ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2013-19

June 7, 2013

ALBERTA HUMAN SERVICES

Case File Number F5636

Office URL: www.oipc.ab.ca

Summary: Under the *Freedom of Information and Protection of Privacy Act* (the "Act"), the Applicant asked Alberta Human Services (the "Public Body") for information about children who have died while in the care of the province. The Public Body provided access to some of the requested information, but withheld other information under section 17 (disclosure harmful to personal privacy) and section 24 (advice, etc.). It later provided access to additional information.

The Adjudicator reviewed a sample of the approximately 1,600 pages on which information had been withheld. He found that section 17(1) applied to some of the information, as its disclosure would be an unreasonable invasion of the personal privacy of third parties. He found that section 17(1) did not apply to other information. He ordered the Public Body to comply with its duty to consider all relevant circumstances in making the decision to disclose or withhold personal information under section 17, in respect of all of the records at issue, taking note of particular guidance set out in the Order.

The Adjudicator found that the Public Body had not properly applied section 24 to some of the information in the records, as the information was background factual information to which section 24(1) cannot apply. He ordered the Public Body to give the Applicant access to such background factual information appearing in all of the records at issue.

The Adjudicator found that other information that the Public Body had withheld under section 24 constituted information that could reasonably be expected to reveal advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council under section 24(1)(a). However, he found that the Public Body had not properly exercised its discretion to withhold that information. The Adjudicator therefore ordered the Public Body to reconsider its decision to refuse access to the information that it had withheld under section 24, taking note of particular guidance set out in the Order.

Statutes and Regulation Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(h)(ii), 1(n), 17, 17(1), 17(2), 17(2)(c), 17(2)(e), 17(2)(g), 17(4), 17(4)(a), 17(4)(b), 17(4)(c), 17(4)(d), 17(4)(f), 17(4)(g), 17(4)(h), 17(5), 17(5)(a), 17(5)(f), 17(5)(g), 17(5)(h), 24, 24(1), 24(1)(a), 24(1)(b), 24(2), 71(1), 71(2), 72, 72(2)(a), 72(2)(b), 72(4) and 93(4)(b); *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12, s. 126.1(1); *Fatality Inquiries Act*, R.S.A. 2000, c. F-9, s. 53 and 53.1; *Child and Youth Advocate Act*, S.A. 2011, c. C-11.5; *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c. A-3, s. 11; *Designation of Constitutional Decision Makers Regulation*, Alta. Reg. 69/2006.

Orders Cited: AB: Orders 96-006, 96-019, 97-002, 99-001, 2000-028, 2001-001, F2003-014, F2004-015, F2004-026, F2005-016, F2006-006, F2006-030, F2007-013, F2008-020, F2008-028, F2008-031, F2009-033, F2009-034, F2009-046, F2010-028, F2012-10, F2012-17 and F2013-13.

Cases Cited: AB: *University of Alberta v. Pylypiuk*, 2002 ABQB 22; *R. v. Canadian Broadcasting Corp. Radio One*, 2007 ABPC 168. **CAN:** *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23.

Other Source Cited: *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), c. 11, s. 2(b).

I. BACKGROUND

[para 1] Under the *Child, Youth and Family Enhancement*, a child may be placed in the care of the province if he or she is considered to be in need of intervention or protective services. If a child dies while in the care of the province, a Report of Death is prepared. If the matter is believed to warrant an investigation, a Special Case Review is carried out, culminating in a Special Case Review Report.

[para 2] Under the *Freedom of Information and Protection of Privacy Act* (the "Act"), a journalist with the *Edmonton Journal* (the "Applicant") made an access request dated November 24, 2009 to Alberta Children and Youth Services, which is now part of Alberta Human Services (the "Public Body"). She wrote as follows:

> I request all records, as defined by section 1(q) of the *Freedom of Information and Protection of Privacy Act*, related to Special Case Reviews conducted by the provincial department responsible for children in the care of the state between

> Jan. 1, 1999 and the date on which this request is filled, including, but not exclusive to, copies of Special Case Review reports.

In a letter dated December 27, 2009, the Applicant explained her request as follows:

> I am seeking to understand the process by which the death of a child in care is investigated, and to identify whether there have been changes in that process over the past 10 years. I am also seeking to learn how many children have died in care. I am interested in learning both the causes and circumstances of their deaths.

