ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2012-14

June 29, 2012

ALBERTA HEALTH

Case File Number F5460

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (the "Act"), the Applicant asked Alberta Health (the "Public Body") for water well information from 1986 to the present, which consisted of water chemistry and microbiological data. The Public Body withheld the requested information under section 17(1) of the Act, on the basis that its disclosure would be an unreasonable invasion of the personal privacy of third parties. While not actually applying section 16(1), the Public Body also raised the possibility that the requested information fell within the exception to disclosure set out in that section, on the basis that disclosure of the information might harm the business interests of third parties.

The Applicant requested legal land descriptions associated with the wells from which water had been tested, but excluded the names, addresses and telephone numbers of the well owners, tenants or other individuals who had submitted the water samples. The Adjudicator found that the legal land descriptions, in conjunction with the water analyses contained in the records at issue, generally did not constitute anyone's personal information, as that term is defined in section 1(n) of the Act. Rather, the information requested by the Applicant was about land, property, wells and/or water. Section 17(1) therefore could not apply.

However, the Adjudicator found that the records at issue consisted of a small amount of personal information, namely in instances where the legal land description contained in the records, in conjunction with the history of occupants of the land available from other

sources, would identify a particular individual who had submitted well water for testing. However, he found that section 17(1) of the Act did not apply to this personal information, as disclosure of the information would not be an unreasonable invasion of personal privacy.

The Adjudicator also found that the records at issue would reveal personal information in instances where the water quality data indicated that groundwater was polluted or contaminated, and the source of the pollution or contamination could, by virtue of other available information, be traced to an identifiable individual. However, on consideration of the relevant circumstances, the Adjudicator found that section 17(1) of the Act did not apply to this personal information. Its disclosure was likely to promote public health and safety and the protection of the environment, within the terms of section 17(5)(b), which outweighed the possibility that the individuals in question had supplied personal information in confidence under section 17(5)(f). The Adjudicator further noted that an individual responsible for pollution or contamination would not be exposed "unfairly" to harm within the terms of section 17(5)(e), or have his or her reputation "unfairly" damaged, within the terms of section 17(5)(h). The relevant circumstances set out in those two sections were therefore not engaged so as to weigh against disclosure.

The Adjudicator found that section 16(1) of the Act did not apply to the records at issue, as disclosure would not be harmful to the business interests of any third parties. While suggested in the course of the inquiry, the water quality data requested by the Applicant was neither the "scientific and technical information" nor the "commercial information" of any businesses occupying the land from which the water was extracted. Further, even if the analyses of the water constituted information falling within the terms of section 16(1)(a), and even if the information could be characterized as being supplied in confidence under section 16(1)(b), the Adjudicator found that disclosure of the information could not reasonably be expected to bring about any of the consequences set out in section 16(1)(c).

The Applicant argued that disclosure of groundwater data was clearly in the public interest under section 32(1)(b) of the Act. The Adjudicator found that the threshold for triggering that section had not been reached. While research into groundwater was an important objective, the circumstances were not so compelling as to require disclosure to the public.

As neither section 16(1) nor section 17(1) applied to the records at issue, the Adjudicator ordered the Public Body to give the Applicant access to copies of the responsive information in its possession, being copies of any and all Certificates of Chemical Analysis, Microbiological Reports and Chemical Content Summaries (but not including any names, addresses and telephone numbers). The Adjudicator's order was conditional on the Applicant paying any required fees, or else being excused from paying fees, which was yet to be determined. Also yet to be determined was whether the Applicant was entitled to the creation of a record from the Public Body in a particular format under section 10(2).

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 1(n)(i), 4(1)(l)(v), 6(3), 9(1), 9(2)(a), 10(2), 15, 16, 16(1), 16(1)(a), 16(1)(a)(ii), 16(1)(b), 16(1)(c), 16(1)(c)(i), 16(1)(c)(ii), 16(1)(c)(iii), 17, 17(1), 17(2), 17(2)(a), 17(2)(g)(ii), 17(4), 17(4)(a), 17(5), 17(5)(a), 17(5)(b), 17(5)(e), 17(5)(f), 17(5)(g), 17(f)(h), 18(1)(b), 30, 32, 32(1), 32(1)(a), 32(1)(b), 40(1)(bb), 67(1)(a)(ii), 71(1), 71(2), 72, 72(2)(a), 72(4), 93(1), 93(4) and 93(4)(b); *Personal Information Protection Act*, S.A. 2003, c. P-6.5, s. (1)(i)(k); *Water Act,* R.S.A. 2000, c. W-3, s. 3.

Authorities Cited: AB: Orders 96-003, 96-011, 96-013, 96-021, 97-011, 98-014, 98-018, 2000-017, F2002-002, F2004-013, F2004-024, F2004-028, F2005-011, F2006-010, F2006-014, F2006-030, F2007-019, F2008-018, F2008-020, F2008-025, F2008-031, F2009-023, F2009-028, F2010-001, F2010-009, F2010-013 and F2012-06; *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner)*, 2006 ABQB 515; *Leon's Furniture Ltd. v. Alberta (Information and Privacy Commissioner),* 2011 ABCA 94, leave to appeal refused [2011] S.C.C.A. No. 260 (QL); *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2011 ABQB 226. **ON:** Orders PO-2322 (2004), MO-2053 (2006), MO-2199 (2007) and PO-2900 (2010). **CAN:** *Gordon v. Canada (Minister of Health*), 2008 FC 258.

Other Sources Cited: Alberta Energy and Utilities Board and Alberta Environment, *Development of a Memorandum of Understanding between Alberta Environment and Alberta Energy and Utilities Board to Enhance Collaboration for the Protection and Management of Ground Water* (December 20, 2007); Alberta Environment, *Alberta Tier 1 Soil and Ground Remediation Guidelines* (Edmonton, December 2010); Government of Alberta, *Alberta Environment's Drinking Water Program: A 'Source to Tap, Multi-Barrier' Approach* (Edmonton, May 2009); Government of Alberta, *Water for Life: Alberta's Strategy for Sustainability* (Edmonton, 2003); "Multi-million Dollar Landmark North American Lawsuit on Hydraulic Fracturing and Its Impact on Groundwater" (online: retrieved October 12, 2011); "Province to scale back water monitoring", *Calgary Sun* (online: March 14, 2010); Rosenberg International Forum on Water Policy, *Report of the Rosenberg International Forum on Water Policy to the Ministry of Environment, Province of Alberta* (Berkeley, February 2007); "Tell Us What's Being Done to Our Ground Water, Demand Albertans", *The Tyee, B.C.'s Home for News, Culture and Solutions* (online: October 17, 2011).

I. BACKGROUND

[para 1] Alberta Health (the "Public Body"), formerly known as Alberta Health and Wellness, facilitates the testing of well water for the purpose of encouraging private well owners to access information about the quality of their well water. The objective is to help individuals avoid water that is not fit for consumption. Through the Water Well Testing Service, which is administered by the Environmental Public Health Unit of Alberta Health Services ("AHS"), well owners may voluntarily attend at a community health facility and request a sample bottle, instruction form and requisition form. Once they provide the bottle with a sample of their well water, the sample is forwarded to the Alberta Center for Toxicology at the University of Calgary (the "Centre for Toxicology")

for chemical content testing, and to the Provincial Laboratory for Public Health (Microbiology) (the "Provincial Laboratory") for microbiological content testing.

[para 2] While the Water Well Testing Service is administered by AHS, the Public Body conducts cursory surveillance in relation to the activities of the Centre for Toxicology, as funded by the Public Body through a grant. From time to time, the Public Body also carries out studies in relation to a particular water basin or geographical area of Alberta. For these studies, the Public Body selects the private water wells to be tested, approaches the well owners for permission to collect water samples, collects and tests those samples, and reviews the testing results directly with the well owners.

[para 3] In an access request dated May 5, 2010, the Applicant requested the following from the Public Body under the *Freedom of Information and Protection of Privacy Act* (the "Act"):

> *All water well information from 1986 to present including water chemistry and microbiological data. Prior to 1986 these data were public information. Make data base available to the public.*

[para 4] On May 11, 2010, the Applicant provided the Public Body with the following clarification of what he was seeking:

> 1. *water chemistry data from all water wells which are not now in the public domain,*
> 2. *microbiological analysis from all water wells,*
> 3. *well test information which relates to flow capacity from wells,*
> 4. *drilling logs, well completion information and geological information determined while drilling.*
>
> *This request relates to all water wells which are not currently in the public domain and all future wells.*

In stating that his request relates to all "future wells", the Applicant wants the database that he has requested to include information not only in respect of existing wells, but future ones as well. One of the issues in this inquiry is whether the public is entitled to such existing and future information under section 32(1) of the Act (disclosure in the public interest). Having said this, if section 32(1) does not apply, then the Applicant's possible right of access is limited to the information falling within the timeframe of the access request and in existence when the Public Body received it – that is, information created or compiled between January 1, 1986 and May 11, 2010.

[para 5] I considered whether the Applicant's intention was to make a continuing request under section 9(1) of the Act, but I concluded otherwise. He did not indicate that his access request continued to have effect for a specified period of up to two years, as required by section 9(1). As just explained, the proper characterization of the Applicant's access request is that he would like a public database containing the requested

information in respect of all existing and future wells. He does not want to periodically receive the requested information on particular dates chosen by the Public Body, as contemplated by section 9(2)(a), nor does he want to receive the requested information for only two years, as contemplated by section 9(1).

[para 6] In a letter dated May 26, 2010, the Public Body advised the Applicant that it did not have any information responsive to items 3 and 4 set out above. It stated that the particular information "relates to Alberta Environment" and that the Applicant should submit an access request to that body.

[para 7] In a letter dated June 10, 2010, the Public Body responded to the request for items 1 and 2 set out above. While the Applicant requested information dating from 1986, the Public Body advised him that the information set out in item 1 (i.e., the chemistry data) has been in existence only since 2002, and that the information set out in item 2 (i.e., the microbiological data) was available only from 1993, as records created prior to then had been destroyed in accordance with records retention schedules. As for the information that it had, the Public Body refused access to all of it under section 17(1) of the Act, on the basis that disclosure would be harmful to the personal privacy of third parties.

[para 8] In a form dated July 21, 2010, with an attached letter dated July 15, 2010, the Applicant requested a review of the Public Body's response to his access request. The Commissioner authorized a portfolio officer to investigate and try to settle the matter. This was not successful, and the Applicant requested an inquiry in a form, with an attached sheet, dated December 15, 2010. A combined written and oral inquiry was subsequently set down.

[para 9] When providing a sample of the requested records to this Office by letter dated February 10, 2011, the Public Body indicated that it was additionally relying on section 18(1)(b) of the Act (disclosure harmful to public safety) to withhold information from the Applicant. However, in a subsequent letter dated August 26, 2011, it stated that it was not relying on that section after all. There is accordingly no issue in this inquiry in relation to section 18(1)(b). In the same letter of August 26, 2011, the Public Body raised the possible application of section 16(1) to the records (disclosure harmful to business interests of a third party). As section 16(1) sets out a mandatory exception to disclosure, its application was included as an issue in the inquiry.

[para 10] Given the large volume of information requested by the Applicant, the Public Body responded to the access request after reviewing a sample of records. The Public Body did not provide a fee estimate to the Applicant, noting that the fee estimate would be very high due to the number of records and that the requested information was being withheld in any event. In a letter to this Office dated March 24, 2011, the Applicant stated that he would not be able to pay the associated high fees and took the position that he should be excused from paying fees, on the basis that the requested records relate to a matter of public interest under section 93(4)(b) of the Act.

[para 11] As contemplated by section 67(1)(a)(ii) of the Act, this Office notified AHS and Alberta Agriculture and Rural Development ("AARD") of the Applicant's request for review. These two bodies participated in the inquiry as affected parties. Alberta Environment, which is now called Alberta Environment and Sustainable Resource Development ("Alberta Environment"), was also invited to participate, but it declined.

[para 12] This Office also invited private landowners and their tenants who have submitted well water samples to provincial authorities for testing to participate in the inquiry. Due to the large number of such parties, this Office disseminated a Public Notice of Inquiry across Alberta in September 2011, inviting written submissions and attendance at the oral portion of the inquiry. Seven additional affected parties made written and/or oral submissions. This Office also engaged an *amicus curiae* (the "Amicus") to represent the interests of private landowners and their tenants.

[para 13] Written initial submissions for the inquiry were provided by the parties on various dates between September 15 and October 17, 2011. The oral portion of the inquiry was held on October 18 and 19, 2011. Additional written submissions and information requested by me were provided by the Public Body, AHS and the Applicant on various dates between October 27 and November 10, 2011.

II. RECORDS AT ISSUE

[para 14] Given the large volume of information requested by the Applicant, this inquiry proceeded by way of a review of a sample of responsive records. The Public Body submitted examples of four types of records with its written submissions in September 2011. They consist of a "Certificate of Chemical Analysis" from the Centre for Toxicology and a "Confidential Laboratory Report" from the Provincial Laboratory (I will call this the "Microbiological Report"). They also consist of two types of charts – one entitled "Trace Metal Water Sample Results" from the Centre for Toxicology and one entitled "Routine Water Sample Results" from the Centre for Toxicology (I will collectively refer to these as the "Chemical Content Summaries"). In the course of the oral hearing, the Public Body submitted an additional type of Certificate of Chemical Analysis, being one for "trace" chemicals, as opposed to the one for "routine" chemicals that had already been provided.

[para 15] While the Certificates of Chemical Analysis and Microbiological Report contain the names, addresses and/or telephone numbers of the well owner, tenant or other person who collected and submitted the water sample, these names, addresses and telephone numbers are not at issue. The Applicant is not interested in obtaining this information. Rather, he is interested in knowing the legal land descriptions contained in the records, as they indicate the location of the property and therefore the location of the well from which the water sample was taken.

[para 16] The Public Body is in the process of preparing a draft Aggregate Report that groups the routine chemical and trace metal chemical content testing results contained in the Chemical Content Summaries on a township level. The Applicant indicated that he is

not interested in obtaining access to the Aggregate Report, as the water data according to township, rather than legal land description, is not useful for the research purposes that he has in mind. For instance, the Aggregate Report would group information about water emanating from many aquifers and therefore mask the subtle variations associated with individual wells. The draft Aggregate Report is accordingly not at issue in this inquiry.

[para 17] At the time of its response to the Applicant's access request, the Public Body indicated that it had copies of Microbiological Reports, and it submitted a copy of a Microbiological Report to this Office as a sample record at issue in February 2011. However, it subsequently explained in its written inquiry submissions, and some of its witnesses testified at the oral hearing, that these Microbiological Reports are actually in the custody or under the control of AHS, which is responsible for the Provincial Laboratory.

[para 18] In a letter dated October 28, 2011, the Public Body further stated that it does not actually have custody or control of any Certificates of Chemical Analysis that are produced in relation to its Water Well Testing Service, again despite the fact that it submitted one such Certificate as a sample record at issue in February 2011. The original copies of the Certificates of Chemical Analysis are in the possession of the Centre for Toxicology, which is located at the University of Calgary. The Public Body explained that it receives only the two types of Chemical Content Summaries from the Centre for Toxicology, but that these are essentially a synopsis of the information contained in the Certificates of Chemical Analysis.

