ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2012-26

November 22, 2012

UNIVERSITY OF CALGARY

Case File Number F5673

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (the "Act"), the Applicant asked the University of Calgary (the "Public Body") for access to a response to a letter that she had sent to it, which response she believed to be in existence but had not received. She then requested a review of the adequacy of the Public Body's search for the response.

The Adjudicator concluded that the Public Body had conducted an adequate search for the response, and moreover, had located it and provided it to the Applicant. The Applicant believed that there was a more thorough response in existence, but the Adjudicator found that the response that was in existence, and that she had requested, was given to her in the course of the review by this Office.

The Applicant also asked for the Public Body's decision and reasons for decision following her complaint of wrongdoing by her former supervisor. The Public Body located a responsive record, being a letter to the former supervisor, in which it set out its decision and reasons following the investigation. It withheld the entire letter from the Applicant under section 17(1) of the Act (disclosure harmful to personal privacy). The Applicant requested a review of the decision to withhold the letter. She also requested a review of the adequacy of the Public Body's search for the requested decision and reasons, as she believed that some other record setting out the Public Body's decision and reasons was in existence.

The Adjudicator concluded that the Public Body had conducted an adequate search for the requested decision and reasons, as the only responsive record, other than a letter that the Public Body had written to the Applicant after its investigation, was the letter that the Public Body had written to the former supervisor. While the Applicant believed that there was a more detailed decision apart from the foregoing, the Adjudicator found that there was not.

The Adjudicator found that the substantive content of the letter to the Applicant's former supervisor was subject to section 17(1) of the Act, as disclosure would be an unreasonable invasion of the personal privacy of the former supervisor. The Adjudicator accordingly confirmed the decision of the Public Body to withhold the information. The Adjudicator found that the non-substantive content of the letter (e.g., its date and the names of the sender and recipients) was not subject to section 17(1) and ordered its disclosure to the Applicant.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 2(e), 10, 10(1), 10(2), 16(1), 17, 17(1), 17(2), 17(4), 17(4)(d), 17(4)(g), 17(5), 17(5)(a), 17(5)(c), 17(5)(g), 25(1), 32(1), 32(1)(b), 59(4), 67(1)(a)(ii), 71(2), 72, 72(2)(a) and 72(2)(b); *Ombudsman Act*, R.S.A. 2000, c. O-8.

Authorities Cited: AB: Orders 97-002, 97-003, 97-009, 97-018, 99-028, 2000-020, 2001-016, 2001-033, F2003-005, F2004-015, F2004-024, F2004-026, F2005-016, F2007-029, F2008-012, F2008-028, F2008-031, F2010-029 and F2012-21; *University of Alberta v. Pylypiuk*, 2002 ABQB 22. **CAN:** *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

I. BACKGROUND

[para 1] The Applicant, who was a student at the University of Calgary (the "Public Body"), made allegations of wrongdoing against her former supervisor. The allegations were the subject of an investigation by the Public Body. The Applicant takes the position that she is entitled to a remedy as a result of the wrongdoing, up to and including monetary compensation in the form of damages.

[para 2] In a request to access information made on December 5, 2010, the Applicant asked for the following three items of information from the Public Body under the *Freedom of Information and Protection of Privacy Act* (the "Act"):

1. *Letter from General Counsel as referenced in an e-mail*
2. *Decisions and the reasons for the decisions regarding the investigation that I was involved in including reference to myself and [the former supervisor]*
3. *Insurance policies with respect to the General Liability Insurance program, etc.*

In her request for review by this Office, the Applicant explained that, by way of item 1 above, she was requesting access to the General Counsel's response to a letter dated April 7, 2009 that the Applicant had sent to the General Counsel. In an e-mail dated May 22, 2009, the General Counsel told the Applicant that she had previously e-mailed a

response and asked whether the Applicant had received it. According to the Applicant, she had not received it and did not subsequently receive it.

[para 3] The Public Body conducted a search of e-mail correspondence between the Applicant and the General Counsel that was sent or received around May 22, 2009, being the date of the e-mail referenced in item 1 of the Applicant's access request. By letter dated January 7, 2011, the Public Body granted the Applicant access to all of e-mail correspondence that it had located in response to item 1. It withheld all of the information requested in item 2 of the Applicant's access request in reliance on section 17(1) of the Act (disclosure harmful to personal privacy), and withheld all of the information requested in item 3 in reliance on section 25(1) (disclosure harmful to economic and other interests of a public body).

