the Alberta Farm Recovery Plan (AFRP) from October 26, 2007 to the present, and the amount that each producer has received under the AFRP.

The names of all the Alberta producers who have received payments under the Alberta Farm Recovery Plan II (AFRPII) from June 5, 2008 to present, and the amount that each producer has received under the AFRP II.”

[para 2] On August 18, 2008, the Public Body wrote a letter to the Applicant clarifying the Applicant’s access request. The letter confirmed that the Applicant was requesting the names of Alberta producers who were issued payments under AFRP and AFRP II rather than the names of Alberta producers who had received payments. The letter also confirmed that the Applicant was requesting records regarding AFRP payments from October 26, 2007 to July 25, 2008 and records regarding AFRP II payments from June 5, 2008 to July 25, 2008.

[para 3] On October 15, 2008, the Public Body responded to the Applicant’s access request denying access to the information under sections 16 and 17.

[para 4] On December 12, 2008, the Applicant requested a review of the Public Body’s decision. Mediation was authorized but did not resolve the issues.

[para 5] On May 12, 2009, the Applicant requested that the Information and Privacy Commissioner conduct an inquiry into the matter.

[para 6] During the inquiry, the Public Body and the Applicant each submitted an initial and a rebuttal submission. In addition, this Office published a Public Notice of Inquiry in 9 daily newspapers informing the public of this inquiry and inviting Alberta Producers who were issued payments under the AFRP from October 26, 2007 to July 25,

2008 and Alberta Producers who were issued payments under AFRP II from June 5, 2008 to July 25, 2008, to participate in the inquiry.

[para 7] In response to the notice in the daily newspapers, this Office received one response from an individual. This individual informed the Office that although he was not issued a payment under AFRP or AFRP II, he nevertheless would like to participate in the inquiry. In response, I wrote to that individual on April 27, 2011 requesting that he provide me with further information regarding his interest in the inquiry in order to assist me in determining whether to permit him to participate as an affected party or as an intervenor. This individual did not, however, respond to my request and, as such, did not participate further in the inquiry.

[para 8] During the inquiry, this Office also contacted ten organizations inviting each of them to provide comments as to whether they would like to participate in the inquiry as an intervenor. These organizations consisted of the following: the Alberta Beef Producers, Alberta Lamb Producers, Alberta Sheep Breeders' Association, Alberta Pork Industry Services, Alberta Elk Commission, Bison Producers of Alberta, Horse Industry Association of Alberta, Wild Rose Agricultural Producers, Canadian Federation of Independent Business and the UFA Co-operative Ltd. In addition, at the request of the Public Body, this Office also contacted seven other organizations and similarly invited them to provide comments as to whether they would like to participate in the inquiry as an intervenor. The organizations that were identified by the Public Body were the Alberta Cattle Feeders Association, Western Stock Growers Association, Alberta Barley Commission, Alberta Winter Wheat Producers Commission, Alberta Pulse Growers, Alberta Canola Producers Commission and the Alberta Soft Wheat Producers Commission. In response to these letters, only one organization, the Alberta Pork Producers, stated that they were interested in participating in the inquiry as an intervenor.

[para 9] After a review of the correspondence from the Alberta Pork Producers, I accepted that organization as an intervenor and provided it with the opportunity to make a submission. This Office then sent a copy of that submission to the Public Body and to the Applicant for comment. The Applicant provided this Office with a letter in response. The Public Body did not respond to the Alberta Pork Producers' submission.

II. RECORDS AT ISSUE

[para 10] The records consist of the names of Alberta Producers who were issued payments and amounts they were issued under the AFRP from October 26, 2007 to July 25, 2008 and under AFRP II from June 5, 2008 to July 25, 2008.

III. ISSUES

[para 11] There are 2 issues in this inquiry:

- A. Does section 17 of the FOIP Act (personal information) apply to the records/information?