[para 19] Given the foregoing, the Public Body now takes the position that only the two types of Chemical Content Summaries are responsive to the Applicant's access request, and in the Public Body's custody or under its control. At the oral hearing, counsel for the Public Body stated that the Public Body does not receive the Certificates of Chemical Analysis on a "routine" or "regular" basis, only the Chemical Content Summaries. An Environmental Health Consultant with the Public Body explained that the Public Body receives only the summary data or "line listing" as part of the Water Well Testing Service, as this reporting is part of the administration of the Public Body's grant given to the Centre for Toxicology. The Public Body's FOIP Coordinator testified that she now considers there to be approximately 1,700 pages of responsive records, as opposed to "over 700,000 records", which is what she had told the Applicant in the Public Body's letter to him dated June 10, 2010.

[para 20] Conversely, in the Applicant's submissions dated November 10, 2011, he raised the possibility that all of the Certificates of Chemical Analysis, which are in the possession of the Centre for Toxicology, are in the custody on under the control of Public Body. He submitted that the Public Body provides direction to the Centre for Toxicology, he characterizes the latter as the former's service provider, and he believes that the Public Body can obtain the Certificates if it requests them.

[para 21] However, at the oral hearing, I explained that I did not consider the Certificates of Chemical Analysis, insofar as they are in the hands of the Centre for

Toxicology, to be at issue in the inquiry. I advised the parties that I was not going to address an issue regarding custody and control, to the extent that there was any disagreement as to whether the Public Body has custody or control of certain records.

[para 22] As for the Microbiological Reports, it appears that all of these may once have been in the custody or under the control of the Public Body, but responsibility for the Provincial Laboratory was transferred to AHS sometime between the date of the Applicant's access request and the date of this inquiry. In the course of the inquiry, AHS acknowledged that it has custody or control of the Microbiological Reports, given its relationship with the Provincial Laboratory. However, insofar as the Applicant's own right of access to records is concerned – although not necessarily disclosure in the public interest under section 32 of the Act – AHS is not the public body in relation to which I can make an order in this inquiry. In his submissions of November 10, 2011, the Applicant further raised the possibility that the Public Body should have transferred his request for the Microbiological Reports to AHS under section 15 of the Act.

[para 23] I decided not to address an issue regarding custody and control of records, or an issue regarding a possible transfer of part of the Applicant's request under section 15, for a few reasons. First, the Applicant did not raise any issues, in these respects, in his request for review or request for inquiry, so I did not initially set them down as issues in the Notice of Inquiry. Second, while the Public Body effectively altered its view as to what records it had between the time of its response to the Applicant's access request and this inquiry – and I appreciate that the Applicant may feel disadvantaged in this respect – there remains information at issue in this inquiry that I can address. This Order will therefore serve as a precedent, to the appropriate extent, in respect of any future request by the Applicant for access to comparable records in the custody or under the control of any other public body, or for access to similar records from Alberta Health itself.

[para 24] Third, in order for the Applicant to possibly obtain all of the information that he wished to obtain, I invited him at the oral hearing to make access requests to AHS, the Provincial Laboratory and/or the Centre for Toxicology, in which case I would have placed this inquiry in abeyance while any or all of those bodies responded to the Applicant's access requests. Assuming that he was denied access to information and wished this Office to review the matter, this Office could then have joined the inquiries, and involved all of the necessary bodies as full parties to those inquiries. This would have been far more efficient, in my view, than to add issues to the present single inquiry regarding custody and control or transfer of the Applicant's access request. As noted by counsel at the oral hearing, I would also have had to name the Provincial Laboratory, the Centre for Toxicology and/or the University of Calgary, which operates the Centre for Toxicology, as affected parties in the present inquiry. However, as with the AHS, I could have made no order against these other bodies in the event that I found that they, as opposed to the Public Body, had custody or control of certain records. In short, I recognized the complexity of the relationships between the various bodies and the various records, as well as the difficult position of the Applicant, and therefore invited him to address it in the manner that I considered most effective.

[para 25] The Applicant declined to place the current inquiry in abeyance in order to make additional access requests. He said that he felt strongly that he was entitled to the groundwater information in the form of a publicly available database under section 32 of the Act – in which case I could require disclosure from whatever public body happened to have the information – and that it therefore did not matter which public body has custody or control of the information. He said that he was not particularly interested in the paper records from only AHW, from only AHS or from only whichever public body. He indicated that he preferred to proceed with the inquiry on the basis that his primary argument was that disclosure of groundwater data is clearly in the public interest under section 32. He understood that, in order to address an issue of custody and control, I would likely have to name the Provincial Laboratory, the Centre for Toxicology and/or the University of Calgary as affected parties to the inquiry, and he indicated that he did not have the endurance to protract this matter.

[para 26] Although I decided not to make custody and control an issue in this inquiry, I did so only to the extent that there was lack of clarity as to whether the Public Body has custody or control of certain records. The Public Body's written submissions and testimony from its witnesses at the oral hearing indicate that it has possession of testing results apart from those set out in the Chemical Content Summaries, although this is in the context of what the Public Body refers to as "groundwater studies" or "environmental public health projects". The Public Body's letter of October 28, 2011 confirms that the Centre for Toxicology has forwarded Certificates of Chemical Analysis to the Public Body in the context of groundwater studies (e.g., the Beaver River Basin study).

[para 27] The Public Body's Environmental Health Consultant also indicated at the oral hearing that the Public Body sometimes carries out its own water quality studies, for instance when residents in a section of the province have a particular concern about water quality (e.g., in relation to naturally occurring arsenic). In such cases, the Public Body, with the assistance of the Centre for Toxicology, might undertake a more focussed "well monitoring study", which involves many well owners and culminates in a report. The Environmental Health Consultant said that the Public Body also carried out its own water quality study after reviewing a set of data that it had received from the Centre for Toxicology between 2002 and 2008 and identifying possible problems in certain areas of the province. At the oral hearing, the Public Body's FOIP Coordinator confirmed that the Public Body has copies of a sample set of Certificates of Chemical Analysis from the period 2002 to 2008.

[para 28] Turning to the Microbiological Reports, the Public Body's FOIP Coordinator stated, at the oral hearing, that the Public Body has copies of a sample set of Microbiological Reports from the period 2002 to 2008. Again, I see that the Public Body's written information said that it does not have any Microbiological Reports, but this is a reference only to the records that it receives through the Water Well Testing Service. The Public Body wrote, in its letter of October 28, 2011, that "it was determined that the Microbiological Reports and the Certificates of Chemical Analysis produced as a result of the water samples being submitted for testing as part of the Water Well Testing

Service were not under the custody and control of Alberta Health and Wellness" [my underline].

[para 29] In short, the Public Body appears to be restricting the records at issue to those created or compiled in the context of its Water Well Testing Service. However, the Applicant did not set out such a restriction in his access request. He asked, more generally, for "[a]ll water well information from 1986 to present including water chemistry and microbiological data…" Therefore, if the Public Body has possession of any copies of Certificates of Chemical Analysis or Microbiological Reports, no matter the context in which they were obtained, I consider such records to be responsive to the Applicant's access request. I also consider it clear that the Public Body has custody or control of the particular copies that it possesses, despite the possibility that it does not have custody or control of the originals located elsewhere. While possession is not necessarily sufficient to amount to custody or control, as there must also be some right or obligation to hold the information in one's possession (Order F2009-023 at para. 33), possession is sufficient in this case, given that the Public Body has the right to be possessing the copies of the Certificates of Chemical Analysis and Microbiological Reports that it has.

[para 30] At the same time, I recall from the oral hearing that the Applicant is not particularly interested in obtaining access to the Certificates of Chemical Analysis if the information in them is already summarized in the Chemical Content Summaries, and did not appear particularly interested in obtaining access to the Certificates of Chemical Analysis or Microbiological Reports, at least not from the Public Body, if it does not actually have an exhaustive set of this information. As already noted, the Applicant also strongly prefers to have access to the information that he has requested in the form of an electronic database, rather than in the form of paper copies. He stated that he is essentially interested in a publicly available database that would be created in the public interest under section 32 of the Act, and that he is not personally interested in the records in their current form, as they would be too voluminous to handle. However, he added that, if he did not succeed on the issue under section 32, he wished to preserve the ability of other individuals, such as researchers, to obtain access to the records as they currently exist. This Order will accordingly address the Applicant's right of access to all of the information at issue that I have described, even though he may later choose to remove particular records from the scope of his access request.

[para 31] In a letter dated August 22, 2011, at the oral inquiry on October 18, 2011, and in a follow-up letter dated October 21, 2011, I repeatedly asked the Public Body to assure me that I had a sample copy of all types of records responsive to the Applicant's access request that are in its custody or under its control. In its letter dated October 28, 2011, the Public Body told me that it did not have any additional responsive material to provide to me. In his submissions of November 10, 2011, the Applicant questioned whether the Public Body had provided all responsive information. For instance, he wondered whether the Public Body has a record relating to volatile hydrocarbon analysis, given that he noted a requisition form for this type of testing.

[para 32] As already discussed, the Public Body appears to have improperly circumscribed the scope of the Applicant's access request, but I have addressed this by including certain possibly overlooked records among the responsive records in this inquiry. Having said this, the possibly overlooked records are ones to which the Public Body has itself referred and has provided to me by way of sample copies. I cannot find other records to be responsive if the Public Body never provided copies to me, despite my repeated requests.

[para 33] I again note, on the other hand, that the limitations placed on me in this inquiry, regarding the sample records that I am able to review and the particular public body in relation to which I am able to make an order, does not preclude that Applicant from requesting any other information that he believes to be in the custody or under the control of a particular public body. Assuming that the requested records are sufficiently comparable to the ones at issue in this inquiry, I see no reason why my conclusions in this Order would not apply – although that would have to be determined by the particular parties and/or confirmed by this Office should it again become involved.

[para 34] To summarize then, provided that they were created or compiled on or after January 1, 1986 (being the date set out in the Applicant's access request), and not including the names, addresses and telephone numbers of the well owners, tenants or other persons who submitted a water sample (as the Applicant has made it clear that he does not seek this information), the records at issue in this inquiry consist of all copies of Certificates of Chemical Analysis, Microbiological Reports and the two types of Chemical Content Summaries that are in the possession of the Public Body, regardless of the context in which they were obtained, and even if the originals or other copies exist elsewhere.

III. ISSUES

[para 35] In a letter dated August 19, 2011, this Office advised the parties that the inquiry would be held in two parts. The Notice of Inquiry, dated August 31, 2011, set out the following issues for Part A:

> Do the records consist of personal information, as that term is defined in section 1(n) of the Act?
>
> If the records consist of personal information, does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the records/information?
>
> Does section 16(1) of the Act (disclosure harmful to business interests of a third party) apply to the records/information?
>
> Does section 32(1) of the Act require the Public Body to disclose the records/information in the public interest?

Following the oral portion of the inquiry, and as indicated in a letter to the parties dated October 21, 2011, I decided to address the following issue in Part A of the inquiry, even though it had originally been set down for Part B:

> Does section 10(2) of the Act require the Public Body to create a record for the Applicant?

However, on my review of the Applicant's submissions on the above issue, which were in response to those of the Public Body, I find that I require more information from those two parties before deciding the issue in relation to section 10(2). It will therefore again be addressed in Part B of the inquiry, along with the following issue initially set down for Part B:

> Should the Applicant be excused from paying all or part of a fee, as provided by section 93(4) of the Act?

IV. DISCUSSION OF ISSUES

A. Do the records consist of personal information, as that term is defined in section 1(n) of the Act?

[para 36] Section 1(n) of the Act reads as follows:

> *1(n) "personal information" means recorded information about an identifiable individual, including*
>
> > *(i) the individual's name, home or business address or home or business telephone number,*
> >
> > *(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*
> >
> > *(iii) the individual's age, sex, marital status or family status,*
> >
> > *(iv) an identifying number, symbol or other particular assigned to the individual,*
> >
> > *(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
> >
> > *(vi) information about the individual's health and health care history, including information about a physical or mental disability,*
> >
> > *(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*

(viii) anyone else's opinions about the individual, and

(ix) the individual's personal views or opinions, except if they are about someone else;

[para 37] In this inquiry, the information that is arguably "personal information" under section 1(n) consists of the legal land descriptions in the records requested by the Applicant, and in turn, the information about the testing, water, wells and land that can then possibly be linked back to the particular owner or occupant of the lands in question. The Public Body and Amicus noted that the information at issue includes the following data elements: the sample number, the date on which the water sample was collected, the water source from which the sample was collected (e.g., well or dugout), the well depth, the level/amount of different chemical compounds found in the sample, and the level/amount of different microbiological compounds found in the sample. For his part, the Applicant adds that he is also interested in knowing the type of well (e.g., flowing or pumping), the water sampling technique, and information set out in a "comments" section on the Certificates of Chemical Analysis. The "comments" section is extremely short and, in the sample record that I received, does not contain any names, addresses or telephone numbers.

[para 38] In its written submissions, the Public Body explained that, due to the large number of landowners and tenants with private wells in Alberta, and the practical difficulty in notifying them all of the Applicant's access request under section 30 of the Act, it took a cautious approach by treating the requested information as personal information falling within the mandatory exception to disclosure under section 17(1). At the oral hearing, as in its written submissions, the Public Body took no position on whether the legal land descriptions – alone or in conjunction with other information – meant that there is personal information in or revealed by the records at issue. In opting not to make any argument on whether the information requested by the Applicant is, in fact, personal information within the meaning of section 1(n), the Public Body said that it was deferring to the submissions of the Amicus.

[para 39] In its written submissions, AHS submitted that the records contain personal information within the terms of section 1(n). AHS specifically referred to "the individual's name, home or business address or home or business telephone number", as set out in section 1(n)(i), but names, addresses and telephone numbers are not themselves at issue in this inquiry. Still, the Amicus submitted that the legal land descriptions contained in the records are akin to an individual's address, as set out in section 1(n)(i), and therefore constitute personal information. He also argued that other information about identifiable individuals would be revealed on disclosure of the legal land descriptions found in the records requested by the Applicant.

[para 40] Conversely, the Applicant argued that the information in relation to water analyses that he has requested is not personal information. At the oral hearing, counsel for AARD similarly submitted that the records at issue do not consist of personal information within the terms of section 1(n) of the Act. She said that the

information is not about any identifiable individuals, given that there are no names or addresses involved. She acknowledged that a legal land description can sometimes serve to identify an individual, but said that this is not the case here, as the legal land descriptions serve only to identify the location of a well.

1. Relevant commentary on what constitutes personal information

[para 41] In section 1(n) of the Act, personal information is defined as information "about" an identifiable individual. It has been stated that the term "about" in the context of this phrase is a highly significant restrictive modifier, in that "about" an individual is a much narrower idea than "related" to an individual; information that is generated or collected in consequence of some action on the part of, or associated with, an individual – and that is therefore connected to him or her in some way – is not necessarily "about" that individual (Order F2007-019 at para. 20).

[para 42] The essential question in this inquiry is whether the information in the records requested by the Applicant, or information that would be revealed on disclosure of the records, is "about" any individuals, or whether it is instead "about" land, property, wells or water.