[para 4] In correspondence to this Office dated February 5, 2011, the Applicant alleged that the Public Body had still overlooked the record that she had requested in item 1, and had therefore not conducted an adequate search for the responsive record, as required by section 10(1) of the Act. She also requested a review of the Public Body's decision to withhold the information requested in items 2 and 3 from her. In doing so, she raised the possibility that section 32(1) (disclosure in the public interest) applies to the information that she has requested. Finally, she alleged that the Public Body had not adequately searched for all responsive records setting out its decision and reasons following its investigation of her complaint against her former supervisor, as requested in item 2 of her access request.

[para 5] The Commissioner authorized a portfolio officer to investigate and try to settle the matter between the parties. This was partly successful, in that the Public Body located an additional record that it considered responsive to item 1 of the Applicant's access request, and granted her access to it by letter dated May 2, 2011.

[para 6] The Applicant requested an inquiry in correspondence dated July 20, 2011, and a written inquiry was set down. This Office subsequently identified an issue regarding the application of section 16(1) of the Act to the insurance information requested by the Applicant in item 3 of her access request, as that section sets out a mandatory exception to disclosure.

[para 7] As contemplated by section 67(1)(a)(ii) of the Act, I arranged for this Office to notify the Applicant's former supervisor and the Canadian Universities Reciprocal Insurance Exchange ("CURIE") as parties affected by the Applicant's request for review. The former supervisor was affected by the Applicant's request for review of the Public Body's response to item 2 of her access request (being the decision and reasons following its investigation), and CURIE was affected by the Applicant's request for review of the Public Body's response to item 3 of her access request (being the insurance information).

[para 8] A Notice of Inquiry was issued on March 20, 2012, setting out issues in relation to sections 10(1), 16(1), 17(1), 25(1) and 32(1) of the Act. However, by e-mail dated March 26, 2012, the Applicant advised this Office that she was no longer pursuing

her request for the general liability policy, in other words the insurance information set out in item 3 of her access request. The records responsive to item 3 were therefore removed from the scope of the inquiry. The issues relating to the application of sections 16(1) and 25(1) were also removed, as these issues dealt only with the Public Body's decision to withhold the insurance information. An Amended Notice of Inquiry was issued on March 27, 2012 to reflect the foregoing.

[para 9] By letter dated April 25, 2012, CURIE withdrew from the inquiry, as it had been affected only by the Applicant's request for the insurance information.

II. RECORDS AT ISSUE

[para 10] The Public Body has not withheld any information that it has located in response to item 1 of the Applicant's access request, and the Applicant has decided not to pursue access to the insurance information set out in item 3. The only record before me that is at issue is therefore a record responsive to item 2, being a two-and-a-half page letter from the Public Body to the Applicant's former supervisor, in which the former Provost and Vice-President (Academic) sets out the Public Body's decision and reasons for decision following the Applicant's complaint of wrongdoing by her former supervisor. The Applicant indicates that she has previously been told by the Public Body that this letter is a "letter of reprimand", but knows nothing about the content.

[para 11] While the foregoing letter is the only responsive record before me, the Applicant alleges that the Public Body has not adequately searched for all of the records that are responsive to items 1 and 2 of her access request.

III. ISSUES

[para 12] The Amended Notice of Inquiry, dated March 27, 2012, set out the following issues:

> Did the Public Body meet its duty to assist the Applicant under section 10(1) of the Act?
>
> Did the Public Body properly apply section 17(1) of the Act (disclosure harmful to personal privacy) to the records/information?
>
> Does section 32(1) of the Act (disclosure in the public interest) require the Public Body to disclose the records/information?

[para 13] In her inquiry submissions, the Applicant raises several matters over which I have no jurisdiction, although she may be referring to them primarily by way of background or as reasons to suggest why the Public Body is not authorized to withhold information from her. I am referring to, among other things, her view that the process surrounding the investigation of her complaint against her former supervisor was not fair or proper, that her former supervisor was treated too leniently following the investigation,

and that she did not receive a remedy or restitution. I also have no ability, as requested by the Applicant by way of nature of relief sought, to advocate for an amendment to the *Ombudsman Act* so that the Ombudsman can hear complaints by students against universities after they have exhausted internal appeals.

[para 14] In this inquiry, I have only jurisdiction to determine whether the Public Body met its duty to assist the Applicant under the Act – and, in particular, whether it conducted an adequate search for records responsive to her access request – along with jurisdiction to decide whether she should be given access to the information that the Public Body is withholding from her.

[para 15] The Applicant alleges that the former Provost and the General Counsel of the Public Body have committed criminal offences and asks me to contact authorities under section 59(4) of the Act. Section 59(4) allows the Commissioner to disclose to the Minister of Justice and Attorney General information relating to the commission of an offence under an enactment of Alberta or Canada if the Commissioner considers there to be evidence of an offence. I have been delegated the authority to hear this inquiry, but have not been delegated the authority to exercise the Commissioner's discretion on her behalf under section 59(4). I therefore cannot decide that the Minister of Justice and Attorney General be contacted. However, because the Applicant has effectively asked that the Commissioner exercise her discretion under section 59(4), I have drawn the Commissioner's attention to the Applicant's allegations that offences have been committed, so that the Commissioner can decide whether there is evidence of any offences and whether to exercise her discretion to disclose information to the Minister of Justice and Attorney General.