She also specifically asked for all Reports of Death.

[para 3] The Public Body released some of the requested information by letters dated April 8, April 16 and November 17, 2010. It withheld other information, primarily under section 17 (disclosure harmful to personal privacy) and section 24 (advice, etc.) of the Act.

[para 4] In correspondence dated January 14, 2011, the Applicant requested a review of the Public Body's response to her access request. The review proceeded directly to inquiry, but was placed in abeyance for a period of time while the parties independently attempted to settle the matter, or at least narrow the issues or the amount of information at issue. By letter dated August 9, 2011, the Public Body gave the Applicant access to additional information, so the information at issue was reduced. As other information continued to be withheld, the inquiry proceeded.

[para 5] Due to the large number of people whose personal information is contained in the records requested by the Applicant, this Office invited certain entities to intervene in order to represent the interests of those third parties. The following participated as interveners in the inquiry: the Child and Youth Advocate, the Family Law Office – Legal Aid, the Alberta Foster Parent Association, and the Psychologists' Association of Alberta.

II. RECORDS AT ISSUE

[para 6] The records at issue consist of information on approximately 1,600 pages. The inquiry proceeded by way of a review of a sample of those records, being pages 1-55, 535-559, 662-669, 958-964 and 1491-1524. They are described in an Index of Records prepared by the Public Body. The records from which information was redacted include three Reports of Death and three Special Case Review Reports relating to six specific cases. There is also a Memorandum with an attached Child Youth Information Module Summary, relating to the same case described in one of the Reports of Death. The sample records also include two Briefing Notes, one of which attaches a Proposal for an Innovative Approach to Special Case Reviews along with a Special Case Reviews Pending Summary, and the other of which attaches a document entitled Special Case Reviews for Consideration. These records contain information in summary form relating to numerous cases, and they respond, in part, to the Applicant's request for information regarding the process by which the death of a child in care is investigated (such as how

the Public Body decides whether or not to conduct a Special Case Review), whether there have been changes in that process, how many children have died in care, and the causes and circumstances of their deaths. Finally, a page of handwritten Contact Notes indicates some of the foregoing information in relation to one particular case.

[para 7] The sample records also include two screenshots from a database. However, in her letter of December 27, 2009, the Applicant stated that she did not want to see the database. The screenshots are therefore not responsive to her access request. Also not responsive are portions of the Special Case Reviews Pending Summary dealing with cases where children have been injured while in the care of the province. The Applicant requested information only regarding children who have died.

[para 8] The Family Law Office submits that the information at issue should only be that relating to children who were actually in the care and custody of the Director under the *Child, Youth and Family Enhancement Act* at the time of death, as opposed to children who were not actually in care and custody but had only been brought to the attention of the Director as possibly being at risk or in need of intervention, or children who were previously in the care and custody of the Director but not at the time of death. Given that the Applicant requested records about children who have died "in care", I initially presumed that the information at issue related only to the first of the foregoing categories of children. However, I do see from the Briefing Notes that the distinction raised by the Family Law Office exists. Still, the Applicant specifically asked for Reports of Death and Special Case Review Reports, which in some cases are prepared for children who were not in the care of the province at the time of death. The information in those records is therefore at issue, regardless of the nature of the particular child's relationship with the Director or the Public Body.

[para 9] Further, the distinction raised by the Family Law Office does not alter any of my conclusions in this Order. If a child was not actually in the care and custody of the Director at the time of death, but the Public Body nonetheless considered it appropriate to make a Report of Death or conduct a Special Case Review, the Public Body obviously believed that its relationship with the child was close enough to warrant an investigation of the child's death, including an investigation of the role that the government may have played in the underlying events and whether the death might have been prevented. Given this, my references throughout this Order to children "in care" should be taken to include any child in respect of whom a Report of Death, or Special Case Review Report dealing with a death, has been written.

III. ISSUES

[para 10] The Notice of Inquiry, dated December 12, 2011, set out the following issues:

> Does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the records/information?

Did the Public Body properly apply section 24 of the Act (advice, etc.) to the records/information?

[para 11] The Applicant argues that the Public Body's refusal to give access to the requested records infringes her freedom of expression under section 2(b) of the *Charter of Canadian Rights and Freedoms*. I have no jurisdiction to determine a question of constitutional law (see *Administrative Procedures and Jurisdiction Act*, s. 11 and the *Designation of Constitutional Decision Makers Regulation*).