[para 43] Section 1(1)(k) of the *Personal Information Protection Act* similarly defines "personal information" as "recorded information about an identifiable individual". In *Leon's Furniture Ltd. v. Alberta (Information and Privacy Commissioner),* 2011 ABCA 94 (at paras. 47 to 49), the following comments were made about this definition [my underline]:

> The "identifiable individual" term has two components. Firstly, the individual must be "identifiable". Generic and statistical information is thereby excluded, and the personal information (here the relevant number) must have some precise connection to one individual. Secondly, the information must relate to an individual. Information that relates to objects or property is, on the face of the definition, not included. The key to the definition is the word "identifiable". […]
>
> Further, to be "personal" in any reasonable sense the information must be directly related to the individual; the definition does not cover indirect or collateral information. Information that relates to an object or property does not become information "about" an individual, just because some individual may own or use that property. Since virtually every object or property is connected in some way with an individual, that approach would make all identifiers "personal" identifiers. In the context of the statute, and given the purposes of the statute set out in s. 3, it is not reasonable to expand the meaning of "about an individual" to include references to objects that might indirectly be affiliated or associated with individuals. Some identification numbers on objects may effectively identify individuals. Many, however, are not "about the individual" who owns or uses the object, they are "about the object".
>
> The adjudicator's conclusion that the driver's licence number is "personal information" is reasonable, because it (like a social insurance number or a

> passport number) is uniquely related to an individual. With access to the proper database, the unique driver's licence number can be used to identify a particular person: *Gordon v. Canada (Minister of Health)*, 2008 FC 258, 324 F.T.R. 94, 79 Admin. L.R. (4th) 258 at paras. 32-4. But a vehicle licence is a different thing. It is linked to a vehicle, not a person. The fact that the vehicle is owned by somebody does not make the licence plate number information about that individual. It is "about" the vehicle. The same reasoning would apply to vehicle information (serial or VIN) numbers of vehicles. Likewise a street address identifies a property, not a person, even though someone may well live in the property. The licence plate number may well be connected to a database that contains other personal information, but that is not determinative. The appellant had no access to that database, and did not insist that the customer provide access to it.

[para 44] I further note that various Ontario Orders have discussed the distinction between information that is about an individual and information that is not about an individual. In Ontario Order MO-2053 (2006) (at pp. 4 to 5, or paras. 17 to 21), a useful summary and comments were provided as follows [my underline]:

> I have carefully reviewed the records and considered the representations provided to me. For the reasons that follow, I have concluded that the municipal addresses of properties for which septic system applications have been submitted is not "personal information" as defined in section 2(1) of the Act. Rather, this is information about a property.
>
> The distinction between "personal information" and information concerning residential properties was first addressed by Commissioner Sidney B. Linden in Order 23. The Commissioner made the following findings, which have been applied in a number of subsequent orders of this office (e.g. Orders MO-188, MO-189, PO-1847):
>
>> In considering whether or not particular information qualifies as "personal information" I must also consider the introductory wording of subsection 2(1) of the Act, which defines "personal information" as "... any recorded information about an identifiable individual ...". In my view, the operative word in this definition is "about". The *Concise Oxford Dictionary* defines "about" as "in connection with or on the subject of". Is the information in question, i.e. the municipal location of a property and its estimated market value, about an identifiable individual? In my view, the answer is "no"; the information is about a property and not about an identifiable individual.
>>
>> The institution's argument that the requested information becomes personal information about an identifiable individual with the addition of the names of the owners of the property would appear to raise the potential application of subparagraph (h) of the definition of "personal information" [in Ontario's *Municipal Freedom of Information and Protection of Privacy Act*].

> Subparagraph (h) provides that an individual's name becomes "personal information" where it ... appears with other personal information relating to the individual or where the disclosure of the name would reveal other information about the individual"… In the circumstances of these appeals, it should be emphasized that the appellants did not ask for the names of property owners, and the release of these names was never at issue. However, even if the names were otherwise determined and added to the requested information, in my view, the individual's name could not be said to "appear with other personal information relating to the individual" or "reveal other personal information about the individual, and therefore subparagraph (h) would not apply in the circumstances of these appeals. …

Subsequent orders have further examined the distinction between information about residential properties and "personal information". Several orders have found that the name and address of an individual property owner together with either the appraised value or the purchase price paid for the property are personal information (Orders MO-1392 and PO-1786-I). Similarly, the names and addresses of individuals whose property taxes are in arrears were found to be personal information in Order M-800. The names and home addresses of individual property owners applying for building permits were also found to be personal information in Order M-138. In addition, Order M-176 and Investigation Report I94-079-M found that information about individuals alleged to have committed infractions against property standards by-laws was personal information. In my view, the common thread in all these orders is that the information reveals something of a personal nature about an individual or individuals.

The information at issue in this case bears a much closer resemblance to information which past orders have found to be about a property and not about an identifiable individual. For example, in Order M-138, the names and home addresses of individual property owners who had applied for building permits were found to be personal information, but the institution in that case did not claim that the property addresses themselves were personal information, and the addresses were disclosed. In Order M-188, the fact that certain properties owned by individuals were under consideration as possible landfill sites was found not to be personal information. Similarly, in Order PO-2322, former Assistant Commissioner Tom Mitchinson found that water analysis and test results concerning an identified property were information about the property, not personal information.

The record at issue in this case contains several fields, and those which contain responsive information are the fifth and sixth columns titled "street no" and "street name". This information is analogous to what was at issue in Orders M-188 and PO-2322, and I find that it is "about" the properties in question and not "about" an identifiable individual. As such, it falls outside the scope of the definition of "personal information" in section 2(1) of the Act. Because only "personal information" can qualify for exemption under section 14(1), this exemption has no application in the circumstances of this appeal.

[para 45] The foregoing excerpt refers to Ontario Order PO-2322 (2004), which dealt with a request for water analyses and test results (among other things). That Order was subsequently reviewed, and partly distinguished, in Ontario Order PO-2900 (2010), another matter addressing an individual's request for water well information. In the latter Order (at pp. 9 to 10, or paras. 34 to 38), the following relevant comments were made [my underline]:

> Order PO-2322 appears to support a view that, when a request is made for water well information about a particular well commissioned by a particular individual, the name of the individual in connection with that property information might not constitute the personal information of that individual.
>
> In this appeal, however, the request is not for water well information about a particular well commissioned by a particular individual but, as indicated, for many water well records. In these circumstances, based on the nature of the request and the records at issue, I am satisfied that the name of the individual on a well water record would reveal that this individual commissioned a well drilling company to drill a well and register the well with the Ministry. As a result, I am satisfied that the disclosure of the name would reveal other personal information about that individual, and constitutes the personal information of that individual under the definition found in section 2(1)(h) [of Ontario's *Freedom of Information and Protection of Privacy Act*]. This decision is in keeping with previous decisions regarding personal information found on other property records as identified above.
>
> I also note that the request resulting in this appeal was modified and expanded to produce a more comprehensive package of responsive records, and that the final revised request was for "select wells – 10 well records from [7 different districts] containing both corporate and personal well owners and a well print out report." As stated above, the request in this appeal is, effectively, for bulk access to all information in the 750,000 well water records held by the Ministry. In my view, a request of this nature is different than a request for the water well record relating to one specific property or property owner. This supports my finding that the names of the individual well owners set out in the records constitutes the personal information of those individuals.
>
> Finally, I agree with the position of the Ministry that the other information contained on the well records, including the location of the well (including the municipal address or GPS location), and the specifics about the well (for example the depth, casing diameter, water levels, etc.), constitutes information about the well and the property, and is not personal information (see Order MO-2053). Furthermore, water well records that do not relate to identifiable individuals, but to corporate entities or other organizations such as not-for-profit or municipalities, do not contain personal information.

[para 46] According to the foregoing excerpt, the fact that an individual commissioned a well drilling company to drill a well is his or her personal information. While the Applicant noted that information relating to the drilling of wells, including the geographic location of the well and the name and address of the well owner, is already available on a database administered by Alberta Environment, the Amicus responded that

the records at issue do not merely disclose the foregoing information, but tie the location of a well to the quality of the well water. In this inquiry, I must consider whether any of the information relating to water in the records requested by the Applicant is, in turn, about an individual and therefore "personal information" within the meaning of section 1(n) of the Act.

[para 47] The Amicus noted the following comments made in *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2011 ABQB 226 (at paras. 71 and 73):

> Here, the general words ("personal information") are followed by the specific words particularized in the list (s. 1(n)(i) to (ix)). This suggests that the definition of personal information in *FOIPP* should be limited by the list that follows. While the enumeration is not exhaustive because the list is prefaced with the term "including", other unenumerated examples falling within the definition must be in the same type or nature as the enumerated list. Therefore, the Privacy Commissioner should have considered the context of the definition when interpreting the words "personal information" in s. 1.
>
> […]
>
> Here, the documents before me and before the Privacy Commissioner show only the builder's name; they do not include [the homeowner's] name. The address of the proposed building is evident without the City showing it to the neighbour. There was no other information included in the list in s. 1(n) nor in the nature of the information included in 1(n) that could have covered the plans held by the City and for which [the homeowner], through her builder, sought a building permit.

Although the Amicus noted the foregoing for the purpose of submitting that a legal land description is akin to an individual's address as set out in section 1(n)(i), I read the above excerpt as suggesting that the address of a building, in and of itself, is not personal information. The same may be said of legal land descriptions in that they are about property, not people.

[para 48] What I glean from the foregoing relevant commentary is that a legal land description is not itself personal information: see *Leon's Furniture Ltd. v. Alberta (Information and Privacy Commissioner)* and Ontario Order MO-2053. However, a legal land description may serve as an identifier that will reveal what does constitute personal information: see the various Orders cited within Ontario Order MO-2053, which concludes that "the common thread in all these orders is that the information reveals something of a personal nature about an individual or individuals". The distinction between what is and is not personal information is demonstrated in Ontario Order PO-2900: the fact that an individual – who can be identifiable by virtue of information about property – drilled a well is his or her personal information, but information about the well itself is not his or her personal information.

[para 49] Consistent with the foregoing commentary are principles articulated by earlier Orders of the Office. When determining whether information is about an identifiable individual, one must look at the information in the context of the record as a whole, and consider whether the information, even without personal identifiers, is nonetheless about an identifiable individual on the basis that it can be combined with other information from other sources to render the individual identifiable [Order F2006-014 at para. 31, citing Ontario Order MO-2199 (2007) at para. 23]. Information will be about an identifiable individual where there is a serious possibility that an individual could be identified through the use of that information, alone or in combination with other available information [Order F2008-025 at footnote 1, citing *Gordon v. Canada (Minister of Health*), 2008 FC 258 at para. 34].

2. The extent to which there is personal information in this inquiry

[para 50] In this inquiry, I note three categories of information that is possibly the personal information of third parties. I will now discuss these in turn.

(a) The fact that an individual submitted a water sample for testing

[para 51] The Applicant or anyone else gaining access to the legal land descriptions in the records at issue would be able to conduct a land titles search in order to ascertain the owner of the land at the time that the sample was taken. In some cases, it would be that a business (which cannot have personal information) or an unidentifiable individual (who cannot have personal information because not identifiable) submitted the water sample for testing. In these cases, there would be no personal information, within the terms of section 1(n) of the Act, relating to the provision of the sample.

[para 52] In other cases, however, the individuals who submitted the water sample for testing would be identifiable. For instance, if a particular piece of property is known – by family or neighbours or through a land tiles search – to have only ever been owned and occupied by a single individual since 1986, it would be fairly clear that the particular individual arranged for the water to be tested. Even where land is occupied by a tenant, whose identity would not be revealed by a land titles search, neighbours would be in a position to identify him or her. Further, while the Applicant is but one person and is unlikely to identify, or is uninterested in identifying, the individuals who submitted water samples for testing, his desire is to make the information that he has requested publicly available.

[para 53] Given the foregoing, I find that there is a reasonable likelihood that some individuals could be identified through the use of the legal land description found in the records at issue, in combination with other available information (i.e., land titles search results or knowledge on the part of neighbours or family). I also find that the fact that an identifiable individual submitted water for testing is his or her personal information, however innocuous that information may be. I must therefore address, in the next part of this Order, whether disclosure of this information would be an unreasonable invasion of personal privacy of such third parties.

[para 54] The foregoing conclusion is consistent with a recent Order of this Office. In Order F2012-06 (at paras. 79 and 98), it was stated:

> In some instances legal land descriptions may serve to enable an applicant to learn personal information about identifiable individuals, for example, when this information appears in the context of personal information about an individual. In such cases, land descriptions will constitute personal information.
>
> […]
>
> On its own, a legal land description is not personal information, but is a description of the location of land. However, a legal land description can be used to learn the identity the individual who owns the land. Consequently, if a land description appears with other information about the landowner, it can be argued that the land description is personal information, given that the description could serve to identify the individual whom the other information is about. For example, if one were to refer to a legal land description and then state that the owner of that land had made a complaint to the government about water quality on that land, it would be possible to identify the individual and to learn that the individual had made a complaint to the government about water quality. ...

The foregoing excerpt explains that, while a legal land description by itself is not personal information, disclosure of it may reveal what constitutes personal information, depending on the context. Just as a legal land description can reveal the fact that an identifiable individual made a complaint about water quality, it can reveal that an identifiable individual submitted a water sample for testing, as is the case in this inquiry.

[para 55] The Amicus submitted that disclosure of a legal land description would enable one to learn additional information about the current and past owners of the land. He noted that a land titles search would reveal full names and residential addresses, values or amounts paid for property, the existence of caveats and rights of way, and information about mortgages and financial charges against property. However, one can conduct a land titles search and ascertain the foregoing information independent of any disclosure of the records at issue in this inquiry. I accordingly find that the information requested by the Applicant would not reveal the foregoing information.

(b) The chemical and microbiological data

[para 56] Aside from the fact that an identifiable individual submitted a water sample for testing, I now turn to whether the water data and analyses set out in the records at issue constitute, or would reveal, personal information within the terms of section 1(n) of the Act.

[para 57] Counsel for AARD characterized the information requested by the Applicant as being about the water running under land. She noted that section 3 of the *Water Act* states that the water in the province is vested in the Crown:

> *3(1) In this section, "use" includes but is not limited to use for the purposes of drainage, flood control, erosion control and channel realignment.*
>
> *(2) The property in and the right to the diversion and use of all water in the Province is vested in Her Majesty in right of Alberta except as provided for in the regulations.*

In his written submissions, the Applicant likewise noted the foregoing, adding that the regulations under the *Water Act* do not provide any exception to the fact that the Crown owns the groundwater in Alberta. While individuals can have the right to divert and use water, either under a licence or for domestic use, ownership of the water remains with the Crown.

[para 58] As for whether a legal land description in conjunction with water quality data amounts to anyone's personal information, the Applicant argued that the land description serves the purpose of indicating the location of the well, or the water test location. He said that the information is about the water in an aquifer hundreds of feet below the surface of the property identified by way of the land description. While the land description may coincide with an individual's residential address, the reference to geographic location in the records at issue is not for the purpose of identifying a place of residence but rather the location of a groundwater source. In the Applicant's words, it just might happen that someone lives on the land above. He further argued that, because water resources are owned by the Crown and therefore by all citizens, information about water cannot be considered private or personal information.

[para 59] In my view, it is quite clear that the chemical and microbiological data found in the Certificates of Chemical Analysis, Microbiological Reports and the two types of Chemical Content Summaries is, in and of itself, nobody's personal information. The information is about water. The legal land description, in this context, serves only to identify the water's location, or the location of the well from which the water sample was taken.