IV. DISCUSSION OF ISSUES

A. Did the Public Body meet its duty to assist the Applicant under section 10(1) of the Act?

[para 16] Section 10 of the Act reads as follows:

> *10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.*
>
> *(2) The head of a public body must create a record for an applicant if*
>
> > *(a) the record can be created from a record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise, and*
> >
> > *(b) creating the record would not unreasonably interfere with the operations of the public body.*

[para 17] The Notice of Inquiry specified that the issue under section 10(1) of the Act would be restricted to whether the Public Body conducted an adequate search for responsive records. A public body's duty to assist an applicant under section 10(1) includes the obligation to conduct an adequate search (Order 2001-016 at para. 13; Order F2007-029 at para. 50). The Public Body has the burden of proving that it conducted an adequate search, as it is in the best position to provide evidence of the adequacy of its search and to explain the steps that it has taken to assist the applicant within the meaning of section 10(1) (Order 97-003 at para. 25; Order F2007-029 at para. 46).

[para 18] In her request for review, the Applicant alleged that the Public Body failed to adequately search for and locate two records: (1) the response of the Public Body's General Counsel, as set out in item 1 of her access request; and (2) the decision and reasons of the Public Body following its investigation into the alleged wrongdoing by her former supervisor, as set out in item 2.

1. Item 1 of the Applicant's access request

[para 19] In a letter dated April 7, 2009 that the Applicant sent to the Public Body's General Counsel as an attachment to an e-mail of the same date, she referred to a letter that she had written to the former Provost on March 30, 2009, and that she understood to have been forwarded to the General Counsel. The April 7, 2009 letter paraphrased the March 30, 2009 letter as consisting of the Applicant's "inquiries into the mechanisms that may be in place to address the issues with the administration of my complaint and the remedies that may be available to me". In her inquiry submissions, the Applicant refers to the foregoing as being two questions asked by her, one regarding the mechanisms for addressing the administration of her complaint and one regarding the remedies.

[para 20] In the course of the review by this Office, but prior to this inquiry, the Public Body located an additional record that it considered responsive to item 1 of the Applicant's access request, and granted her access to it by letter dated May 2, 2011. The record is an e-mail sent May 19, 2009 from the General Counsel to the Applicant, which reads as follows:

> *Thank you for your e-mail [reproduced below]. The procedures and final decision maker will depend on what you are seeking as a remedy. For example, if you are seeking damages, depending on the amount, our insurers will respond. Our insurer may require proof of damages, as would the University. We can either meet to discuss or if you prefer you can put your request in writing.*

The May 19, 2009 e-mail reproduced the e-mail that had been received from the Applicant as follows:

> *The Provost's office has once again directed me to your office to make a request for damages. I'm unsure as to the purpose of this exercise as I am of the opinion that it is [the Provost]'s responsibility to make a decision as*

> *to the appropriate remedy. Given that he has directed me to your office, I would like to know what procedure is in place for assessing my request for damages. Specifically, who is the final decision maker in determining whether or not I will be awarded a remedy and what types of remedies are available to me.*

[para 21] Given the sequence and content of the correspondence between the Applicant and the Public Body's General Counsel, I find that the General Counsel's e-mail of May 19, 2009 is the record that is responsive to item 1 of the Applicant's access request.

[para 22] The Applicant's request for item 1 resulted from the fact that the General Counsel had e-mailed her on May 22, 2009 to ask whether the Applicant had received an earlier e-mail in reply to the Applicant's letter of April 7, 2009. (Although item 1 referred to a "letter", the Applicant acknowledges that it was in fact an e-mail that was referenced in the General Counsel's e-mail of May 22.) The Applicant's letter of April 7 asked the two questions about the mechanisms for addressing her complaint and about the remedies available to her. Although the General Counsel's e-mail of May 19 is a response to the Applicant's e-mail reproduced above, it would appear that the General Counsel considered her e-mail of May 19 to also effectively respond to the letter of April 7. In the e-mail of May 19, the General Counsel had provided information about certain procedures and about obtaining a remedy. In her subsequent e-mail of May 22, the General Counsel replied – albeit quite late – to the e-mail to which the Applicant attached the letter of April 7, and wrote, "I have sent you an e-mail on this. Did you receive it?" The e-mail being referenced is the one of May 19 sent three days earlier.