B. Does section 16 of the FOIP Act (business interests) apply to the records/information?

IV. DISCUSSION

A. Does section 17 of the FOIP Act (personal information) apply to the records/information?

[para 12] Section 17 is a mandatory (“must”) section of the FOIP Act. If section 17 applies, a public body must refuse to disclose the information. There are two criteria that must be fulfilled under section 17:

- (a) the information must be personal information of a third party; and
- (b) the disclosure of the personal information must be an unreasonable invasion of a third party’s personal privacy.

1. Is the information personal information of a third party?

[para 13] Personal information is defined under section 1(n) of the FOIP Act. The relevant portions of section 1(n) read:

I In this Act,

...

(n) “personal information” means recorded information about an identifiable individual, including

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

...

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

[para 14] Section 1(n) defines the term “personal information” as including an individual’s name and information regarding their financial history. However, after a review of the records, I find that the names of the Alberta Producers who were issued financial aid and the amounts issued to those producers under AFRP and AFRP II is not personal information.

[para 15] In Order F2010-009, the Adjudicator addressed a similar issue. In that order, the Adjudicator addressed whether the same public body, the Alberta Financial

Services Corporation, disclosed the complainant's personal information in contravention of Part 2 of the Act. In that inquiry, the Alberta Financial Services Corporation argued that the information it disclosed was business and not personal information. This information included information regarding the complainant's farming operation, financial numbers and information regarding the complainant's Canadian Agricultural Income Stabilization [CAIS] Program claims.

[para 16] The Adjudicator in Order F2010-009 held that none of this information was about the Complainant in his personal or natural capacity. The Adjudicator instead found that the information was business information about the Complainant's sole proprietorship or corporation. The Adjudicator also held that even if the information did indirectly relate to the Complainant as an individual, it did not have a personal dimension so as to render it "personal information" within the meaning of the FOIP Act. In Order F2010-009, the Adjudicator stated the following at paragraphs 15 and 16:

On my review of all of the alleged disclosures by the Public Body, as just set out, I find that the Public Body did not disclose the Complainant's personal information. Under section 1(n), "personal information" is recorded information about an identifiable individual, which means a human being (Order 96-019 at para.67) acting in his or her natural capacity (Order F2002-006 at para.92). The Public Body cites the following passage:

The use of the term "individual" in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended "identifiable individual" to include a sole proprietorship, partnership, unincorporated association or corporation, it could and would have used the appropriate language to make it clear. The types of information enumerated under...the Act as "personal information" when read in their entirety, lend further support to [the] conclusion that the term "personal information" relates only to natural persons. [Order F2002-006 at para.92, citing Ontario Order P-16 (1988) at p.19.]

The above makes a distinction between information about an identifiable individual in his or her natural or personal capacity and information about that individual's business, whether it happens to be a sole proprietorship, partnership, unincorporated association, corporation or any other type of entity. Even where an individual is the only person connected to a business, so that it might be argued that information about the business is also information about the individual, it has been concluded that there is no "personal information" within the definition set out in the Act (Order F2002-006 at paras. 90 and 93).

[para 17] I accept the principles outlined in Order F2010-009 and find that the names of Alberta Producers who were issued financial aid under AFRP and AFRP II and the amounts that were issued is not personal information within the meaning of section 1(n) of the FOIP Act. I find that this information is business information about the

Third Parties' businesses. I find that even if the information at issue does indirectly relate to Third Parties as individuals, there is insufficient evidence and/or information before me that it has a personal dimension so as to render it "personal information. I find that this information is not about Alberta Producers in their natural or personal capacity but about the Alberta Producers' businesses whether they are a sole proprietorship, partnership, corporation or another type of business. As such, I find that section 17 does not apply to that information.

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

[para 18] As I have found that the information at issue is not personal information of a third party, I will not address whether the disclosure of the information would be an unreasonable invasion of privacy.

B. Does section 16 of the FOIP Act (business interests) apply to the records/information?

[para 19] Section 16 reads:

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.

[para 20] Section 16 is a mandatory exception. This means that if a head of a public body determines the information falls within the exception, the public body must refuse access.