[para 12] Having said this, much of the substance of the Applicant's submissions in relation to the *Charter* also relates to the application of sections 17(5)(a) (disclosure desirable for the purpose of subjecting government activities to public scrutiny) and section 24 (proper exercise of discretion in withholding advice and recommendations). She submits, for instance, that access to the information at issue is necessary to allow meaningful public discussion and debate. This is a consideration under both of the foregoing sections, and I can interpret them in a manner that takes into account the *Charter* value of freedom of expression and the importance of access to information to enable public commentary. The application of sections 17(5)(a) and 24 will not necessarily mean that the media will gain access to information in every case, but the desirability of public discussion and debate is certainly relevant, as discussed later in this Order.

IV. DISCUSSION OF ISSUES

A. Does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the records/information?

[para 13] 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*
>
> …
>
> *(c) an Act of Alberta or Canada authorizes or requires the disclosure,*
> …
>
> *(e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council,*
> …

(g) the information is about a licence, permit or other similar discretionary benefit relating to

(i) a commercial or professional activity, that has been granted to the third party by a public body, or

…

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,

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation,

(c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,

(d) the personal information relates to employment or educational history,

…

(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,

(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,

or

(h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.

(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,
…

(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 14] The Public Body withheld information under section 17(1) throughout the records at issue. In the context of section 17, the Public Body must establish that the information that it has withheld is the personal information of third parties, and may present argument and evidence to show how disclosure would be an unreasonable invasion of their personal privacy. If a record does contain personal information about third parties, section 71(2) states that it is then up to the Applicant to prove that disclosure would not be an unreasonable invasion of their personal privacy.

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

[para 15] 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,

(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,
…

(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 16] The records at issue consist of the personal information of a variety of third parties. It includes the types of personal information set out above, as well as other recorded information about identifiable individuals. The individuals or third parties in question include the children in care, their biological parents, and their siblings. While work-related information is generally not personal information, there are potentially some instances of personal information of staff of the Public Body and third parties that it engages in the course of child protection services, such as physicians, psychologists, other professionals and foster parents. I elaborate later in this Order.

[para 17] The Applicant argues that the names of the children in question could be removed and then only people close to the case would know their identity. However, even where no name is disclosed, the surrounding information may nonetheless identify an individual. Where events, facts, observations and circumstances contained in a record would identify a third party, there is personal information about that third party (Order 96-019 at para. 43; Order 2000-028 at para. 18). As submitted by the Child and Youth Advocate, even without any names disclosed, details about a child's death, interviews and interactions, family composition, nature of protective orders and the circumstances of care can reasonably lead to identification of the child.

[para 18] It also does not matter, contrary to the submission of the Applicant, that a large segment of the public may not be able to identify the children and other third parties in question. Even if they are identifiable only to people close to the case, they are nonetheless identifiable, and disclosure of information not known to people close to the case can be an unreasonable invasion of personal privacy.

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

[para 19] 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 situations.

[para 20] The Applicant cites section 17(2)(c), under which a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if an Act of Alberta or Canada authorizes or requires the disclosure. She argues that section 53 and 53.1 of the *Fatality Inquiries Act* authorizes, and sometimes requires, public disclosure. However, as explained by the Public Body, the provisions of the *Fatality Inquiries Act* limit public disclosure to the specific circumstances set out in that legislation – which are discussed below in the part of this Order dealing with public scrutiny – rather than authorize disclosure of information in every case of a child's death while in care.

[para 21] The Applicant submits that section 17(2)(e) is engaged on the basis that the personal information of individuals working for child protective services is about their employment responsibilities. However, as noted by the Public Body, section 17(2)(e) is intended to permit the disclosure of relatively general information about the employment, pay and entitlements of public officials, not every detail of their work (Order F2009-046 at para. 57). Having said this, the fact that information is of a work-related nature is a relevant circumstance weighing in favour of disclosure, as discussed later in this Order.

[para 22] Under section 17(2)(g), a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if it is about a licence, permit or other discretionary benefit, relating to a commercial or professional activity, that has been granted to the third party by a public body. The Applicant therefore argues that information pertaining to Delegated First Nations Agencies, Child and Family Service Authorities, licenced care facilities and other organizations or entities appearing in the records at issue can be released. However, as noted by the Public Body, the records do not contain the information set out in section 17(2)(g). The names of the organizations and entities appear in the records because they were somehow involved in the child protection matter, but there is no information about the nature of any licence, permit or discretionary benefit.