[para 23] The Applicant complains that she has never received a satisfactory response to the two questions posed in her letter of April 7. Indeed, while it provided information about obtaining a remedy, the e-mail of May 19 did not address the "issues with the administration" of the Applicant's complaint. However, this does not change the fact that the e-mail of May 19 is the e-mail referenced in the General Counsel's e-mail of May 22, and that it is therefore the record that is responsive to item 1 of the Applicant's access request. By way of item 1, the Applicant requested the General Counsel's response as referenced in an e-mail that the Applicant herself explains, in her request for review, to be the e-mail of May 22.

[para 24] As the e-mail of May 19 is the record responsive to item 1 of the Applicant's access request, I conclude that the Public Body conducted an adequate search for that record.

[para 25] As just noted, the Applicant is not satisfied that the General Counsel properly responded to her letter of April 7. She demands a written response to her two questions. In response to this concern and request on her part, I repeat the following from an earlier Order of this Office:

> The Applicant has a right of access to records (section 6(1) of the Act). The Applicant does not have a right to have the Public Body answer

> questions. Similarly, the Public Body does not have a duty to answer the Applicant's questions (it may do so if it wishes), but the Public Body does have a duty to respond to the Applicant about whether it has records that will answer the Applicant's questions.
>
> (Order 2001-033 at para. 9)

[para 26] In this case, the Public Body has met its duty to assist the Applicant by essentially advising her that the e-mail of May 19 is the existing record that responds to the two questions posed in her letter of April 7. Although the Applicant interprets the General Counsel's e-mail of May 22 to mean that there was some other, more thorough response that she has yet to receive, the response referenced in the e-mail of May 22 was the e-mail of May 19, as I have explained above.

[para 27] I considered whether the Public Body's failure to initially locate the May 19 e-mail means that it failed to initially conduct an adequate search for the record responsive to item 1 of the Applicant's access request. I decided otherwise. The standard for conducting an adequate search for records is not perfection, but what is reasonable (Order 2000-020 at para. 17). The Applicant's access request was made in December 2010, and it was for an e-mail dating from May 2009, more than a year and half earlier. The Public Body explains that, prior to its initial search for records responsive to item 1 of the Applicant's access request, it had completed a particular conversion of its computer system. In the course of the review by this Office, the Public Body determined that it was not confident that it had used the search function to its full capacity, and it therefore conducted the second search at which time it located the May 19 e-mail. I find that the Public Body's failure to fully or properly utilize a new electronic search function when conducting the initial search falls within a reasonable margin of error.

2. Item 2 of the Applicant's access request

[para 28] The Applicant also alleges that the Public Body failed to conduct an adequate search for all records responsive to item 2 of her access request, which was her request for the Public Body's decision and reasons following its investigation of her complaint against her former supervisor. She apparently received a letter addressed to her after the investigation, which is referenced in the Public Body's letter of January 7, 2011 in response to her access request (neither party provided me with a copy). The Applicant is aware of the existence of the letter already provided to her and of the letter written to her former supervisor that is at issue in this inquiry, but she is under the impression that there is some other record more thoroughly setting out the Public Body's decision and reasons.

[para 29] The source for this belief on the Applicant's part is a letter of April 8, 2008 from the former Provost, in which he advised her that he would be "deciding whether any further action is necessary" and that, following the investigation, there would be "fair and reasonable results, for all parties concerned". She effectively interprets the Provost's letter as promising her a written decision containing detailed reasons. She further

emphasizes that she is not particularly interested in the letter provided to her former supervisor. Rather, she seeks a written record that includes "facts, issues, law, analysis and a conclusion", and she submitted samples of such detailed and relatively lengthy decisions written by bodies and courts in other contexts. She also makes it clear that she is not referring to the Committee of Investigation's final report, which she has already received. She seeks access to a record explaining, among other things, why the Public Body did not grant her a remedy or restitution, believing that such a record exists but has not been provided to her.

[para 30] The Applicant argues that the Public Body must have an additional record setting out its decision and reasons, following the investigation of her complaint, on the basis that it was required to provide reasons in accordance with sections 4.1(d) and 4.8(e) of the Public Body's *Disclosure Protection Policy*. The Applicant's complaint in relation to her former supervisor was a "protected disclosure", which engaged the foregoing policy.

[para 31] However, I do not find that section 4.1(d) or 4.8(e) of the *Disclosure Protection Policy* required the decision and reasons that the Applicant believes to be in existence. Section 4.1(d) says that "[i]f the Dean, supervisor or senior officer decides to refuse to deal with a Protected Disclosure or ceases to investigate a Protected Disclosure, he or she must inform the person who made the Protected Disclosure and give reasons for the decision". In the Applicant's case, the Public Body neither ceased to investigate her complaint nor refused to deal with her complaint (although she is clearly not satisfied with the way in which it was dealt). Section 4.8(e) says that "any and all findings of the investigation will be conveyed back to the person who originally made the Protected Disclosure". As noted above, the Applicant did receive the report of the Committee of Investigation.