[para 21] For information to fall under section 16(1), the following three-part test must be fulfilled:

Part 1: The information must reveal trade secrets of a third party, or commercial, financial, labour relations, scientific or technical information of a third party (section 16(1)(a));

Part 2: The information must be supplied, explicitly or implicitly, in confidence (section 16(1)(b)); and

Part 3: The disclosure of the information could reasonably be expected to bring about one of the outcomes set out in section 16(1)(c).

1. Does the information reveal trade secrets of a third party, or commercial, financial, labour relations, scientific or technical information of a third party (section 16(1)(a))?

[para 22] There are two criteria under section 16(1)(a):

- a. the information must be of a third party, and
- b. the information must reveal trade secrets, or commercial, financial, labour relations, scientific or technical information.

a. Does the information relate to a third party?

[para 23] Section 1(r) of the FOIP Act defines a third party as:

1 In this Act,

...

(r) “third party” means a person, a group of persons or an organization other than an applicant or a public body;

[para 24] After a review of the parties’ submissions I find that the Alberta Producers listed in the records are third parties for the purposes of the FOIP Act.

[para 25] In Order 2000-005, the former Commissioner held that, pursuant to section 25(1)(p) of the *Interpretation Act*, R.S.A. 1980, c.I-7 (now section 28(1)(nn) of

Interpretation Act, R.S.A. 2000 c. I-8), a person includes a corporation. I agree with this conclusion.

[para 26] In addition, I also find that an unincorporated business would also fulfill the requirements of this section as it would fulfill the requirements of an “organization”. The Canadian Oxford Dictionary defines an organization as “2. *an organized body, esp. a business, ...*”. Similarly, Webster’s II Dictionary defines an organization as “5. *A number of persons or groups having specific responsibilities and united for a particular purpose*”. I find that an unincorporated business would fulfill these definitions.

[para 27] I also find that a partnership would be considered a third party under the FOIP Act. Section 1(r) states that a third party means “a person, a group of persons or an organization other than an applicant or a public body”. Although a partnership was not considered a “person” for the purposes of the FOIP Act (see Order 2000-005)¹, a partnership by its very nature consists of a group of individual partners and is therefore “a group of persons”. In addition, I find that a partnership fulfills the definition of “an organization” as defined in The Canadian Oxford Dictionary and Webster’s II Dictionary.

b. Does the information reveal trade secrets, or commercial, financial, labour relations, scientific or technical information?

[para 28] In prior orders, the former Commissioner said that “financial information” includes information relating to the monetary resources of the third party, such as the third party’s financial capabilities, and assets and liabilities, past or present (Order 96-018) as well as information regarding financial transactions, insurance, past performance, estimated advertising costs and commission expected or proposed in respect of sales involved (Order 98-006).

[para 29] After a review of the records at issue, and all of the information and evidence before me, I find that the names of the Third Parties and the amount of financial aid issued to the Third Parties is financial information of the Third Parties. I find that the information consists of information relating to the monetary resources of the Third Parties including information regarding their financial position.

[para 30] I note that in Order 96-012, the former Commissioner held that company names, without anything more, is not financial information. However, in this case, revealing the Third Parties’ company names would disclose the fact that those companies received payments under the AFRP and AFRP II programs. Although the disclosure of the names without more would not disclose the amount of the payments, it would reveal

¹ In Order 2000-005, the former Commissioner held that a partnership is not a person for the purposes of the FOIP Act. The former Commissioner held that, in Alberta, a partnership is not considered a “person” as it is not a legal person separate from the partners. In support, the former Commissioner referred to two decisions of the Alberta Court of Appeal: *Michel v. Lafrentz* (1992), 85 Alta. L. R. (2d) 1 (Alta. C.A.) and *International Association of Science and Technology for Development v. Hamza* [1995] A.J. No. 87 (Alta. C.A.).

information about their financial position as it would reveal that they qualified for the programs.