(c) The fact or perception that an individual is responsible for polluting or contaminating groundwater

[para 60] Where there is associated information suggesting that an individual has acted improperly, there are allegations that the act of an individual was wrongful, or disclosure of information is likely to have an adverse effect on an individual, the record of the act or activities and information about them potentially has a personal dimension, and thus may be the individual's personal information (Order F2006-030 at paras. 12, 13 and 16; Order F2008-020 at para. 28).

[para 61] Given the foregoing, I raised the possibility, at the oral hearing, that if water is known or believed to be polluted or contaminated, there may be blame or stigma associated with the owner or occupant of the lands in question such that there would be a sufficient personal dimension to render the water quality data "about" the owner or

occupant, and therefore constitute his or her personal information within the terms of section 1(n) of the Act.

[para 62] Counsel for AARD responded that the records at issue do not say anything definitive about the quality of water, as further testing is often necessary and then carried out. She submitted that water contamination on a piece of land does not necessarily mean that the current owner of the land is responsible, or that even a past owner of the land is responsible. She noted, for instance, that contamination may be naturally occurring and have nothing to do with the activities of an individual. Even where the contamination might flow from a human activity, she submitted that the particular landowner may still not be responsible, as he or she may not reside on the land. She argued that one cannot work on hypotheticals, and that there must be some level of certainty in order to say that someone is "identifiable" within the terms of section 1(n). She said that, at most, any link between the water quality data in the records in this case and the conduct of a particular individual is speculative.

[para 63] Two well owners who attended the oral hearing noted that their own research has shown that landowners have changed many times over the years. This similarly suggests a level of difficulty in linking polluted or contaminated water to the activities of an identifiable individual.

[para 64] Counsel for AHS argued that perception does not make information "about" an identifiable individual. He submitted that, if a third party looking at the information at issue has a perception that someone is not maintaining his or her well properly – which may or may not be true – this perception does not give rise to the existence of personal information within the meaning of section 1(n).

[para 65] In the course of the oral hearing, I drew the parties' attentions to section 17(5)(g) of the Act, which refers to personal information that is "inaccurate or unreliable". I asked whether this might mean that incorrect perceptions about an individual can constitute his or her personal information. Counsel for AARD responded that, in this inquiry, the information in relation to contamination – whether inaccurate or unreliable, and whether accurate or reliable – does not link to an identifiable individual in the first place, as it could link to any number of hypothetical individuals. Conversely, the Amicus argued that the legal land descriptions in the records can connect information about pollution or contamination to an identifiable individual and that a conclusion – whether correct or not – can still be drawn about that identifiable individual and be his or her personal information.

[para 66] In my view, a mere belief, perception or speculation about an individual does not amount to "information about" that individual within the terms of section 1(n), even where the individual is "identifiable" in the sense that he or she is the particular individual to whom the belief, perception or speculation is attached. However, I also find that there will be instances in which disclosure of the information requested by the Applicant will reveal that specific groundwater is polluted or contaminated, and where that pollution or contamination can, by virtue of other available information, be traced

back to an identifiable individual who can be the only one responsible. For example, an Environmental Health Consultant, who testified at the oral hearing on behalf of the Public Body, noted that hydrocarbon spills from a buried tank can be linked back to a specific piece of land, as can water contaminated from intensive livestock operations.

[para 67] I accordingly find that the fact that identifiable individuals are responsible for polluting or contaminating groundwater will sometimes be revealed by the records at issue, and that this fact – but not a mere perception – amounts to their personal information within the meaning of section 1(n) of the Act. I must therefore address, in the next part of this Order, whether disclosure of the fact that an identifiable individual polluted or contaminated groundwater would be an unreasonable invasion of his or her personal privacy.

3. Conclusions regarding the existence of personal information

[para 68] I conclude that the information requested by the Applicant will reveal the personal information of third parties, within the meaning of section 1(n) of the Act, in instances where the legal land description contained in the records, in conjunction with the history of occupants of the land available from other sources, will identify a particular individual who submitted well water for testing. The records will also reveal personal information in instances where the water quality data will indicate that groundwater is polluted or contaminated, and the source of the pollution or contamination can be traced to an identifiable individual.

B. If the records consist of personal information, does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the records/information?

[para 69] Section 17 of the Act reads, in part, as follows:

> *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.*
>
> *(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if*
>
>> *(a) the third party has, in the prescribed manner, consented to or requested the disclosure,*
>> *…*
>>
>> *(g) the information is about a licence, permit or other similar discretionary benefit relating to*
>>
>>> *…*

(ii) real property, including a development permit or building permit, that has been granted to the third party by a public body,

and the disclosure is limited to the name of the third party and the nature of the licence, permit or other similar discretionary benefit,
…

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

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

(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,
…

(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
…

[para 70] In the context of section 17, a public body must establish that the information that it has withheld is the personal information of a third party, and may present argument and evidence to show how disclosure would be an unreasonable invasion of the third party's personal privacy. If a record does contain personal information about a third party, section 71(2) states that it is then up to an applicant to prove that disclosure would not be an unreasonable invasion of the third party's personal privacy.

[para 71] At the oral hearing, counsel for the Public Body again explained that the Public Body took a cautious approach when it applied section 17(1) to the information at issue, primarily out of concerns relating to confidentiality. Apart from that, the Public

Body took no position on whether section 17(1) actually applies. Counsel for AHS similarly noted an expectation of confidentiality on the part of the individuals who submitted water samples for testing – as well as argued that the information at issue would not really assist in protecting public health or the environment – but AHS otherwise took no position on the application of section 17(1) of the Act.

[para 72] In his written submissions and at the oral hearing, the Amicus submitted that disclosure of the records at issue would constitute an unreasonable invasion of the personal privacy of the individuals who submitted water samples for testing, individuals who can be identified as having polluted or contaminated groundwater, and individuals owning land proximate to water that is polluted or contaminated.

[para 73] Counsel for AARD submitted that, on the assumption that there is even personal information in the records at issue, its disclosure would not be an unreasonable invasion of personal privacy. The Applicant likewise took the position that the information that he requested would not unreasonably invade personal privacy.

1. Circumstances in which there would not be an unreasonable invasion of personal privacy

[para 74] Under section 17(2) of the Act, a disclosure of personal information is expressly not an unreasonable invasion of a third party's personal privacy in certain circumstances. The Applicant raised the possible application of section 17(2)(g)(ii). He argued that a well constitutes a discretionary benefit relating to real property, and that the ability to test the water might also be such a benefit. In support, he cited Order 98-018, in which disclosure of the identities of third parties who had received a licence to hunt grizzly bears was found not to be an unreasonable invasion of personal privacy. He also cited Order 98-014, in which disclosure of information pertaining to a grazing lease was found not to be an unreasonable invasion of personal privacy.

[para 75] Section 17(2)(g)(ii) states that a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the information is about a licence, permit or other similar discretionary benefit relating to real property "and the disclosure is limited to the name of the third party and the nature of the licence, permit or other similar discretionary benefit". In this inquiry, the information requested by the Applicant is not limited to the nature of a licence, such as a licence to divert and use the water. The information at issue relates to the chemical and microbiological analyses of water, which in turn might reveal that an identifiable individual polluted or contaminated it. Such information falls outside the scope of section 17(2)(g)(ii).

[para 76] Section 17(2)(a) states that a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the third party has, in the prescribed manner, consented to or requested the disclosure. In this inquiry, some well owners have indicated that they have no objection to disclosure of the information about their water. For instance, two well owners who attended the oral hearing testified that they have used the Water Well Testing Service of the Public Body, as well as additional

testing by other government bodies, and they have no concerns about their well water information being disclosed to the Applicant or made publicly available.

[para 77] I suspect that many others well owners would consent to disclosure of the information about their water, if asked. In this regard, section 17(2)(a) may apply to a portion of the information sought by the Applicant. However, it is unnecessary for me to refer to section 17(2)(a) for the purposes of my conclusions in this inquiry. On my consideration below of the relevant circumstances weighing in favour of and against disclosure under section 17(5), I conclude that disclosure of all of the information at issue would not be an unreasonable invasion of the personal privacy of third parties.

2. Circumstances in which there is a presumption of an unreasonable invasion of personal privacy

[para 78] Under section 17(4) of the Act, a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy in certain circumstances. At the oral hearing, counsel for AARD submitted that that there is no presumption against disclosure of personal information in this inquiry, even assuming that there is any personal information. The Amicus stated in his written submissions that section 17(4) does not apply to the records at issue. The Applicant also argued that there are no presumptions against disclosure under section 17(4).

[para 79] I agree that section 17(4) does not give rise to any presumptions against disclosure of the information at issue in this inquiry. I considered the application of section 17(4)(a), under which a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to a medical condition. At the oral hearing, an Environmental Health Consultant for the Public Body suggested that, in learning information about water quality, one could also learn information about a particular family's health or risks to its health. However, the fact that water is contaminated, or otherwise of poor quality, does not definitively say anything about the health of the individuals who might have consumed it. I therefore find that section 17(4)(a) is not engaged in this inquiry.

3. Relevant circumstances in deciding whether disclosure would be an unreasonable invasion of personal privacy

[para 80] Section 17(5) of the Act states that, in determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, one must consider all the relevant circumstances, and section 17(5) sets out a non-exhaustive list of such circumstances. I will now review the relevant circumstances possibly weighing in favour of or against disclosure of the information at issue in this inquiry, as raised by the parties.

(a) Public scrutiny of government activities

[para 81] Under section 17(5)(a), a relevant circumstance weighing in favour of the disclosure of personal information is that the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny.

[para 82] At the oral hearing, the Applicant cited section 17(5)(a), although he said that it was not for the purpose of questioning the activities of the Public Body, AHS, or any other public body. Rather, he argued that disclosure of the information at issue will show, or should show, that the government "is doing its job" – in other words, it would scrutinize their activities in a favourable way. In his written submissions, he wrote that Alberta Environment has called for greater public involvement in the stewardship of water resources, and that, without water analyses being publicly available, it is virtually impossible for the general public or scientists to provide the type of oversight contemplated by Alberta Environment. He said that increased surveillance and monitoring of changes to water quality will only support the government's stated goal of openness and transparency.

[para 83] Counsel for AHS submitted that, because the Certificates of Chemical Analysis and Microbiological Reports represent just a snapshot in time, they really do not serve the purpose of public scrutiny. I note that an Environmental Health Consultant with the Public Body testified that, because the Water Well Testing Service is voluntary, there is a hodge podge of results in the context of trace analysis, meaning that the results are not comprehensive or representative of water quality in a particular region. She did acknowledge, however, that one can get a better sense of water quality in a particular area as a result of routine testing.

[para 84] In any event, I find that the relevant circumstance in relation to public scrutiny under section 17(5)(a) only minimally exists in this inquiry. Some of the information requested by the Applicant relates to groundwater studies carried out by the Public Body and will shed light on what the government has investigated and found in that regard. However, most of the information at issue is the result of well owners and tenants voluntarily arranging for their water to be tested, as opposed to any initiatives on the part of the Public Body and therefore any of its "activities", as contemplated by section 17(5)(a). There are times where public health inspectors will follow up with additional testing to ensure that water is safe to drink, but these relatively infrequent instances are insufficient to render the information at issue, as a whole, desirable for the purpose of scrutinizing the activities of the Government of Alberta or public bodies. In short, the Applicant has requested the water data in order to learn about the water, not the activities of government.

(b) Promotion of public health or the protection of the environment

[para 85] Under section 17(5)(b), a relevant circumstance weighing in favour of the disclosure of personal information is that the disclosure is likely to promote public health and safety or the protection of the environment.

[para 86] The Applicant cited section 17(5)(b), submitting that if universities and researchers could access the information that he has requested, it would assist in making water safe. He submitted that the information at issue permits the monitoring of groundwater and the identification of where there are stresses on the system. In his written submissions, the Applicant said that, if water resources have become contaminated with biological material, landowners are impacted in that there could be serious health consequences. He cited the Walkerton tragedy, during which members of a community in Ontario died or became seriously ill following contamination of the water supply by the presence of *E. coli*. He wrote that, if more information about water analyses is made available, groundwater studies will be able to be conducted by outside researchers with a higher degree of investigation and thoroughness, which will lead to improvements in health and safety, and help protect water resources.

[para 87] I find that the relevant circumstance under section 17(5)(b) exists in this inquiry so as to weigh in favour of disclosure of the personal information of third parties. Because the quality of water can affect health and impact the environment, information about water quality would serve to promote public health and the environment.

(c) Personal information supplied in confidence

[para 88] Under section 17(5)(f), a relevant circumstance weighing in favour of the disclosure of personal information is that the personal information has been supplied in confidence.

[para 89] The Public Body submitted that it has been its longstanding practice to treat water testing results as confidential. It argued that if the testing results were not treated in confidence, well owners may be deterred from accessing the Water Well Testing Service. The Amicus similarly submitted that, if the records at issue were disclosed, well owners may opt out of the testing service, which would defeat the program's goal of ensuring safe and potable water.

[para 90] On behalf of the Public Body, an Environmental Health Consultant testified at the oral hearing that the Community Population Health Branch of the Public Body has historically treated the information generated by the Water Well Testing Service test as confidential, including legal land descriptions in that they can be linked back to an individual. While it is not necessarily in writing or explicit, she stated that there is an implicit expectation of confidentiality on the part of individuals relying on the testing service. The Public Body's FOIP Coordinator similarly stated that her understanding from the program area, being the Community Population Health Branch, is that disclosure of the information requested by the Applicant would harm the Public Body's relationship with well owners.

[para 91] In the course of the oral hearing, I asked the Public Body and AHS to provide copies of the requisition forms and any accompanying material that are provided to well owners when they offer water samples for all of the types of testing. Following his

review of the requisition forms, the Applicant submitted that there are no indications of confidentiality.

[para 92] I agree that there are no express indications of confidentiality on the forms. However, I find it likely that some of the individuals who provided water samples did so with an expectation of confidentiality and therefore supplied their legal land descriptions in confidence. The legal land descriptions, in turn, are what reveal the personal information of identifiable third parties that is at issue in this inquiry (i.e., the fact that they provided a water sample, or the fact that they are responsible for contamination). The relevant circumstance set out in section 17(5)(f) accordingly weighs against disclosure of the information requested by the Applicant.

(d) Unfair exposure to harm and unfair damage to reputation

[para 93] Under section 17(5)(e), a relevant circumstance weighing against the disclosure of a third party's personal information is that the third party will be exposed unfairly to financial or other harm. Under section 17(5)(h), a relevant circumstance weighing against the disclosure of personal information is that the disclosure may unfairly damage the reputation of the third party. I will discuss these two provisions together, as the parties' submissions regarding them, and the provisions themselves, overlap in that both raise the possibility of unfair consequences to third parties.

[para 94] The Applicant argued that environmental laws exist to prevent pollution to groundwater, and he could think of no laws that would protect polluters. With respect to the hypothetical polluter, he accordingly argued that exposing them would not unreasonably invade their privacy, as any harm or damage to reputation would not be unfair. In short, the Applicant said that polluters should be exposed. He further submitted that any harm to individuals within the terms of sections 17(5)(e) and 17(5)(h) is outweighed by the promotion of public health and safety and protection of the environment under section 17(5)(b). He wrote that, if an individual is negatively affecting the quality of groundwater and disclosure of that fact is embarrassing or harmful, the greater good must be considered. He submitted that it is important to stop contamination of drinking water at an early stage, before there are possibly devastating results.