[para 32] The Applicant further writes that it is not reasonable or likely that no records were created during the process surrounding the investigation of her complaint beyond a letter of reprimand to her former supervisor (i.e., the letter at issue). She cites the Public Body's *Records and Retention and Disposition Policy*, one of the purposes of which is to "ensure that the University's business information assets are retained as long as needed for administrative, legal and fiscal purposes". In turn, she notes that section 20.3 of the collective agreement governing her former supervisor requires reasons for all discipline to be in writing, and that section 20.5 authorizes written warnings or reprimands to be kept on a staff member's file for up to five years. She then argues that this timeframe suggests that the reasons for the warning or reprimand – which she believes would include the decision and reasons following the investigation of her complaint against her former supervisor – would be retained for five years and that they therefore must exist somewhere.

[para 33] A letter of reprimand might itself contain the reasons for disciplinary action. In other words, to the extent that the letter at issue in this inquiry is an example of the record that the Applicant cites in reference to the collective agreement, it exists but is being withheld from her. As for some other record setting out the Public Body's decision

and reasons, the fact that a letter of reprimand itself may be retained for five years does not speak to the length of time that related documents, if they exist, may be retained. Moreover, even if records did once exist, section 20.5 of the collective agreement sets out a maximum period of retention, not a minimum one.

[para 34] In short, the Applicant misinterprets the various provisions that she cites. She believes that they required the Public Body to formulate its decision and reasons in a particular form, to provide her with a copy, and to retain a copy somewhere. However, on my review of the various provisions, none of the foregoing is true. I am satisfied that the only decision and reasons prepared by the Public Body, at the conclusion of its investigation of the Applicant's allegations of wrongdoing by her former supervisor, are contained in whatever letter she already received, and in the letter at issue in this inquiry, which the Public Body is withholding from her.

[para 35] Finally, the Applicant argues that it is reasonable, from a natural justice perspective, for her to receive a decision from the Public Body following her participation in its investigation of her complaint against her former supervisor. She cites *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 for the propositions that she is entitled to written explanation (see para. 43), and that she is entitled to greater procedural protections because there is no statutory appeal of the results of her complaint against her former supervisor (see para. 24). However, even if the Applicant had a reasonable expectation of a particular form of written decision from the Public Body, this does not bring one into existence.

[para 36] In short, while the Applicant believes that some other record setting out the Public Body's decisions and reasons following its investigation of her complaint against her former supervisor exists, I find that this is an erroneous belief on her part. I accept the Public Body's position and evidence to the effect that the records responsive to item 2 of the Applicant's access request consist only of the letter that she already received from the Public Body and the letter to her former supervisor that the Public Body is withholding from her. As the Public Body has located these records, it conducted an adequate search for them.

3. Conclusion regarding the Public Body's search for responsive records

[para 37] As I have found that the Public Body conducted an adequate search for the records responsive to items 1 and 2 of the Applicant's access request – and, moreover, has located the responsive records – I conclude that it met its duty to assist the Applicant, in this regard, under section 10(1) of the Act.

[para 38] At this point, I note that the Public Body says that the Applicant is effectively requesting, within the terms of section 10(2) of the Act, that it create a record responding to the two questions posed in her letter of April 7, 2009. Under section 10(2), a public body must create a record for an applicant if the record can be created from a record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise, and creating the record

would not unreasonably interfere with the operations of the public body. In response to the Public Body's reference to section 10(2), the Applicant asks me to determine whether the Public Body is required to create a record responding to her two questions, as well as a record setting out its decision and reasons following the investigation of her complaint.

[para 39] Section 10(2) does not require the Public Body to create any records for the Applicant. The provision applies when there is a record in a currently "inaccessible" electronic form, which might possibly be converted into a record that can then be made accessible to an applicant. In this inquiry, there is no reasonable possibility that the Public Body has the answers to the questions posed in the Applicant's letter of April 7, or a decision and reasons following its investigation of her complaint against her former supervisor, existing in an inaccessible electronic form somewhere in its computer systems. The records responsive to the Applicant's access request would be in the form of an e-mail or document, and I have found that the Public Body conducted an adequate search for such records in these forms.

B. Did the Public Body properly apply section 17(1) of the Act (disclosure harmful to personal privacy) to the information/record(s)?