[para 31] I also find that disclosure of the names and amount of financial aid would reveal other financial information. Because the eligibility criteria and formulae for calculating the amount of aid is publicly known and because the Public Body did not exercise any discretion in awarding the financial aid, other information could arguably be inferred by the recipient of the information. Although I find that there is insufficient evidence or information before me to suggest that an individual who receives this information could infer a Third Party's exact average profit or loss, expenses or size of inventory from the information, I find that an individual could infer whether a Third Party had been engaged in livestock farming during the requisite time frame and for the required period and also infer some limited information regarding the financial health of the business based on the amount of financial aid received.

2. Was the information supplied, explicitly or implicitly in confidence (section 16(1)(b))?

a. Was the information supplied by a third party?

[para 32] After a review of the submissions of the parties, I find that the information at issue was supplied by the Third Parties. I find that the Third Party names were provided by Third Parties in their application for AFRP and AFRP II financial aid. I also find that the amounts awarded to each Third Party should be treated as being supplied by the Third Parties.

[para 33] In Order 99-040, the former Commissioner held that if information at issue would not have been created without information supplied by a third party, the information must be treated as having been supplied by the third party. The information that was created would be considered to be "inextricably linked" with the information provided by the third party. In this inquiry, I find that the information regarding the eligibility of a Third Party for financial aid and the amount of the financial aid awarded to each Third Party could not have been created if the Third Party had not provided certain base information to the Public Body. I therefore find that information regarding the Third Parties' eligibility for financial aid and amount of financial aid awarded must be treated as information that has been supplied by the Third Parties.

[para 34] In coming to this conclusion, I took into account that the Public Body determined whether a Third Party was eligible for financial aid under the AFRP plans and the amount of financial aid pursuant to a set formula. The Public Body submits that it did not use any discretion in these decisions.

b. Was the information supplied in confidence?

[para 35] In order for information to be implicitly supplied in confidence under section 16(1)(b), a third party must, from an objective point of view, have a reasonable

expectation of confidentiality in regard to the information supplied. Furthermore, it is necessary to consider all the circumstances of the case including whether the information was:

- i) communicated to the public body on the basis that it was confidential and that it was kept confidential;
- ii) treated consistently in a manner that indicates a concern for its protection from disclosure by the third party prior to being communicated to the public body;
- iii) not otherwise disclosed or available from sources to which the public has access; or
- iv) prepared for a purpose which would not entail disclosure (Orders 99-018, 2000-010)

[para 36] After a review of the submissions of the parties, I find that these four criteria are fulfilled. I find that the information that the Third Parties supplied to the Public Body was supplied in confidence and, for reasons previously discussed in this order, by extension, I find that the information that the Public Body created from this information regarding the Third Parties' eligibility and the amount of the financial aid also fulfills these four criteria.

i. Was the information communicated to the Public Body on the basis that it was confidential and that it was kept confidential?

[para 37] After a review of the submissions of the parties, I find that the information that the Third Parties provided the Public Body in their application for financial aid was provided to the Public Body on the understanding that it was confidential.

[para 38] In coming to this conclusion, I took into account the Public Body's affidavit evidence. The Public Body deposes that it told the Third Parties that their information would be protected and only used for certain limited and enumerated purposes. In this regard I note that section 5.0 of the Public Body's Code of Conduct states that employees are required to safeguard the confidentiality of all non-public information of its past, present and prospective customers. It also states that the information obtained from a customer may only be used and shared with others for the specific purpose or transaction for which it was given or collected and cannot be disclosed without the consent of the individual. The relevant portion of section 5.0 reads as follows:

5.0 Protection of AFSC's Properties and Information

Our relationships with customers, suppliers and with each other are based on trust. You will protect the properties and safeguard the confidentiality of all non-

public information of AFSC, its customers, employees and suppliers (past, present and prospective).

You are also committed to protecting AFSC's properties as well as those of our suppliers from improper use and will respect applicable intellectual and other property rights. Some specific commitments are highlighted below.