[para 95] Two well owners who attended the oral hearing similarly argued that their interest in safe water should outweigh any impact that disclosure might have on polluters. They argued that privacy should not be protected in matters involving water contamination, and even possibly unethical conduct in relation to water protection.

[para 96] In my view, an individual responsible for pollution or contamination would not be exposed "unfairly" to harm within the terms of section 17(5)(e), or have his or her reputation "unfairly" damaged, within the terms of section 17(5)(h). An individual who has contributed to the pollution or contamination of Alberta's water resources, whether knowingly or not, and whether intentionally or not, should not expect to have that fact hidden from others who rely on those water resources. The relevant circumstances set

out in sections 17(5)(e) and 17(f)(h) are therefore not engaged so as to weigh against disclosure of the information at issue in this inquiry.

[para 97] Aside from individuals identified as having polluted or contaminated groundwater, the Amicus submitted that disclosure of the information at issue may have potential adverse consequences on land values or attract unwanted personal scrutiny from adjoining landowners or others sharing the same aquifer. He wrote, for example, that where water testing results on a neighbouring property disclose concerns relating to the chemicals present in the water, this may have a significant impact on an individual's ability to sell his or her own property, despite the fact that tests of his or her own water present no similar concerns. In reference to both sections 17(5)(e) and 17(5)(h), he conceived of a situation in which a prospective purchaser of land might learn of a failed test in relation to water quality on adjacent land, and decide not to purchase the property, even though the water may come from different sources. He suggested that such harm would be unfair to the prospective seller, even though it may not be unfair in relation to the seller of the land that actually draws bad water.

[para 98] Conversely, two landowners who testified at the oral hearing noted that disclosure of the information at issue might actually resolve the concern identified by the Amicus, in that a prospective purchaser could more definitively ascertain the quality of a particular piece of land's water by reviewing the results from the same water source and depth, not jumping to conclusions based on hearing about the result in relation to an adjacent piece of land. The Applicant argued that vendors selling land proximate to a polluter or to contaminated water would want to have access to information about contaminated water before it spreads to their land, or to have it rectified before they decide to sell themselves.

[para 99] I find that sections 17(5)(e) and 17(f)(h) do not set out circumstances relevant to the disclosure of the personal information of individuals whose property is adjacent or near property known to be above, or known to draw, polluted or contaminated water. This is because such individuals have no personal information in this context. For reasons set out earlier in this Order, the information about polluted or contaminated water is, first, about the water, and secondly, about any identifiable individuals known to have polluted or contaminated it. The fact that neighbouring landowners might be affected by this information about the water, or about another individual, has nothing to do with their own personal information.

(e) Personal information likely to be inaccurate or unreliable

[para 100] As a witness for AHS, the Program Leader for Environmental Microbiology at the Provincial Laboratory explained that microbiological data can be misinterpreted, in that an initial water sample may show a failed result, but the second sample will show that there is actually no problem with any well water. It is not just a matter of a "pass" or "fail", as a failure means only that there might be a problem, in which case follow-up is undertaken to verify or correct the result. He said that it is very difficult to know the source of any contamination from the raw data itself, making it possible for people to overreact to the data in respect of water from a well and assume things that are not the

case. For instance, where there is evidence of *E. coli*, it could be due to raw chicken touching the kitchen tap from which the sample was taken. In the same vein, a well owner might incorrectly believe that his or her own well water is contaminated when the contamination is, in fact, the result of improper methods used by a drilling company that did not drill his or her own well. In short, even where there is evidence of contamination of water from a particular well, it does not mean that there is an overarching concern about the well water in the geographic area, more generally. An Environmental Health Consultant for the Public Body likewise testified that a water quality result that may pose a risk (e.g., the presence of naturally occurring arsenic) does not mean that neighbouring wells are affected, given that the wells may be in different aquifers.

[para 101] The foregoing testimony raised the possibility that section 17(5)(g) is engaged in this inquiry. Under section 17(5)(g), a relevant circumstance weighing against the disclosure of personal information is that the personal information is likely to be inaccurate or unreliable.

[para 102] The Applicant argued that the relevant circumstance under section 17(5)(g) does not exist here, as any failed, negative or out-of-range result is subject to further testing by public health officials to confirm the results. However, as pointed out by the Amicus and confirmed by the Public Body, even where there if a follow-up test, the original results are nonetheless contained in the records at issue.

[para 103] Still, the water test results – whether noted as a “pass” or a “fail” or any other characterization – are not themselves inaccurate or unreliable. No one suggested that the testing being done by the Provincial Laboratory and Centre for Toxicology is not accurate or reliable. Rather, someone might draw an inaccurate or unreliable conclusion about whether water is contaminated, and who contaminated it, based on the water test results. Counsel for AARD submitted that the Act does not govern interpretations or conclusions, but rather information itself. She said that the Act does not purport to control what someone might make of the information once he or she learns it.

[para 104] I find that the relevant circumstance set out in section 17(5)(g) does not exist in this inquiry. As explained earlier in this Order, information constitutes personal information only where it can be linked to an identifiable individual. Where there is a mere belief or speculation that water is polluted or contaminated, and that a particular individual is responsible for polluting or contaminating it, that individual has not been sufficiently identified so as to give rise to the existence of personal information within the meaning of section 1(n). In other words, a perception about that individual, based on mere belief or speculation, is not his or her personal information. If there is no personal information, section 17(1) as a whole – let alone section 17(5)(g) specifically – cannot apply.

[para 105] Where, conversely, an individual has been correctly identified as having polluted or contaminating groundwater, this personal information is not inaccurate or unreliable, and section 17(5)(g) is likewise not engaged.

(f) Lack of consent of third parties

[para 106] Two well owners who made brief written submissions in response to the Public Notice of Inquiry said that they do not want any of their information or records to be disclosed to the public or to the Applicant. While two other well owners who testified at the oral hearing consented to disclosure of the information about their water, the Amicus noted that consent has not been obtained from virtually every other individual whose personal information is, or may be, at issue in this inquiry. He also expressed concern regarding all of the landowners who did not participate in the inquiry. Counsel for AARD responded that the lack of consent, or even the presence of an objection, does not necessarily mean that information cannot be disclosed.

[para 107] A third party's objection, or refusal to consent, to the disclosure of his or her personal information is a factor weighing against disclosure (Order 97-011 at para. 50; Order F2004-028 at para. 32). Where an individual cannot be located or is not otherwise able to participate in an inquiry, and therefore is not in a position to consent or object to the disclosure of his or her personal information, this may also be taken into account, essentially as a relevant circumstance weighing against disclosure (Order 96-021 at para. 172; Order F2008-031 at para. 125). I have accordingly considered the foregoing when reaching my conclusions under section 17.

(g) Public availability of personal information

[para 108] The Applicant argued that, because the only way of identifying a land owner is through the Land Titles Office, section 4(1)(l)(v) of the Act is engaged. That section states that the Act does not apply to a record made from information in a Land Titles Office. However, while there are legal land descriptions in the records, the information at issue in this inquiry is not "made" from information in a Land Titles Office.

[para 109] Still, the Applicant raised the public nature of legal land descriptions as a relevant circumstance in favour of disclosure. The public availability of information, and legal land descriptions in particular, was considered as follows in Order F2010-001 (at para. 39):

> Section 17 of the FOIP Act does not specifically address public availability of personal information. However, I agree with the Public Body that a public body must consider whether section 17 of the FOIP Act permits or prohibits giving access to personal information to an applicant before it may disclose personal information to an applicant, even in situations where the information may be publicly available. In Order F2009-010, I said:
>
> > If there is no preexisting system of public access in relation to personal information, personal information is not in fact publicly available for the purposes of the FOIP Act. Consequently, considering public availability to be a factor weighing in favor of disclosure under section 17(5) in such circumstances would be improper. On the other hand, if there is a system of public access in place in relation to personal information, in addition

> to making an access request under the FOIP Act, then personal information is publicly available. However, when determining whether this information should be disclosed to an applicant who has made an access request under the FOIP Act, public availability would be only one factor to weigh under section 17(5) of the FOIP Act and could be outweighed by other factors weighing against disclosure.

> In the present circumstances, information regarding legal land descriptions and landowners is publicly available. However, information regarding occupants and their mailing addresses, in conjunction with the results of water testing on the property they occupy, is not publicly available. Further, the Public Body severed information regarding occupants and mailing addresses, rather than information such as legal land descriptions. Consequently, the public availability of the information severed is not a factor that applies in this case.

As in Order F2010-001, the information at issue in this inquiry does not consist simply of legal land descriptions, which are publicly available. Rather, some of the legal land descriptions will serve to reveal personal information that is not publicly available, namely the fact that an identifiable individual submitted a water sample for testing, or the fact that an identifiable individual is responsible for polluting or contaminating groundwater. Moreover, the information about the water that serves to reveal the foregoing facts is not publicly available. The non-enumerated circumstance in relation to the public availability of personal information accordingly does not exist in this inquiry.

[para 110] The Applicant also cited section 40(1)(bb) which permits a public body to disclose personal information "when it is available to the public". He argued that well locations are already publicly available through the Alberta Environment database. Again, however, this overlooks the fact that the information that I have just described is not publicly available.

4. Conclusions regarding the application of section 17(1)

[para 111] I found, earlier in this Order, that the fact that an individual – who is identifiable by virtue of a legal land description – tested his or her well water is his or her personal information. The mere fact of providing a water sample does not give rise to any unfair harm within the terms of section 17(5)(e), or unfair damage to reputation within the terms of section 17(f)(h). Further, while some individuals may have supplied their legal land description, and therefore the fact that they were submitting a water sample, in confidence under section 17(5)(f), and some individuals have not consented or might not consent to disclosure, these relevant circumstances are outweighed by my finding that disclosure of the information at issue is likely to promote public health and safety and the protection of the environment, as well as minimally assist in subjecting government activities to public scrutiny. I therefore conclude that disclosure of the fact that a particular individual submitted well water for testing would not be an unreasonable invasion of personal privacy.

[para 112] I also find that section 17(1) does not apply to any of the information at issue that would reveal that an identifiable individual is responsible for polluting or

contaminating groundwater. Disclosure of such information is likely to promote public health and safety and the protection of the environment, within the terms of section 17(5)(b), which outweighs the possibility that the individual in question supplied personal information in confidence under section 17(5)(f), or that they do not consent to the disclosure of their personal information. Moreover, an individual responsible for pollution or contamination would not be exposed "unfairly" to harm within the terms of section 17(5)(e), or have his or her reputation "unfairly" damaged, within the terms of section 17(5)(h). The relevant circumstances set out in those two sections are therefore not engaged so as to weigh against disclosure.

[para 113] I conclude that section 17(1) of the Act does not apply to any of the records at issue in this inquiry, as disclosure would not be an unreasonable invasion of the personal privacy of third parties.

C. Does section 16(1) of the Act (disclosure harmful to business interests of a third party) apply to the records/information?

[para 114] Section 16 of the Act reads, in part, as follows:

> *16(1) The head of a public body must refuse to disclose to an applicant information*
>
> *(a) that would reveal*
>
> …
>
> *(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*
>
> …

[para 115] Under section 71(1) of the Act, a public body has the burden of proving that an applicant has no right of access to information under section 16(1). A public body may be assisted by other parties.

[para 116] In a letter dated August 26, 2011, the Public Body wrote the following:

> …AHW had hoped to engage in a discussion with the Commissioner and advise that the chemical content reports may be withheld on the basis of section 16. The information in the chemical content reports may reveal the well owner's scientific or technical information that was supplied by the well owner in confidence. Furthermore, the disclosure of this information could reasonably be expected to result in undue financial loss or interfere significantly with the negotiating position of the landowner as well as possibly resulting in similar information no longer being supplied to the public body when it is in the public interest that similar information continues to be supplied.

[para 117] At the oral hearing, however, the Public Body took no position on the application of section 16(1) to the information at issue. As with the personal information of individuals, counsel for the Public Body explained that the Public Body simply had concerns about possible confidentiality within the terms of section 16(1)(b), given that the Water Well Testing Service is voluntary and it did not want third parties to stop using it if they knew that their testing results would fall into the hands of an applicant or the public.

[para 118] Counsel for AHS echoed the Public Body's concerns regarding the voluntary nature of the Water Well Testing Service, and the impact that the placement of water quality information in the public domain might have on users. He did not elaborate any further.

[para 119] Counsel for AARD said that she deferred to the arguments of the Public Body and AHS. She did, however, point out that section 16(1) was inapplicable absent a link between the disclosure of the information requested by the Applicant and the harms alleged. She questioned whether there was such a link in this inquiry.

[para 120] The Amicus did not take any definitive position on the application of section 16(1) either, but instead raised certain points for my consideration.

[para 121] The Applicant submitted that section 16(1) does not apply to the information at issue in this inquiry. As will be discussed below, he argued that the information is not of the sort contemplated by section 16(1)(a), that there has been no information supplied in confidence under section 16(1)(b), and that disclosure of water quality data could not "reasonably" be expected to bring about any of the outcomes set out in section 16(1)(c).

[para 122] For section 16(1) to apply to information, the requirements set out in all three paragraphs of that section must be met. In other words, in order to qualify for the exception to disclosure set out in section 16(1) of the Act, the records at issue must satisfy the following three-part test:

- Would disclosure of the information reveal trade secrets of a third party or commercial, financial, labour relations, scientific or technical information of a third party under section 16(1)(a)?

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

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

(Order F2004-013 at para. 10; Order F2005-011 at para. 9)

On my review of each of the above questions and the various points raised by the parties, I conclude that disclosure of the record at issue would not be harmful to the business interests of any third parties, and that section 16(1) therefore does not apply.

1. Would disclosure of the information reveal one of the types of information set out in section 16(1)(a)?

[para 123] In this inquiry, the only possibilities raised by the parties in relation to section 16(1)(a) were that the information at issue may reveal "scientific and technical information" and that it may reveal "commercial information" of a third party.

(a) Scientific and technical information

[para 124] In its written submissions, the Public Body stated that the chemical analyses relating to the water samples are derived from scientific processes and may therefore possibly constitute "scientific and technical information" within the terms of section 16(1)(a)(ii). The same could be said of the microbiological analyses.

[para 125] "Scientific information" has been defined as information exhibiting the principles or methods of science (Order 2000-017 at paras. 31-32; Order F2012-06 at para. 56). "Technical information" has been defined as information belonging to a third party regarding the applied sciences, proprietary designs, methods and technology (Order F2012-06 at para. 57, citing Order F2002-002 at para 35 and Order F2008-018 at para. 67).

[para 126] The Applicant argued that any scientific or technical information is about the water owned by the Crown to everyone's benefit, not about any third party business.

[para 127] The Amicus noted, in his written submissions, that any "scientific or technical information" would be that of the Centre for Toxicology, and he questioned whether the Centre for Toxicology is a third party within the terms of section 16, given that it is somehow affiliated with the Public Body. The same argument would apply to the Provincial Laboratory, insofar as its processes for analyzing the microbiological content of water is concerned.