[para 40] 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*
>
> > *[various circumstances, none of which exist in this inquiry]*
>
> *…*
>
> *(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
>
> > *…*
> >
> > *(d) the personal information relates to employment or educational history,*
> >
> > *…*
> >
> > *(g) the personal information consists of the third party's name when*
> >
> > > *(i) it appears with other personal information about the third party, or*
> > >
> > > *(ii) the disclosure of the name itself would reveal personal information about the third party,*
> >
> > *…*

(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,
…

(c) the personal information is relevant to a fair determination of the applicant's rights,
…

(g) the personal information is likely to be inaccurate or unreliable,
…

[para 41] In the context of section 17, the Public Body must establish that the information being withheld in the letter to the Applicant's former supervisor 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 the letter does contain personal information about a third party, section 71(2) states that it is then up to the Applicant to prove that disclosure would not be an unreasonable invasion of the third party's personal privacy. Because section 17 sets out a mandatory exception to disclosure – and section 2(e) provides for independent reviews of the decisions of public bodies – I must also independently review the information in the record at issue and determine whether disclosure would or would not be an unreasonable invasion of personal privacy.

1. Do the records consist of the personal information of third parties?

[para 42] Section 1(n) of the Act reads, in part, 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,
…

(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
…

[para 43] I find that most of the letter at issue in this inquiry consists of the personal information of third parties. In particular, it consists of the personal information of the Applicant's former supervisor, such as the kind set out in the definition reproduced above (i.e., his name, information about his employment history, and opinions of others about him). As discussed later in this Order, the letter also consists of a small amount of personal information of the writer of the letter, and of two individuals to which it was copied.

[para 44] A small part of the letter consists of nobody's personal information, such as its date and a notation above the date. As section 17(1) cannot apply to information that is not personal information, the Public Body was not authorized to withhold the foregoing in reliance on section 17(1), and I will order its disclosure to the Applicant.

[para 45] There is also a small portion of the letter that includes the Applicant's personal information. However, it merely consists of a few words indicating that she lodged a complaint against her former supervisor. I do not intend to order the Public Body to sever this information and provide it to the Applicant, given that she is already aware that she lodged a complaint against her former supervisor. It has been stated that there is no point ordering the disclosure of information that would be worthless to an applicant (see, e.g., Order F2008-028 at paras. 267-269).

2. Would disclosure be an unreasonable invasion of personal privacy?

[para 46] 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 parties do not raise the possibility that any of these circumstances exist in this inquiry, and I find that none of them exist.

[para 47] 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. The Public Body and the Applicant's former supervisor both submit that there is a presumption against disclosure of the personal information of the former supervisor under section 17(4)(d), on the basis that the information relates to employment history. The term "employment history" has been described as a complete or partial chronology of a person's working life such as might appear in a personnel file (Order F2003-005 at para. 73). Information about an individual's working life includes facts about the management of the individual's employment, such as information relating to performance and discipline (Order F2010-029 at para. 120).

[para 48] I find that the presumption against disclosure under section 17(4)(d) applies to the personal information of the Applicant's former supervisor, as found in the letter written to him. As explained by the Applicant's former supervisor, the letter discloses facts that might have resulted in discipline under the applicable collective agreement.

[para 49] The Public Body and the Applicant's former supervisor also both submit that there is a presumption against disclosure under section 17(4)(g). I agree. The letter

consists of the name of the former supervisor appearing with other personal information about him.

[para 50] Even where presumptions against disclosure arise under section 17(4) of the Act, all of the relevant circumstances under section 17(5) must be considered in determining whether a disclosure of personal information would constitute an unreasonable invasion of a third party's personal privacy. I will now review the enumerated and unenumerated relevant circumstances possibly weighing in favour of or against disclosure of the letter at issue, as raised by the parties or else independently noted by me.

[para 51] Where personal information of third parties exists as a consequence of their activities as staff performing their duties, or as a function of their employment, this is a relevant circumstance weighing in favour of disclosure under section 17(5) (Order F2003-005 at para. 96; Order F2004-015 at para. 96). Where a name (which constitutes personal information) appears only with the fact that an individual was discharging a work-related responsibility (which is not personal information), the presumption against disclosure under section 17(4)(g) (name appearing with or revealing other personal information) does not apply (Order F2004-026 at para. 117). Consistent with the foregoing statements, several orders of this Office have found that disclosure of information that would merely reveal that individuals acted in a work-related capacity is generally not an unreasonable invasion of their personal privacy (for a list, see Order F2008-028 at para. 53, or Order F2008-031 at para. 129).

[para 52] Given the foregoing principles, I find that section 17(1) does not apply to the name of the sender of the letter at issue, the name of the recipient, and the names of two individuals to which the letter was copied. It also does not apply to the business addresses and telephone numbers contained in the letter. The foregoing information merely reveals that particular individuals sent or received the letter in their work-related capacities. I will accordingly order disclosure of the information to the Applicant.