- *Use and Disclosure of Customer and Employee Information - Information obtained directly or indirectly from a customer, an employee or director may be used or shared with others only for the specific purpose or transaction for which it was given or collected and cannot be disclosed without the consent of the individual. Although circumstances may arise where an individual's consent is not required (e.g. where it is necessary to protect AFSC's interests or where there is a legal obligation, such as a court order, to disclose), you must be careful to disclose only the information that is warranted in such situations. When in doubt, you will not disclose without seeking advice from your manager or Legal Counsel.*

[para 39] I note that section 5.0 of the Public Body's Code of Conduct and the AFRP application form for financial aid contain a statement which states that the information is subject to the FOIP Act. I do not, however, find that the statement is particularly helpful in determining whether section 16 applies to the information at issue. In my view, this reference to the FOIP Act in both of these documents simply begs the question as to whether the criteria under the FOIP exceptions, such as section 16, are fulfilled.

[para 40] Lastly, I took into account the nature of the information and the context in which it was supplied. In Order 2001-022, the Commissioner held that the nature and context of a situation may support a finding that the information was submitted in confidence. In this inquiry, I find that the nature of information supplied by the Third Parties regarding their financial situation supports a finding that the information was submitted in confidence. In my view, it is reasonable to find that this type of information would be considered confidential by the Third Parties and would have been submitted in confidence to the Public Body.

ii. Was the information treated consistently in a manner that indicates a concern for its protection from disclosure by the Third Party prior to being communicated to the Public Body?

[para 41] The Public Body states that the Third Parties would have been concerned for the protection of the information from disclosure prior to communicating the information to the Public Body. The Public Body states that due to the competitive climate within the industry, the Third Parties would clearly attempt to avoid disclosure of the information.

[para 42] After a review of the parties' submissions, I find that this criterion is fulfilled. Although I do not find that there is sufficient evidence before me regarding the competitive nature of the industry as is suggested by the Public Body, I find that given the nature of the information regarding the Third Parties' eligibility for financial aid, it is reasonable to find that the Third Parties would have kept this type of information confidential.

iii. Was the information not otherwise disclosed or available from sources to which the public has access?

[para 43] The Public Body states that the information has not been disclosed and has not been made publicly available. After a review of the parties' submissions, I find that there is no evidence or information to suggest that the information has been disclosed or available to the public from other sources.

iv. Was the information prepared for a purpose which would not entail disclosure?

[para 44] The Public Body states that the information was prepared for a purpose that would not entail disclosure. The Public Body states that the Third Parties provided the information to the Public Body only for the purpose of assisting the Public Body in determining the Third Parties' eligibility for financial aid under AFRP and AFRP II, to calculate the amount of aid and to provide the assistance to the Third Parties.

[para 45] In addition, in the Public Body's affidavit, it states that it has always treated the information it collected for the AFRP programs as confidential. The Public Body, in its submission, states that any information it received either directly or indirectly from a Third Party was only used or shared for the specific purpose or transaction for which it was disclosed, and it was not shared without the consent of the Third Party who provided it. The Public Body also states in its submission that the Third Parties were informed on the application form for AFRP funding that the information would be protected.

[para 46] After a review of the information and evidence before me I find that the information was prepared for the limited purpose of determining the eligibility of Third Parties for financial aid, calculating the amount of aid and providing the aid to the Third Parties. I find that this information was prepared for a purpose that would not entail disclosure.

3. Could the disclosure of the information reasonably be expected to bring about one of the outcomes set out in section 16(1)(c)?

[para 47] The Public Body states that the disclosure of the information could reasonably be expected to significantly harm the competitive position of the Third Parties under section 16(1)(c)(i) or result in similar information no longer being supplied to the Public Body by Third Parties under section 16(1)(c)(ii).

a. Section 16(1)(c)(i)

[para 48] In Order 96-013, the former Commissioner emphasized that harm under section 16(1)(c)(i) must be “significant”. In that Order, the former Commissioner also said that in order for a public body to meet the harm test under that section there must be a probability of harm:

“...[The] evidence must demonstrate a probability of harm from disclosure and not just a well-intentioned but unjustifiably cautious approach to the avoidance of any risk whatsoever because of the sensitivity of the matters at issue.” (*Canada (Information Commissioner) v. Canada (Prime Minister)*, [1992] F.C.J. No. 1054 (Fed T.D.))