[para 128] Counsel for AARD submitted that any scientific or technical information would be about the water, not about the business providing the water sample or occupying the land. She again noted the fact that, by virtue of section 3 of the *Water Act*, water is vested in the Crown so it does not belong to any businesses.

[para 129] I find that the information at issue in this inquiry would not reveal scientific or technical information of a third party. The data and analyses set out in the records are facts about water, and reveal nothing about principles or methods of science, or about applied sciences, proprietary designs, methods and technology, including in relation to the Centre for Toxicology or the Provincial Laboratory.

[para 130] As discussed in this Order in relation to identifiable individuals, some of the records at issue – in conjunction with information gathered from other sources or the known history of which business has occupied a particular piece of land – will reveal that a specific business arranged to have its water tested. However, this information would also not constitute scientific or technical information.

(b) Commercial information

[para 131] In suggesting that section 16(1) might apply to the records at issue, the Public Body did not raise the possibility that the records consist of "commercial information" within the terms of section 16(1)(a)(ii). However, this possibility was discussed in the course of the oral hearing. For instance, counsel for AARD suggested that information about the presence or absence of a functioning well on a piece of property, and information about water availability further to a licence to use that water, might be commercial information where the property is occupied by a business.

[para 132] Conversely, the Applicant submitted that information as to whether a well bore on particular land is good or bad, and information about water quality, is not commercial, in the sense that it really has nothing to do with the operation of a farm or any other business. He said that the success or failure of a farm or other business, which he considers the commercial aspect, is a reflection of factors apart from the absence or presence of a well or water. He submitted that a prospective purchaser would review the financial statements to determine whether the farm or business has profits or losses, irrespective of any available information about the well or water. He also analogized the information about water to information about soil type, which he says is not about the business but rather the land. He said that different types of successful commercial enterprises can exist, depending on the nature of the soil and water, and that this is so even if the quality of the soil or water is not suitable for some other type of enterprise.

[para 133] The Amicus was of the view that nothing in the records requested by the Applicant constituted commercial information, even where a farming operation or other business submitted the water sample.

[para 134] I find that the information at issue in this inquiry would not reveal the commercial information of any third party. "Commercial information" has been defined

as information belonging to a third party about its buying, selling or exchange of merchandise or services (Order F2009-028 at para. 42; Order F2010-013 at para. 19). Groundwater data does not fall within this definition. First, for reasons set out earlier in this Order, the groundwater data does not belong to the business and is therefore not information "of a third party" within the terms of section 16(1)(a)(ii). While a business may have a licence to divert and use water, the water is vested in the Crown.

[para 135] As for the fact that a specific business arranged to have its water tested, this may be information "of a third party", but it still does not constitute commercial information. If that were the case, every fact in relation to every act carried out by a business could be said to be its commercial information.

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

[para 136] With respect to whether any information has been supplied in confidence within the terms of section 16(1)(b), the Applicant submitted that only the water sample and well location are supplied by third parties who seek to have their water tested. He argued that the water sample is not really information, that the well location is about the well rather than the third party, and that the testing results derived from the water sample are not supplied by the third parties. In short, the Applicant noted that the information at issue in this inquiry is comprised of the analyses of water, not anything that businesses actually supplied themselves.

[para 137] Counsel for the Public Body, however, argued that landowners who avail themselves of the Water Well Testing Service are nonetheless arranging for the scientific or technical information about their water to be determined, even though that determination is not made by them. Counsel for the Public Body suggested that it would not be reasonable for landowners to have to do their own testing.

[para 138] I find it plausible to say that some third parties supplied the information at issue in confidence, within the terms of section 16(1)(b). While they did not supply the actual chemical and microbiological analyses appearing in the records, they supplied the water that gave rise to that information, along with the legal land description that links the water to their property. While the information about the water is not information about a business – anymore that it is personal information about an individual – the businesses may be said to have supplied, in confidence, the fact that they were having their water tested.

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

[para 139] In order for information to fall under section 16(1)(c), one must consider the connection between disclosure of the specific information and the outcome or harm that is alleged, how the outcome or harm would constitute damage or detriment, and whether there is a reasonable expectation that the outcome or harm will occur (Order

96-013 at para. 33). Stated differently, there must be a clear cause and effect relationship between disclosure of the withheld information and the outcome or harm alleged; the outcome or harm that would be caused by the disclosure must constitute damage or detriment, and not simply hindrance or minimal interference; and the likelihood of the outcome or harm must be genuine and conceivable (Order 96-003 at p. 6 or para. 21).

[para 140] The test regarding a reasonable expectation that a particular harm or outcome will occur must be satisfied on a balance of probabilities, meaning that the evidence must involve more than speculation or a mere possibility; the evidence must demonstrate a probability that the outcome or harm in question will occur on 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 (Order 96-013 at paras. 31 and 33). The requirement for an evidentiary foundation for assertions of harm was upheld in *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner)*, 2006 ABQB 515 (at paras. 6, 59 and 60).

(a) Similar information no longer being supplied to the public body

[para 141] Section 16(1) can apply to information if its disclosure could reasonably be expected to result in similar information no longer being supplied to a public body when it is in the public interest that similar information continue to be supplied, within the terms of section 16(1)(c)(ii).

[para 142] As indicated earlier, the Public Body had concerns that third parties might stop using its Water Well Testing Service if they knew that their testing results would fall into the hands of an applicant or the public domain. Counsel for AHS had similar concerns.

[para 143] The Applicant argued that the Public Body and AHS are overestimating the possibility that landowners might not avail themselves of the Water Well Testing Service if they knew that their water quality information would become known to others. He suggested that any reduction in water testing would be minimal and therefore not affect the overall ability to analyze water quality in the province. He also argued that, if there were a true concern or noticeable impact, the Public Body or AHS could obtain the required water samples themselves, or make the provision of water samples by landowners mandatory. Counsel for the Public Body countered that a determination of whether section 16 applies in this inquiry should not depend on the enactment of new legislation.

[para 144] As for well owners who have water that is contaminated, or who have received test results showing a small amount of contaminants warning that the well might have to be treated, the Applicant submitted that they will also continue to use the Well Water Testing Service, in order to ensure the health and safety of their families.

[para 145] Although the supply of information that permits water quality to be assessed is in the public interest, I find that disclosure of the information at issue in this inquiry

cannot reasonably be expected to result in similar information no longer being supplied to the Public Body. Businesses with wells are likely to continue to have their water tested, as it is in their own interests to have the water tested. Even businesses knowing or suspecting that their water is contaminated, and even businesses knowing that they are or may be responsible, will continue to have their water tested, so as to confirm or remediate the situation. I accordingly find that the outcome set out in section 16(1)(c)(ii) would not result from disclosure of the records requested by the Applicant.

(b) Harm to competitive position or interference with negotiating position, and undue financial loss or gain to any person or organization

[para 146] Section 16(1) can apply to information if its disclosure could reasonably be expected to harm significantly the competitive position or interfere significantly with the negotiating position of a third party, within the terms of section 16(1)(c)(i). It can also apply if disclosure could reasonably be expected to result in undue financial loss or gain to any person or organization, within the terms of section 16(1)(c)(iii).

[para 147] In its written submissions, the Public Body suggested that section 16(1) of the Act may apply to the records at issue because businesses may be of the view that disclosure of water quality results would have an adverse effect on land values, or attract unwanted scrutiny from adjoining landowners or others sharing the same aquifer. When I asked the Public Body, at the oral hearing, to elaborate on its concerns about undue financial loss and harm to negotiating position, it explained that it was thinking of prospective purchasers, tenants and mortgagees, who might be able to obtain an advantage over a prospective seller if water quality information were in the public domain.

[para 148] In his written submissions, the Applicant argued that, even assuming that negotiations relating to real estate transactions might be affected by disclosure of water quality data, any deficiency in water quality must be disclosed as a material latent defect under real estate law, regardless. As such, he submitted that negotiating position is not harmed. The Applicant further noted that other information associated with land is routinely disclosed, such as agricultural soil types, oil and gas analyses (such as the presence of hydrogen sulfide gas) and the amount of precipitation, even though this information might affect the value of the property.

[para 149] The "unwanted scrutiny" of businesses raised by the Public Body is not one of the consequences set out in section 16(1)(c). Still, the suggestion of the Public Body – based on its cautious approach in dealing with the Applicant's access request – is that third parties may have difficulty negotiating the sale of their business, or the property on which their business sits, or they may obtain a lower price, if it is known that their land draws contaminated water or water of poor quality.

[para 150] However, a business sitting on property drawing bad water would not suffer "undue" financial loss on the sale of their business or property, as the quality of the water

would be a fair consideration in setting the price. I accordingly find that the outcome set out in section 16(1)(c)(iii) would not result from disclosure of the information at issue. For similar reasons, I find that the outcome set out in section 16(1)(c)(i) would not result. A negotiating position is not "harmed" by revelation of a fact that is relevant to the purchase and sale of property, and which a buyer is effectively entitled to know.

4. Conclusions regarding the application of section 16(1)

[para 151] While suggested by the parties, the water quality data requested by the Applicant is neither the "scientific and technical information" nor the "commercial information" of any businesses occupying the land from which the water was extracted. Further, even if the analyses of the water constituted information falling within the terms of section 16(1)(a), and even if information could be characterized as being supplied in confidence under section 16(1)(b), disclosure of the information at issue cannot reasonably be expected to bring about any of the consequences set out in section 16(1)(c).

[para 152] I conclude that section 16(1) of the Act does not apply to any of the information at issue in this inquiry, as disclosure would not be harmful to the business interests of any third parties.

D. Does section 32(1) of the Act require the Public Body to disclose the records/information in the public interest?

[para 153] Section 32 of the Act reads, in part, as follows:

> *32(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people, to any person or to an applicant*
>
> > *(a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant, or*
> >
> > *(b) information the disclosure of which is, for any other reason, clearly in the public interest.*
>
> *(2) Subsection (1) applies despite any other provision of this Act.*
>
> *...*

[para 154] In their written submissions, both the Public Body and AHS note that guidance regarding the application of section 32 of the Act was set out by a former Commissioner, as follows, in Order 96-011 (at pp. 16 to 18, or paras. 48 to 53):

> Section 31 [now section 32] imposes a statutory obligation for the head of a public body to release information of certain risks under "emergency-like" circumstances (i.e. "without delay"). It also defines the circumstances where the obligation arises for the head of the public body. The section also provides for an

> overriding of other provisions in the Act, with respect to release of third party information (if necessary). The significant override of privacy rights provided by section 31 suggests that the definition of what information is "caught" by the provision, and with respect to which a statutory duty of disclosure applies, must be defined narrowly. […]
>
> […]
>
> Once the pre-conditions set out in section 31 [now section 32] are met, a statutory obligation arises for the head of a public body to release information, notwithstanding that other sections of the Act protecting individual privacy may have to be over-ridden in releasing that information. The Act cannot be taken to lightly impose this statutory duty on the head of a public body, or to lightly allow an over-riding of individual privacy rights. Thus, in any review of a section 31 [now section 32] decision, I must first consider whether one of the pre-conditions set out in section 31 [now section 32] has occurred. The applicant has the burden of proof at this part of the investigation and it is not a burden that will be easily met. These pre-conditions are:
>
> > risk of significant harm to the environment
> >
> > risk of significant harm to the health or safety of the public
> >
> > release is clearly in the public interest.
>
> The latter of these pre-conditions was considered by Mr. Justice Cairns in Bosch [Order 96-014 (External Adjudication Order No. 1)]. In the portion of the Bosch decision dealing with section 31(1)(b) [now section 32(1)(b)], Mr. Justice Cairns considered what type of information might be "clearly in the public interest". He made an important distinction between information that "may well be of interest to the public" and information that is "a matter of public interest." I agree with this point. I cannot conclude that the Legislature intended for section 31 [now section 32] to operate simply because a member of the public asserts "interest" in the information. The pre-condition that the information must be "clearly a matter of public interest" must refer to a matter of compelling public interest.
>
> Similarly, I cannot conclude that the Legislature intended for section 31 [now section 32] to operate when a member of the public asserts that there is "risk of significant harm". There must be some actual risk, and there must be some evidence that the harm in question is significant.

[para 155] AHS also noted that Order 96-011 was reviewed in Order F2006-010, in which the following comments regarding the burden of proof under section 32 were made (at para. 31).

> As the previous Commissioner explained [in Order 96-011], an applicant bears the onus of establishing that section 32 applies to the information he seeks disclosed under section 32. In other words, an applicant must establish through evidence that the benefits of disclosure to the public interest will override any of the public and private interests that the Act has created exceptions to preserve. If

> an applicant successfully establishes that section 32 applies to the information, then the burden shifts to the head of the Public Body, who must then establish that a decision not to disclose the information is rationally defensible.

[para 156] In this inquiry, the Applicant acknowledged that the information that he has requested is not about a risk of "significant harm" to the environment or to the health or safety of the public or of an affected group of people, within the terms of section 32(1)(a). Rather, he argued that disclosure of groundwater data is "clearly in the public interest", within the terms of section 32(1)(b).

1. The parties' general submissions

[para 157] In his written submissions, the Applicant argued in favour of disclosure of groundwater data primarily for the purpose of scientific monitoring and research. He wrote as follows:

> There are many scientists who are mapping and quantifying Alberta's ground water resources. The ground water is perhaps one of Alberta's greatest non-human assets as it will sustain our population in the years to come. It is well known from experiences throughout the world that water resources are in great jeopardy and with the influences of exponential population growth and climate change, future generations of Albertans will rely on this resource as a lifeline to sustainability. The Government of Alberta has recognized the importance of water through the introduction of its Water for Life strategy. Even the carefully chosen name of the strategy portrays the importance of protecting our water resources. Scientists have undertaken a major research study to quantify the extent of our aquifers. Through personal communications, they have indicated that restrictions to ground water information have diminished their ability to efficiently conduct their research. Without the use of a comprehensive data set, it is virtually impossible to efficiently make observations and conclusions concerning the subtle changes to ground water quality over a period of time.
>
> … Ground water chemistry and the biological characteristics are not readily available. Post 1986, water data are not available in the public domain and as such, it is not possible to conduct a thorough analysis into how ground water quality is changing and being affected by the industrial footprint in our province.

The Applicant explained that the *Water for Life* strategy advocates for a safe, secure drinking water supply and for reliable, quality water supplies for a sustainable economy (Alberta Environment, *Alberta Tier 1 Soil and Ground Remediation Guidelines* at p. 11, citing Government of Alberta, *Water for Life: Alberta's Strategy for Sustainability*). He noted that the strategy states that citizens, communities, industry and government must share responsibility for water management in Alberta and work together to improve conditions within their local watershed.

[para 158] The Applicant's access request was for information dating from 1986, as prior to that year, water analysis was apparently included in a database of water wells that was in the public domain. At the oral inquiry, the Applicant argued that resurrection of a

similar database to the one that existed prior to 1986 is clearly in the public interest because Albertans have a right to knowledge about a resource that they effectively own. He said that there are hundreds of thousands of wells for which no data has been publicly available since 1986. He submitted that the increase in stresses on the groundwater system and the increase in industrial and agricultural activity make it important to monitor the relevant data. Among other things, he noted that there has been long-term degradation of groundwater from the overuse of salt as a winter highway maintenance practice, and that in the course of oil sands development, salt can also break into a fresh water aquifer and contaminate it. He presented material indicating that farming activities (e.g., sewage from intensive livestock operations), poor well construction and inactive or abandoned wells can all impact groundwater. He argued that water is critical to the sustainability of Alberta, and noted that there is or will be a shortage of it in southern part of province. In his mind, there is no question that section 32(1)(b) applies, and that this outweighs any potential harm that disclosure might have on individuals or businesses.