[para 53] I now turn to the personal information contained in the substantive part of the letter at issue, which consists of the personal information of the Applicant's former supervisor.

[para 54] The Applicant argues in favour of disclosure on the basis that it is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny under section 17(5)(a). For public scrutiny to be a relevant circumstance, there must be evidence that the activities of the government or a public body have been called into question, which makes the disclosure of personal information desirable in order to subject the activities of the public body to public scrutiny (Order 97-002 at para. 94; Order F2004-015 at para. 88). In determining whether public scrutiny is desirable, I may consider whether more than one person has suggested that public scrutiny is necessary; whether the Applicant's concerns are about the actions of more than one person within the public body; and whether the public body has or has not previously disclosed sufficient information or investigated the matter in question (Order

97-002 at paras. 94 and 95; Order F2004-015 at para. 88). However, it is not necessary to meet all three of the foregoing criteria in order to establish that there is a need for public scrutiny (*University of Alberta v. Pylypiuk*, 2002 ABQB 22 at para. 49). What is most important to bear in mind is that the desirability of public scrutiny of government or public body activities under section 17(5)(a) requires some public component, such as public accountability, public interest or public fairness (*University of Alberta v. Pylypiuk* at para. 48; Order F2005-016 at para. 104).

[para 55] The Applicant argues that public scrutiny is desirable in this case on the basis that the investigation of her complaint was closed rather than open, that the Committee of Investigation identified issues with the graduate program in which she was enrolled, that findings were made against her former supervisor, that other students were affected, that she was required not to reveal the contents of the Committee's report or the decision of the Provost, that she was told that fair and reasonable results would be achieved, and that she has received no remedy or restitution.

[para 56] The Public Body responds that section 17(5)(a) is not engaged in this inquiry because the Applicant is motivated by her own private interests, not the public good or the need to subject the Public Body to public scrutiny.

[para 57] I find that the relevant circumstance set out in section 17(5)(a) does not exist in this inquiry. There is an insufficient public component in this case, as the concerns raised by the Applicant are in relation to her own personal dispute with the Public Body and her former supervisor. While she submits that there is a public interest in scrutinizing the operations of the Public Body with respect to its investigation of her complaint against her former supervisor, she has already received the Committee of Investigation's final report, which sets out detailed findings and conclusions. Finally, disclosure of the letter at issue in this inquiry – being the letter to the Applicant's former supervisor and not some other record that the Applicant believes should exist – will not serve the purpose of scrutinizing what it is that the Applicant wishes to scrutinize. In essence, she is unhappy that she did not receive any remedy or restitution from the Public Body, yet the letter at issue will not shed any light on why she received no remedy or restitution.

[para 58] The Applicant cites section 17(5)(g), under which a relevant circumstance to consider, in deciding whether disclosure would be an unreasonable invasion of a third party's personal privacy, is the likelihood that the information is inaccurate or unreliable. She argues that section 17(5)(g) militates in favour of disclosure of the information that she has requested because she believes that, in rendering its decision, the Public Body failed to fully consider a letter that she wrote on October 9, 2008 in response to the final report of the Committee of Investigation.

[para 59] The relevant circumstance under section 17(5)(g) normally weighs *against* disclosure (see, e.g., Order 97-018 at para. 17), so as to prevent inaccurate or unreliable information about a third party from falling into the hands of someone else. In this case, however, the Applicant is effectively suggesting that the Public Body made an incorrect

(i.e., inaccurate and unreliable) decision, and that this weighs *in favour* of disclosure of the personal information of her former supervisor, as contained in the letter written to him. The Applicant's former supervisor responds that the Applicant is merely speculating that there is something inaccurate or unreliable in the letter, and that this is not sufficient to militate in favour of disclosure.

[para 60] I find that the section 17(5)(g) is not engaged in this inquiry. The Applicant's concerns about the Public Body's decision being wrong or unsatisfactory, and about there being inaccurate or unreliable personal information in the letter to her former supervisor, are more properly addressed within the context of section 17(5)(c), which she also cites. To the extent that the relevant circumstance under section 17(5)(g) sometimes militates in favour of disclosure, it would do so not because an applicant simply believes that there might be inaccurate or unreliable personal information of a third party, but because the applicant is entitled, for some reason, to know whether there is inaccurate or unreliable personal information (see Order F2012-21 at para. 50).

[para 61] As just noted, the Applicant raises the relevant circumstance set out in section 17(5)(c), under which a factor weighing in favour of the disclosure of third party personal information is that it is relevant to a fair determination of an applicant's rights. In order for section 17(5)(c) to be a relevant consideration, all four of the following criteria must be fulfilled: (a) the right in question is a legal right drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; (b) the right is related to a proceeding that is either existing or contemplated, not one that has already been completed; (c) the personal information to which the applicant is seeking access has some bearing on or is significant to the determination of the right in question; and (d) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing (Order 99-028 at para. 32; Order F2008-012 at para. 55).