[para 49] In that Order, the former Commissioner stated that the Public Body must provide evidence of the following to prove significant harm:

- (i) the connection between disclosure of the specific information and the harm which is alleged;
- (ii) how the harm constitutes “damage” or “detriment” to the matter; and
- (iii) whether there is a reasonable expectation that the harm will occur.

[para 50] After a review of all of the information and evidence before me, I find that there is insufficient information and evidence before me to prove the existence of significant harm.

[para 51] The Public Body states that the disclosure of the names of the Third Parties and the financial aid amounts could reasonably be expected to significantly harm the competitive position of a third party under section 16(1)(c)(i). The Public Body deposes that the livestock industry is highly competitive. The Public Body also states, in its submission, that the livestock industry has faced severe economic challenges stemming from a high Canadian dollar, low livestock prices and high fuel, feed and fertilizer costs. The Public Body states that information regarding the financial aid awarded to a competitor, could be valuable information to a competitor and would lead to significant harm to the Third Parties. However, there is insufficient evidence before me as to the competitive nature of the industry. Although the Public Body’s affidavit states that the industry is “competitive”, I do not find that this, in and of itself, is sufficient to establish that the industry is competitive. Furthermore, there is insufficient information and evidence before me that a disclosure of the information at issue would harm a Third Party’s competitive position. From the submissions before me, a question remains as to how a competitor would use information regarding a Third Party’s receipt of financial aid to harm a Third Party’s competitive position. Although the Alberta Pork Producers stated that the disclosure of this information could cause “ a great deal of personal and business

harm to the individuals named”, this organization also did not provide sufficient further explanation or evidence in that regard.

[para 52] In the Public Body’s submissions, the Public Body also states that the Applicant would be able to infer other sensitive information from the records. The Public Body states although the disclosure of the Third Parties’ names and amount of financial aid would not permit the recipient to infer specific information submitted by the Third Parties, it would permit the recipient to infer the size of a Third Party’s operation. The Public Body states that this, in and of itself, is valuable information to a competitor.

[para 53] After a review of all of the information and evidence before me, I find that there is insufficient information and evidence before me as to how information regarding the size of a Third Party’s livestock operation would be valuable to a competitor. In other words, if a competitor had this information, how could he use it to the detriment of the Third Party? I find that I do not have sufficient information or evidence before me regarding this issue and I cannot simply assume that the disclosure of the information would significantly harm the competitive position of the Third Party. In addition, presumably, this type of information regarding the size of a Third Party’s operation would, in many cases, be common knowledge in the community in which the livestock operator operates. As previously mentioned, as Adjudicator, I must base my decision on the information and evidence before me. It is not enough for the Public Body to simply state that this type of information is valuable to a competitor.

[para 54] Lastly, in coming to my conclusion under section 16(1)(c)(i), I took into account that the information relates to the financial aid issued in the years 2007 and 2008. Although I accept the Public Body’s argument that this information may provide some information to a competitor regarding a Third Party’s operation in 2011, in coming to my decision, I was also mindful that, the value and relevance of this information will diminish as the information ages.

b. Section 16(1)(c)(ii)

[para 55] In Order 96-018, the former Commissioner held that in order to fulfill section 16(1)(c)(ii) the disclosure must reasonably be expected to result in the Third Party or anyone else no longer supplying information to the Public Body. Furthermore, the former Commissioner emphasized that the continued supply of this information must be in the public interest and not just in the interest of one of the parties.

[para 56] The Public Body states that the disclosure of the information could reasonably be expected to result in similar information no longer being supplied to the Public Body by the Third Parties when it is in the public interest that this information continue to be supplied.