[para 23] The Applicant alternatively argues that the information about the aforementioned entities is not personal information to which section 17(1) can apply. This is normally true. However, in this particular case, given the contextual information contained in the records regarding the nature of the entities' involvement in the underlying child protection matter, the information about the entities can possibly serve to identify the children in care and their family members, and the contextual information can amount to the personal information of these individuals. This is therefore a consideration that I discuss later in this Order.

[para 24] Given the foregoing, I find that none of the provisions of section 17(2) of the Act are applicable in this case.

(a) Presumptions against disclosure

[para 25] 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.

[para 26] The Public Body cites several presumptions against disclosure, as reproduced above. I agree that they all apply, except for one. The records at issue contain much personal information of children and their biological parents that relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation, within the terms of section 17(4)(a). Some personal information relates to eligibility for income assistance or social service benefits, within the terms of section 17(4)(c). Some of the personal information of third parties relates to their employment or educational history, within the terms of section 17(4)(d). There is also personal

information about third parties that consists of personal recommendations or evaluations, such as from physicians, psychologists and government staff, within the terms of section 17(4)(f). Further, the third party personal information in the records at issue consists of names that appear with other personal information, or names the disclosure of which would reveal personal information, within the terms of section 17(4)(g). Finally, there is personal information that indicates the racial or ethnic origin of various third parties, within the terms of section 17(4)(h).

[para 27] I disagree that some of the personal information in the records at issue, at least in the sample records before me, is an identifiable part of a law enforcement record, within the terms of section 17(4)(b). The Public Body cites Order 2001-001 (at para. 45), in which certain information in records emanating from Children's Services was found to be in the context of law enforcement, as that term is defined in section 1(h)(ii) of the Act, on the basis that there had been an administrative investigation that led or could have led to a penalty or sanction. I see no instances of such information in the sample records.

[para 28] In any event, the various other subsections of section 17(4) give rise to presumptions against disclosure of the information requested by the Applicant.

(b) Relevant circumstances weighing against disclosure

[para 29] 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. Personal information supplied in confidence

[para 30] Under section 17(5)(f) of the Act, a relevant circumstance weighing against the disclosure of third party personal information is that the information was supplied in confidence. The Public Body and the interveners all cite this circumstance. I agree that it exists in respect of much of the third party personal information in the records at issue. The context in which third party personal information is given can make it reasonable to conclude that such information was supplied in confidence (Order F2003-014 at para. 18). As noted by the Family Law Office, for example, parents and guardians disclose extremely private and intimate information to the Public Body with an expectation of confidence so as to assist in remedying any child protection concerns. I also note that the Special Case Review Reports are marked "Confidential", implying that the information received from various third parties and appearing in the Reports was understood to be supplied in confidence.

ii. Unfair damage to reputation

[para 31] Under section 17(5)(h) of the Act, a relevant circumstance weighing against the disclosure of third party personal information is that the disclosure may unfairly damage the reputation of any person referred to in the record requested by an applicant.

The Public Body and the Family Law Office both reproduce this section, but do not explain its relevance. Still, I presume that they mean that the information in the records may unfairly damage the reputation of biological parents who were unable to care for their children, foster parents who were caring for the children when they died, and government staff who may be perceived as having failed in their role of protecting children. I agree that section 17(5)(h) is engaged in this respect. There are a variety of reasons why a child might be placed in care, or why he or she might die, which are not a reflection of the character or abilities of the aforementioned individuals, even though it might seem so to a person unconnected to the matter.

iii. Inaccurate or unreliable personal information

[para 32] The Family Law Office cites section 17(5)(g) of the Act, under which a relevant circumstance weighing against the disclosure of a third party's personal information is that the personal information is likely to be inaccurate or unreliable. It says that information about a child and his or her family, which is collected from various sources in the community, can be unsubstantiated, contradictory and hearsay. I agree that some of the information at issue, particularly in the chronologies and details regarding interviews conducted by child protection staff that are found in the Special Case Review Reports, potentially has these qualities. Section 17(5)(g) therefore sets out a relevant consideration in this inquiry.

iv. Sensitivity of personal information

[para 33] The Public Body submits that the highly sensitive nature of the personal information in the records at issue militates against disclosure. I agree. Orders of this Office have noted that the sensitivity of personal information can be a relevant circumstance to consider when deciding whether disclosure would be an unreasonable invasion of personal privacy (Order F2006-006 at paras. 106 and 108; Order F2009-033 at para. 27).