[para 62] I find that the relevant circumstance set out in section 17(5)(c) is not present in this inquiry. The investigation of the Applicant's complaint against her former supervisor is over, and she has pointed to no other proceeding that is either existing or contemplated, and in which she might require, for the purpose of preparation, the personal information of her former supervisor that is contained in the letter at issue in this inquiry.

3. Conclusion regarding the application of section 17(1)

[para 63] As there are presumptions against disclosure of the personal information of the Applicant's former supervisor contained in the letter written to him, and no relevant circumstances weighing in favour of disclosure, I find that the Public Body was authorized to withhold the substantive content of the letter from the Applicant under section 17(1) on the basis that its disclosure would be an unreasonable invasion of a third party's personal privacy. Section 17(1) does not apply to a small amount of other information in the letter and I will accordingly order its disclosure, as set out in the final part of this Order.

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

[para 64] For the purpose of the above issue, the Applicant cites section 32(1)(b) of the Act, which reads 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*
>
> *...*
>
> *(b) information the disclosure of which is, for any other reason, clearly in the public interest.*

[para 65] The Applicant argues that the records that she has requested should be disclosed in the public interest, within the terms of section 32(1), on the basis that the Public Body failed to adhere to various aspects of its *Disclosure Protection Policy*, that she was not given a proper decision and adequate reasons following the investigation of her complaint, that she was not give a proper remedy or restitution, and that she was required to maintain confidentiality even after completion of the process. Further, she does not believe that there was a complete and thorough investigation because the Committee of Investigation's final report did not fully address her complaint, and did not fully address her feedback in response to the Committee's earlier report. She believes that the Public Body is concealing the wrongdoing of her former supervisor without making any attempt to remedy the harm done to her.

[para 66] The Applicant also suggests that there is sufficient evidence to lay criminal charges against the former Provost for breach of trust of a public officer, for obstructing justice, and for acting fraudulently and corruptly. She notes a document setting out when a prosecutor should exercise his or her discretion in the public interest to prosecute, submitting that there should be a prosecution in this case. She further alleges that the Public Body's General Counsel misled her and therefore contravened the Law Society of Alberta's *Code of Professional Conduct.* Finally, she alleges fraud and "deprivation of economic interest" on the part of the Public Body as a whole.

[para 67] The Public Body argues that section 32(1) is not engaged in this inquiry, as the Applicant's submissions relate to a private matter between the Applicant and the Public Body. The Applicant's former supervisor submits that section 32(1) is not engaged because it is to be interpreted narrowly and applies only in "emergency-like" situations (Order 97-009 at para. 166).

[para 68] For section 32(1)(b) to apply, there must be circumstances *compelling* disclosure, or disclosure *clearly* in the public interest, as opposed to a matter that may be of interest to the public (Order F2004-024 at para. 57). My review of the information in the records at issue does not lead me to conclude that any of it should be released on the basis that there is a clear or compelling public interest in disclosure. First, the Applicant

seeks access to the information primarily for her own private purposes. Second, while she makes various allegations against the Public Body and certain of its representatives, disclosure of the letter at issue in this inquiry – being the letter from the former Provost to the Applicant's former supervisor – would not shed light on any of those allegations. Finally, while the Applicant believes that some other record setting out the Public Body's decision and reasons following its investigation of her complaint exists, and that it would be in the public interest to disclose such a record, I have found, as explained earlier in this Order, that no such record exists.

[para 69] I conclude that section 32(1) does not require the Public Body to disclose any of the information in the letter at issue in this inquiry.

V. ORDER

[para 70] I make this Order under section 72 of the Act.

[para 71] I find that section 17(1) of the Act does not apply to the content of the letter to the Applicant's former supervisor that appears above and below the substantive text, as either the information is not personal information or its disclosure would not be an unreasonable invasion of the personal privacy of third parties. Under section 72(2)(a), I order the Public Body to give the Applicant access to the words "Dear [name of the former supervisor]" and all of the information above those words, and access to the words "Yours sincerely" and all of the information below those words.

[para 72] I find that section 17(1) of the Act applies to the remaining information in the letter at issue, as disclosure would be an unreasonable invasion of a third party's personal privacy. Under section 72(2)(b), I confirm the Public Body's decision to refuse the Applicant access to remaining information in the letter.

[para 73] I find that section 32(1) of the Act does not apply to any of the information in the letter at issue so as to require its disclosure, as disclosure is not clearly in the public interest.

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

Wade Raaflaub
Adjudicator