[para 57] The Public Body states that the Third Parties were specifically told that the information they supplied to the AFRP and AFRP II programs would be protected and would only be used and shared for specific purposes. The Public Body states that if it

discloses the information at issue, the Third Parties would consider such a disclosure as a breach of a “relationship of trust” and, as a result, be less willing to provide similar information to the Public Body in the future.

[para 58] After a review of the information and evidence before me, I find that the requirements of section 16(1)(c)(ii) are not fulfilled in this inquiry. In the Public Body’s submission, the Public Body states, on several occasions, that Third Parties would be less willing to provide similar information as opposed to the Third Parties no longer supplying the information, as required by the section. Furthermore, the Public Body has not provided sufficient information and evidence that similar information would no longer be supplied. As previously mentioned, as Adjudicator, I must base my determination of this issue on the information and evidence before me. I cannot simply assume that the Third Parties or anyone else would no longer supply information to the Public Body.

[para 59] The Public Body also states that Third Parties would be less willing to provide similar information particularly in situations where there is no direct incentive to provide the information, but the Public Body nevertheless requires the information in order to regulate the industry. The Public Body states that in order to effectively regulate the industry, it is essential that the Third Parties voluntarily provide information regarding their operations. The Public Body did not, however, provide sufficient information and evidence to support its position. The Public Body did not sufficiently specify what type of information the Alberta Government requires from Third Parties to regulate the industry nor did it provide sufficient information and evidence as to when and how such a situation might arise. The Public Body also did not provide sufficient information and evidence that Third Parties would not voluntarily provide this information. Lastly, I note that the Public Body did not specify whether the Third Parties are required to provide any of this information by statute. If the Third Parties were required to provide information by statute, this information would not fall under section 16(1)(c)(ii) (see Order 2001-026).

[para 60] I note that the Applicant, in support of its argument, also referred to the disclosure of the payments which were made under the BSE Compensation program. The Applicant states that the information disclosed regarding the BSE Compensation program payments is similar to the information at issue in this inquiry. The Applicant states that the publication of the payments under the BSE Compensation program shows that either the livestock producers consented to the disclosure (which would suggest that they were not concerned about the disclosure of this type of information) or, if they did not consent, the disclosure did not deter those participants from applying under AFRP and AFRP II. I do not find that the disclosure of the payments under the BSE Compensation program is highly relevant to this inquiry. This prior disclosure was made under a different program and under different circumstances and, arguably, to some different producers. I do not find that those prior disclosures under that program are determinative in this inquiry.

4. Conclusion under section 16(1)

[para 61] In summary, I find that the information at issue does not fulfill the requirements under section 16(1). I find that although the information at issue fulfills sections 16(1)(a) and 16(1)(b), I find that the criteria under section 16(1)(c) is not fulfilled. As such, I find that the information cannot be withheld under section 16(1). Furthermore, as the Public Body did not apply any discretionary exceptions to the information and there are no other mandatory exceptions that apply to the information, I intend to order the Public Body to disclose this information to the Applicant.

V. ORDER

[para 62] I make the following order under section 72 of the FOIP Act:

A. Does section 17 of the Act (personal information) apply to the records/information?

[para 63] I find that section 17 does not apply to the names of Alberta Producers who were issued financial aid under AFRP and AFRP II and the amount of those payments at issue in this inquiry. Disclosure of this information would not be an unreasonable invasion of the third party's personal privacy as provided by section 17(1).

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

[para 64] I find that section 16 does not apply to the names of Alberta Producers who were issued payments under AFRP and AFRP II and the amount of those payments at issue in this inquiry. This information cannot be withheld under section 16. Furthermore, as the Public Body did not apply any discretionary exceptions to the information and there are no other mandatory exceptions that apply to the information, I order the Public Body to disclose the information at issue to the Applicant.

[para 65] I further order that the Public Body notify me in writing, within 50 days of receiving this Order, that it has complied with this Order.

Lisa McAmmond
Adjudicator