[para 159] The Applicant submitted excerpts from the *Report of the Rosenberg International Forum on Water Policy to the Ministry of Environment, Province of Alberta*. The Report was prepared by an international panel asked to consider regional water problems and offer scientific advice about the nature of the problems and the ways in which they might be addressed. The Report reviewed Alberta Environment's *Water for Life* strategy, and made recommendations as to how it could be strengthened. At the oral hearing, the Applicant drew attention to the following excerpts in the Report (at pp. 5, 7, 10, 12-15 and 18-19):

- [T]he vision which is articulated in the water strategy is a collaborative vision in which the planning and management of water resources will continue to be strongly influenced by stakeholder input in the future. The strategic plan also envisions a program of education in which all Albertans will have access to detailed information about the water resources of the Province and can thereby become more effective participants in processes of water planning and management.

- Achievement of the goals and objectives contained in the strategic plan will not be possible without both employing existing science and undertaking needed scientific research to fill knowledge gaps in support of the strategy. … In the future water policies should be based on the best available scientific and professional knowledge gleaned from all available sources.

- The existing network of groundwater monitoring is insufficient to provide reliable information on water quality and water levels and their variability. Without a more comprehensive monitoring network, it will be very difficult to achieve the goal of ensuring safe drinking water, healthy ecosystems, and reliable water supplies. Monitoring networks need to be installed – and sustained over time - at a density sufficient to ensure proper tracking of level changes and a high probability of detecting contamination before it has spread over a large area.

- In the management of Alberta's economy, water should be viewed as being every bit as important as oil.

- Existing management and governance arrangements are not adequate to respond to contemporary pressures. Groundwater is not adequately monitored…

- The development and projected exploitation of oil sands and coal bed methane are likely to pose special threats to both groundwater quantity and quality. These threats will be exacerbated unless both public and private stakeholders remain fully accountable for any adverse environmental consequences that result from their activities. … The livestock industry and irrigated agriculture will also continue to pose threats to groundwater quality.

- If Albertans are to protect and enhance their groundwater resources so that they will be available in the future as a reliable source of fresh water, they will have to develop and implement a strong groundwater management and protection program.

- [M]uch better knowledge of the relationship between groundwater and aquatic ecosystems is necessary. … Moreover better information about the threats to groundwater quality and quantity is needed as there is significant risk and uncertainty which is incompletely understood by the public.

- Alberta's groundwater resources may play a critical role in defining future economic development.

- Previous practices of groundwater monitoring and management were appropriate to an era in which groundwater was a relatively minor source of supply in most areas. These practices will not be adequate in an era of intensifying pressure to develop groundwater resources. For example, the number of groundwater wells in use in the Province is not accurately known. … The result is that there is little information on the quantity of groundwater extractions and virtually no information on groundwater quality. This merely draws attention to the urgent need to monitor and manage the Province's ground water resource.

- The absence of long-term monitoring and the data that it yields hampers scientific decision-making.

- [G]overning agencies lack both the financial resources and sufficient qualified staff to compile and analyze the limited data that is presently reported, thereby hampering the development of effective management options.

- It is vitally important that the spatial distribution, volume, present quality, and hydrologic connectivity of the groundwater resource be characterized and subsequently monitored to determine changes in storage and quality while changes are occurring.

- Alberta is embarking on an ambitious plan of oil and gas extraction that will require substantial water withdrawals and quality deterioration that has the potential to seriously contaminate ground and surface waters if protective measures should fail. For this reason it is important to have a comprehensive early warning system for detection of contamination from each operation before it has had a chance to migrate and disperse over a substantial volume of groundwater.

- The groundwater management plan includes provisions to build a groundwater information centre as a water data warehouse. However, this should be more than a storage facility. The 'centre' should be designed as a full inter-operable facility where data is not only stored but can be shared with multiple users.

[para 160] By noting the foregoing excerpts, the Applicant essentially drew attention to several overarching points: water is an important resource in Alberta; it is subject to the threat of contamination by various factors; groundwater data must therefore be monitored; the government does not have the ability to carry out all of the necessary monitoring; scientific monitoring and research by parties outside of government can and should fill this gap; and the public should have knowledge of groundwater data and participate in the management of water resources, in any event.

[para 161] These themes were reinforced by the Applicant when he noted a Memorandum of Understanding between Alberta Environment and Alberta Energy and Utilities Board, which states that there is a growing public perception that energy activities are impacting groundwater, that working together is a key to gaining increased public confidence that groundwater is well-managed, that processes should be developed to facilitate data collection/flow/interpretation between agencies, and that knowledge of groundwater resources should be improved (Alberta Energy and Utilities Board and Alberta Environment, *Development of a Memorandum of Understanding between Alberta Environment and Alberta Energy and Utilities Board to Enhance Collaboration for the Protection and Management of Ground Water*, pp. 1-2).

[para 162] The Applicant also submitted a copy of the Government of Alberta's document entitled *Alberta Environment's Drinking Water Program: A 'Source to Tap, Multi-Barrier' Approach*, in which it states (at p. 7):

> Awareness of the issues facing drinking water systems now and in the future is vital to ensuring safe, secure drinking water for all Albertans. Alberta Health and Wellness, the Provincial Public Health Laboratory, Alberta Health Services and Alberta Environment all have roles to play in maintaining this awareness through education, technical assistance and knowledge transfer.

In drawing attention to the above document, as well as the Memorandum of Understanding between Alberta Environment and Alberta Energy and Utilities Board, the Applicant argued that all government departments involved in matters relating to water quality should make a coordinated effort to ensure that groundwater data is available to the public.

[para 163] The Applicant submitted copies of news articles or news releases to show that groundwater data is important and that the public should have access to it. For instance, he cited a news story in which a water advocate in Calgary was noted as saying that the abandonment of water quality monitoring could lead to water quality problems flowing into the city ("Province to scale back water monitoring"). He submitted a news release that noted that the potential for hydraulic gas fracturing to contaminate useable water aquifers with fracturing liquid chemicals and natural gas is "a real public issue" ("Multi-million Dollar Landmark North American Lawsuit on Hydraulic Fracturing and Its Impact on Groundwater"). The Applicant also included an article indicating that his access request and this inquiry has generated some media interest ("Tell Us What's Being Done to Our Ground Water, Demand Albertans").

[para 164] To demonstrate the importance of research into groundwater data, the Applicant submitted a copy of a letter from a Professor in the Department of Earth and Atmospheric Sciences at the University of Alberta. The Professor wrote that there can be no doubt that the information at issue constitutes vital data for the understanding of both groundwater quality and groundwater flow systems. Among other things, the Professor noted:

> 1) It is critical to have access to these water chemistry data in order to conduct teaching and research into the groundwater resources of Alberta. Water chemistry data are a fundamental part of the investigations we undertake: both to understand the chemical composition of the water, and to understand how the water varies (evolves) across the Province in space and time.
>
> 2) Access to this type of data is in the public interest. These data are needed to both understand the resource (i.e., what type of water is found where?), but also how the resource is functioning in the landscape (e.g., surface water-groundwater interactions; groundwater flow systems etc). We cannot safely allocate groundwater for water supply, ecosystem health, etc, without understanding the groundwater flow systems. We need groundwater chemistry data to understand groundwater flow systems.

[para 165] In the same vein, a Ph.D. candidate in the Department of Biological Sciences at the University of Alberta made a written submission in the inquiry, which included the following:

> We are perplexed and troubled by the inaccessibility of the province's groundwater data after 1986. We assert that this data should be made publicly available, and ask that you carefully examine the rationale of Alberta Health & Wellness for not publically disclosing this data set. With respect to our interests, this lack of disclosure is preventing us from investigating the question of whether sulfur pollution from industrial activities has potentially impacted groundwater chemistry in this province, which in turn, could be contributing to the deterioration of water quality in Alberta's lakes and reservoirs.

[para 166] Two landowners who testified at the oral hearing were also in favour of a public database, as they believe that it would permit their neighbours to know about the

problem with water in their area. They said that they are not in a position to advise all of their neighbouring landowners, and that the various government departments that they have asked have not been willing to do so. They questioned how others are able to protect themselves in the absence of an accessible database of information so that they can monitor their own water. They suggested that, if landowners notice something unusual when compared to the existing data in their area, they can investigate further. They agreed that a database relating to groundwater would be used by researchers, and further added that the information would be more objective than anecdotal evidence given by landowners here and there, such as via the media.

[para 167] A few organizations or bodies – such as the Grimshaw Gravels Aquifer Management Advisory Association, the Municipal District of Peace No. 135, the Wild Rose Agricultural Producers and the Association of Summer Villages of Alberta (of which the Applicant is a member of the Board of Directors) – made brief written representations indicating that they are in favour of making the information requested by the Applicant available to the public.

[para 168] In response to the Applicant's arguments regarding the need to monitor and research groundwater data, the Public Body explained in its written submissions that the purpose of the Water Well Testing Service is to encourage private well owners to have their water tested, so as to avoid negative health outcomes. It said that the purpose is not to generate data for research purposes. The Public Body further argued that, because participation in the testing service is voluntary, the information collected is not comprehensive, and the records at issue are not representative of any particular geographic region. The Public Body submitted that, due to these limitations, it does not rely itself on the records to draw any conclusions about the quality of water throughout Alberta. At the same time, however, the Public Body noted that it occasionally carries our groundwater studies, separate and apart from the Water Well Testing Service.

[para 169] The Amicus essentially deferred to the submissions of the Public Body.

[para 170] Counsel for AHS submitted that, due to the transitory and limited value of the microbiological and chemical information in the records at issue, it is unlikely that their release would be in the public interest under section 32.

[para 171] Counsel for AARD argued that section 32 is intended to require proactive disclosure where there is a matter of clear public interest, not disclosure simply on the basis that information might be of interest to the public. She placed the circumstances in this inquiry in the latter category. In arguing that it is not sufficient for a segment of the population to be convinced that particular information is of great importance, counsel for AARD analogized that researchers in the area of child development would undoubtedly be interested in all of the relevant information being held across government, yet this does not mean that their interest can dictate how public funds are spent so as to make disclosure to the public available within the terms of section 32. In other words, according to counsel for AARD, where a member or members of the public are interested in information held by government, they are entitled to make an access request and

should do so under the regular provisions of the Act, not expect disclosure under section 32.

2. The utility of groundwater data for research

[para 172] In the course of the inquiry, the parties engaged in much debate over whether the database requested by the Applicant would assist in monitoring and researching the quality of groundwater in Alberta.

a) Points made against research utility

[para 173] The Public Body argued that the information sought by the Applicant is not useful for research purposes. In its written submissions, it noted that the information at issue is generated, for the most part, through a self-selected and voluntary process, and that no quality control is exercised over the collection of the water that is tested and therefore the results in the records. It also argued that there is no comprehensive set of data. It added that the usefulness of the Microbiological Reports for scientific and research purposes is questionable due to the fact that the records speak to the existence of organisms in the water at a particular point in time, and the organisms may have subsequently died or been carried away. In short, the Public Body argued that a specific set of groundwater data cannot be said to reflect the status of groundwater quality in Alberta generally, in any accurate or fulsome way, whether over a period of time or at a specific moment.

[para 174] At the oral hearing, counsel for the Public Body noted that testimony was presented to the effect that the Water Well Testing Service is generally intended to encourage individuals to test their water for the purpose of the health system, not to carry out any research. The Public Body further noted that the existing data is very incomplete, given the limited sampling and limited number of tests that have been carried out. Having said this, counsel for the Public Body acknowledged that, outside the context of the Water Well Testing Service, the Public Body and other government departments carry out water quality studies.

[para 175] Counsel for AHS similarly noted that the microbiological data gathered by the Provincial Laboratory is very variable, is prone to misinterpretation, and would not serve to identify contamination, or anything in relation to hydrocarbons or inactive or abandoned wells, which were among the concerns of the Applicant. Counsel for AHS argued that the research value was very limited in that the test results relate to only one specific sample and the voluntary nature of the testing means that some water wells get tested repeatedly while others are never tested, which might further skew the results and affect the utility of the data.

[para 176] A witness on behalf of AHS at the oral hearing, being the Supervisor of Risk Assessment in the Environmental Public Health Unit, gave evidence to the effect that the water quality data gathered through the Water Well Testing Service would not usefully contribute to knowledge about groundwater. She said that this is particularly so

given that laboratory techniques have improved over the years, meaning that earlier testing results are less precise and later testing, which is much more sensitive, may be misleading in that it is able to detect very small traces of chemical and microbiological elements. She also said that, because testing is voluntary on the part of private well owners, as well as infrequent when they do use it, the collected results are merely a "snapshot" at a self-selected location at a given point in time. She noted that the results change over time, particularly for the microbiological testing. She explained that the fact that a very small sample of water possibly indicates a health risk does not mean that there is actually a concern with the well water generally. Further testing may reveal the initial result to be inaccurate, as a result of poor sampling, or show that the result was not due to the well water, but due to plumbing in the house or poor maintenance of the well. Also on behalf of AHS, a Manager in the Microbiological Area of the Provincial Laboratory explained that a sample of tested water may not necessarily be from a well, as it could be from a cistern or dugout.

[para 177] During his cross-examination by the Amicus, the Director of the Centre for Toxicology indicated that, while there is value in the chemical testing results in terms of quality assurance, the information would only be useful to persons with the requisite understanding of the chemical information, not to the average landowner.

b) Points made in favour of research utility

[para 178] The Applicant argued that groundwater data, while incomplete, is a useful starting point and its utility is not restricted to resolving issues of contamination and pollution, but also gaining a basic understanding of groundwater. He said that government officials do not always have the requisite knowledge to analyze certain substances and fluids. He submitted that researchers are able to use incomplete data, that such data forms a fundamental part of their studies, and that researchers are trained to review, understand and upgrade existing data. He said that the fact that the Public Body does not use, for research purposes, much of the data that it collects is essentially part of his point. A database would permit others to carry out research. With respect to the groundwater studies already done by the Public Body, he said that information about water quality is but one aspect of the information that he is seeking in relation to groundwater. He submitted that more research is warranted apart from that already carried out by government departments.

[para 179] In short, the Applicant's objective is to establish a base line in order to identify future problems. He submitted that only base line data will catch certain anomalies relating to seismic wells and wells in the oil and gas industry. He stressed the importance of base line data in order to determine whether an industrial activity is causing stress on groundwater when it first moves into a new area.

[para 180] In submitting that incomplete groundwater data is useful, the Applicant noted that it is already being used by researchers. For instance, the aforementioned Professor in the Department of Earth and Atmospheric Sciences at the University of Alberta wrote:

> 3) These data have been used in the past with great success. For example, the Alberta Research Council issued a set of "Groundwater Maps of Alberta" in the 1970's and 1980's – using publically available groundwater and water chemistry data. These maps are still used by the people of Alberta today for groundwater exploration and exploitation. (Alberta Geological Survey Website).
>
> 4) The argument that these data are incomplete, or of little use in their un-processed form is completely incorrect. Any information on the chemistry of water in an area is better than no information. Working with water chemistry data (i.e., processing and culling) forms a routine part of the training of graduate hydrogeologists at the University of Alberta. Yes, these data are often incomplete, but they form a fundamental part of understanding the groundwater resource.

[para 181] During her cross-examination by the Applicant at the oral hearing, the Supervisor of Risk Assessment noted that AHS does not keep past water sample testing records, as they are given to the particular well owner. The Applicant accordingly suggested that a database containing all of the past testing results might be a useful way for well owners to have some understanding of the condition of their well water, as well as that of their neighbours. The Supervisor of Risk Assessment acknowledged that, where there is a concern with water quality, the Water Well Testing Service liaises only with the individual who submitted the water sample, not his or her neighbours – although where there is a larger issue, like a flood causing possible contamination, AHS might notify another entity, such as a municipality or Alberta Environment, so that the latter could then deal with other landowners, as necessary. The Applicant suggested that, regardless of whether there is, in fact, contamination of water, and regardless of the source of the contamination, neighbouring landowners should at least have access to the data so that they can pursue or monitor the matter as they see fit. At another point in the oral hearing, the Applicant argued that, while microbiological results are transitory, they can nonetheless highlight an area that may be of concern so as to avoid contamination, such as that from sewage lagoons associated with livestock operations.

[para 182] When cross-examining another witness for AHS, being the Program Leader for Environmental Microbiology at the Provincial Laboratory, the Applicant noted that aggregate data is useful in order to determine whether there is a "hot spot" of possible contamination of water in a particular area, or clusters of failed results, and this necessarily requires knowledge of the location of the wells possibly affected. In this way, he suggested that a public database linking the legal land descriptions to the water sample results may be useful in order for private researchers to assist in identifying public health concerns. The Applicant said that it is not sufficient to simply rely on communication between government agencies when there are possible concerns about water, and that the public has a right to know the raw information in order to make judgments for itself. He suggested that the current reporting system, or lack thereof, does not allow the public to know whether there are regions of the province that have water quality issues.

(c) Findings in relation to research utility

[para 183] In my view, it is quite clear that the information sought by the Applicant would be useful for scientific monitoring and research. The Applicant has presented ample evidence to show that groundwater data is desired by and would be used by researchers in the relevant fields. He has also sufficiently shown how the information at issue would assist in identifying concerns about water quality in Alberta. The fact that government bodies conduct their own research does not change the fact that private researchers can also make important use of groundwater data. My conclusion is also not altered by the fact that the water quality data held by the government is not exhaustive, and may be prone to misinterpretation by individuals without the requisite expertise. I am confident that researchers are capable of applying the data in order to gain a better understanding of Alberta's groundwater.

[para 184] Accordingly, the Applicant has established that there is "[an]other reason" – within the terms of section 32(1)(b)of the Act – for which groundwater data might be disclosed. The next question, however, is whether disclosure of the information is "clearly in the public interest".

3. The degree of urgency required to engage section 32(1)(b)

[para 185] The Public Body argued that section 32(1) of the Act is meant to apply to urgent situations, and that there is no such urgency in this case. The Amicus similarly wrote that there is no evidence to suggest that disclosure of the records is urgent or necessary. Counsel for AARD noted that, if there is an imminent risk, the Provincial Laboratory and Centre for Toxicology would undoubtedly alert the Public Body or AHS so that affected members of the public may, in turn, be notified. In the same vein, counsel for the Public Body said that, to the extent that there is any urgency in the form of a public health concern, the Public Body deals with those concerns, and there is nothing in disclosure to the public of the records requested by the Applicant that would assist in this regard. Affected landowners will already get a report and the public health inspectors already do any necessary follow-up, without the public having to monitor the information that would be available in the database requested by the Applicant.

[para 186] Indeed, I note testimony at the oral hearing to the effect that the government would certainly address matters potentially affecting an individual's health or the health of the public. As a witness for the Public Body, the Director of the Centre for Toxicology explained that, when a test result has a potentially dangerous chemical concentration, the Centre for Toxicology will draw it to the attention of the public health inspector who assisted in the collection of the water sample, either by noting the result on the report or telephoning the inspector when the result is particularly unusual. The public health inspector will then interpret the result and request any follow-up testing, if warranted. On behalf of AHS, a Manager in the Microbiological Area of the Provincial Laboratory explained that, although collection of the raw microbiological data is just one step or tool in the overall determination of water quality, potentially health-averse situations are addressed. For instance, where there is a potentially hazardous level of

coliforms or *E. coli* in an initial water sample, or in a follow-up sample, the Provincial Laboratory reports the matter within strict timeframes to the appropriate agency, such as Environmental Public Health of AHS, or Alberta Environment, so that the latter may carry out the necessary assessment to protect public health.

[para 187] At this juncture, however, it is important to recall that the section of the Act that is at issue is not section 32(1)(a), under which disclosure may be required in order to prevent what is essentially an imminent threat to public health or the environment. Rather, the question is whether the same sense of urgency required to engage section 32(1)(a) is required to engage section 32(1)(b). The Applicant acknowledged that there is no urgency in this inquiry, such as there might be in the case of a risk of significant harm to the environment or to the health or safety of the public. However, he argued that concerns relating to groundwater are crucial and must be addressed nonetheless. He noted, for instance, that there have been advancements in macro-industrial projects, such as oil sands development and shale gas fracking as well as aging infrastructure, that have the potential to cause significant stress on the environment over time.

[para 188] In response, the Public Body submitted that the reference to "without delay" in the opening part of section 32 means that a situation must be urgent or emergency-like, even for disclosure to be "clearly in the public interest" within the terms of section 32(1)(b). The Public Body went on to argue that this threshold is not met in this inquiry, particularly given the age of the information at issue and the fact that it represents a snapshot in time. Counsel for the Public Body submitted that information ten to 15 years old, for instance, would not be relevant to any emergency or urgent situation today.

[para 189] Counsel for AARD noted that section 32 is reserved for matters in which a public body has a positive obligation to disclose information "whether or not an access request is made". She suggested that this reference to disclosure, regardless of whether anyone has actually asked for the information, means that the threshold for requiring the disclosure is high. She effectively argued that, for both section 32(1)(a) and 32(1)(b), there needs to be compelling or urgent circumstances warranting disclosure. She added that this is demonstrated by the fact that section 32(1) is a provision that overrides the other provisions of the Act, as indicated by section 32(2). Counsel for AARD said that, without a high threshold for triggering section 32(1), it would arguably apply to virtually every aspect of government activity and all information held by government, given that virtually everything that the government does is of interest to the public.

[para 190] In turn, the Applicant responded that there is a sufficient degree of urgency in this case, given that water resources are limited and we must look after them. He argued that section 32 can still capture situations where a public body might take a year or two to make information available, if indeed disclosure of that information is clearly in the public interest. His reading of section 32 is that its objective is to make public bodies open, transparent and accountable, even absent an urgent or emergency-like situation.

[para 191] In my view, the sense of urgency required to engage section 32(1)(b) does not have to meet the same threshold as for section 32(1)(a). The reference to "without

delay" in the introductory words of section 32 can depend on context, meaning that some information might require disclosure immediately while other information may not. The terms "urgent" and "emergency", which have been used to describe the kinds of situations that might give rise to disclosure in the public interest under section 32, are themselves relative.

[para 192] Still, there remains a high threshold in order to trigger section 32(1)(b). While the circumstances in question need not amount to an emergency – in the same sense as an emergency arising from a risk of significant harm to health, safety or the environment – the circumstances must be such that disclosure of information is "clearly" in the public interest. As I mentioned at the oral hearing, for section 32(1)(b) to apply, disclosure must be clearly in the public interest in that there must be circumstances "compelling" disclosure (Order F2004-024 at para. 57). As noted in Order 96-011 (at p. 16 or para. 48), the override provided by section 32 means that it must be interpreted narrowly. In my view, this is regardless of whether it is section 32(1)(a) or 32(1)(b) that is under discussion.

[para 193] In this inquiry, I find that the need to make groundwater data publicly available is not so compelling as to require disclosure in the public interest under section 32 of the Act. Information relating to water quality, as it relates to specific land, is accessible to the owners of that land so as to permit some degree of monitoring by the public. While the government may not be monitoring and researching groundwater as thoroughly as the Applicant would like, given its other priorities and limited resources, the Applicant has not shown that Alberta's water resources have reached a state that requires some form of intervention on the part of the public and researchers. The Applicant's desire for the information primarily for the purpose of monitoring and research is, in some ways, a point militating against disclosure in the public interest. While the requested data will assist in determining the extent to which groundwater is being impacted by industrial or agricultural activity and other factors, the Applicant has not established that there currently exists a problem that requires some form of action that could be achieved through disclosure of groundwater data to the public. In short, monitoring and researching a state of affairs, essentially to see if something is dire, is not the same as dealing with a state of affair already determined to be dire. I acknowledge that prevention of groundwater contamination, devastating health consequences and environmental impact is part of the Applicant's objective, but there still needs to be a more demonstrated level of seriousness before disclosure can be required under section 32 of the Act.

4. Cost implications as being relevant to section 32

[para 194] Information about wells that have been drilled, but not about the water taken from them, is publicly available on a database administered by Alberta Environment. On behalf of the Public Body, its Corporate Solutions Architect testified at the oral hearing that in order to create a database comparable to the one administered by Alberta Environment, the Public Body would have to first acquire new technology that meets provincial requirements in terms of procurement and type of product. He

estimated that, even using the least sophisticated software, it would take nine months and cost $500,000 to develop the database. He said that it would be necessary to have a team ranging from two to five full-time equivalents, depending on the stage of the project. Once the database was up and running, the Corporate Solutions Architect estimated that its ongoing maintenance would cost from $50,000 to $100,000 annually. On behalf of AHS, the Program Leader for Environmental Microbiology at the Provincial Laboratory added that it would be very difficult to recover or extract the more dated electronic data from what is now an archaic system.

[para 195] Referring to the evidence presented by its Corporate Solutions Architect, the Public Body argued that the amount of time, money and human resources necessary to create a public database containing groundwater data precluded the application of section 32 in this inquiry. He submitted that the diversion of such resources would itself be contrary to public interest. Counsel for AARD echoed these submissions by arguing that the manner in which government resources and public funds are spent is more properly within the discretion of the Legislature and the government departments that it authorizes to carry out programs.

[para 196] Counsel for AARD further argued that the "user pay principle" set out in section 6(3) of the Act, by which members of the public are normally required to pay for the processing of their requests to access information, means that the threshold for meeting section 32 must be high. Otherwise, the general taxpayers, rather than the Applicant or the researchers to whom he refers, unfairly bear the cost of the database being sought. The Applicant responded by essentially saying that this point begs the question, given that section 32 is itself an exception to the user pay principle.

[para 197] In cross-examining the Corporate Solutions Architect, the Applicant raised the possibility of populating, or transferring data to, the existing Alberta Environment database, as this would be less expensive and more efficient. The Corporate Solutions Architect acknowledged that this might be possible and would be less costly, but could not definitely say whether it would be feasible, from a technological perspective. He also noted the cost and human resources required in order to coordinate such an endeavor by the Public Body and Alberta Environment with respect to transferring information.

[para 198] The database administered by Alberta Environment is in the form of a map with "GIS" technology whereas the Corporate Solutions Architect noted that the Public Body also has text-based databases containing some of the information requested by the Applicant. On this point, the Applicant states that he might be content with the existing Chemical Content Summaries being routinely made available to the public, along with comparable summaries in relation to the microbiological data that he is seeking.

[para 199] In my view, the costs and resources associated with the disclosure of information are factors to consider in determining whether disclosure is "clearly in the public interest" within the terms of section 32(1)(b). While there might be public interest in knowing information, there is also a public interest in the manner in which government funds are allocated and spent, given that expenditures inevitably fall to taxpayers.

However, in this inquiry, I find it unnecessary to consider the cost implications of the disclosure requested by the Applicant, as I find that disclosure of groundwater data is not clearly in the public interest, in any event.

[para 200] While cost may sometimes be a factor to consider in deciding whether section 32(1)(b) of the Act is engaged, this is probably not the case in respect of section 32(1)(a). Section 32(1)(a) refers to the existence of specified circumstances, rather than to public interest more generally. While the reference to "public interest" in section 32(1)(b) captures a consideration of the cost implications of disclosure, one of the specified circumstances set out in section 32(1)(a) either exists or not, without any added criterion relating to cost.

5. Conclusion regarding the application of section 32

[para 201] Section 32(1)(b) of the Act does not require disclosure of groundwater data in the public interest, as the threshold for triggering that section has not been met. While research into groundwater data is an important objective, the circumstances are not so compelling as to require disclosure in this case.

[para 202] The Notice of Inquiry stated that the issue in relation to section 32(1) included consideration of the means of disclosure, should section 32(1) apply. This was meant to address whether the public would be entitled only to information in its existing form, or whether the public would be entitled to disclosure by way of a resurrected or adapted database. It is not necessary for me to consider the means of disclosure, given than I have concluded that section 32(1) of the Act is not engaged in this inquiry. Having said this, an issue remains in part B of the inquiry as to whether the Public Body is required to create a record for the Applicant in a particular format under section 10(2).

V. ORDER

[para 203] I make this Order under section 72 of the Act.

[para 204] I find that most of the information in the records at issue is not personal information, as that term is defined in section 1(n) of the Act. Section 17(1) therefore cannot apply, meaning that disclosure of the information would not be an unreasonable invasion of the personal privacy of the third parties in question.

[para 205] I find that the records at issue consist of some amount of personal information, namely in instances where the legal land description contained in the records, in conjunction with the history of occupants of the land available from other sources, will identify a particular individual who submitted well water for testing, and in instances where the foregoing information, along with the water quality data, will reveal that an identifiable individual is responsible for polluting or contaminating groundwater. However, I find that section 17(1) of the Act does not apply to any of this personal information, as its disclosure would not be an unreasonable invasion of the personal privacy of the third parties in question.

[para 206] I find that section 16(1) of the Act does not apply to the records at issue, as disclosure would not be harmful to the business interests of any third parties.

[para 207] I find that section 32(1) of the Act does not require disclosure of groundwater data in the public interest.

[para 208] As neither section 16(1) nor section 17(1) applies to the records at issue, I order the Public Body, under section 72(2)(a) of the Act, to give the Applicant access to the following information:

- copies of all Certificates of Chemical Analysis in the possession of the Public Body (but not including the names, addresses and telephone numbers of the well owners, tenants or other individuals who submitted the water sample), even if the originals or other copies of such Certificates of Chemical Analysis exist elsewhere;
- copies of all Microbiological Reports in the possession of the Public Body (but not including the names, addresses and telephone numbers of the well owners, tenants or other individuals who submitted the water sample), even if the originals or other copies of such Microbiological Reports exist elsewhere; and
- copies of all of the Chemical Content Summaries.

[para 209] Under section 72(4) of the Act, I make the order set out in the preceding paragraph conditional on the Applicant confirming, at any point in time, that he would like the foregoing records. He may choose to provide this confirmation after my determination of whether the Public Body is required to create a record for him in a particular format under section 10(2). The order in the preceding paragraph is also conditional on the Applicant paying any required fees under section 93(1), or else being excused from paying fees under section 93(4).

Wade Riordan Raaflaub
Adjudicator