(c) Relevant circumstances weighing in favour of disclosure

[para 34] I now turn to the relevant circumstances weighing in favour of disclosure of the third party personal information in the records at issue.

i. Work-related information

[para 35] The Applicant submits that the Public Body improperly withheld the names and information about government staff and other people working for child protection services.

[para 36] Work-related information is generally not personal information, and its disclosure is generally not an unreasonable invasion of personal privacy (Order F2008-028 at para. 53; Order F2008-031 at para. 129). However, where the disclosure of information about a work-related act is likely to have an adverse effect on an individual,

the information potentially has a personal dimension, and may therefore constitute the individual's personal information (Order F2006-030 at paras. 12, 13 and 16; Order F2008-020 at para. 28). As I noted earlier, it is possible that particular third parties may be perceived as having failed in their role of protecting children in need, or being somehow responsible for a child's death. However, with respect to the numerous government staff and third party professionals having work-related information in the records, I would say that only a few them, at most, would suffer adverse consequences or possible damage to reputation on disclosure of the information.

[para 37] Given this, the Public Body should disclose virtually all of the names of individuals whose information appears in the records as a result of their employment or work-related responsibilities. I note that the Public Body decided to disclose job titles in its revised response in August 2011, but this was not sufficient. As for the names of the few staff or third parties who may be perceived as having done something wrong, I return to this when balancing the relevant circumstances below.

[para 38] Despite the foregoing, I find that the names of the foster parents of the children who have died while in the care of the province should not be disclosed, even though the foster parents may be characterized as acting in a formal or representative capacity (see Order F2010-028 at para. 52). This is because disclosure of the names of the foster parents risks revealing the identity of the child who died, given that members of the community would be aware that the foster parents had had the particular child living with them. In addition, some aspects of the information in relation to the foster parents may be said to have a personal quality.

[para 39] With respect to the employment-related information apart from the names themselves – being the descriptions of the work-related activities – this information is generally intertwined with the personal information of other third parties. For instance, if an caseworker interviewed a child, this information also indicates that the child was interviewed, and is the latter's personal information. Such information can therefore not necessarily be disclosed in view of the principles articulated above. Instead, it forms part of the third party personal information that I will continue to discuss in this Order.

ii. Public scrutiny

[para 40] The Applicant cites section 17(5)(a) of the Act, under which 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. She submits that the release of the information withheld by the Public Body is necessary to properly assess the Public Body's response to the crucial issue of the deaths of children in care, and also required to generally review the quality of child welfare services in Alberta.

[para 41] The Applicant argues that the public interest in the records has been acknowledged by the Public Body, as it granted a fee waiver on the basis of public interest under section 93(4)(b) of the Act. While the notions of public interest and the

desirability of public scrutiny overlap, a determination that records relate to a matter of public interest does not mean that the records will inevitably have to be disclosed. The determination of public interest simply means that there is sufficient public interest to justify the taxpayers bearing the cost of the public body's processing of the access request, during which it will go on to decide whether the records should be disclosed, sever any information that is believed to be subject to an exception to disclosure, and produce a copy of the records to be released to the applicant (Order F2009-034 at para. 69).

[para 42] Rather, for public scrutiny to be a relevant circumstance, there must be evidence that the activities of the Public Body or the Government of Alberta have been called into question, which makes the disclosure of personal information desirable in order to subject those activities 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 or the government; and whether the Public Body has not yet 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 43] The Applicant argues that the death of a child in care suggests a tremendous failure in the province's exercise of an extraordinary power, which must be scrutinized through a proper analysis of comprehensive and accurate information about each individual case. She says that the Public Body's redactions in the records at issue make it impossible for the public to recognize any problems in the child protection system, and to consider or debate any changes to prevent future tragedies. The Applicant submits that the internal investigation process with respect to children dying in care is shrouded in secrecy, making it unclear why the Public Body decides to conduct Special Case Reviews in some cases but not others, or whether it conducts a Review in every case where one is warranted.

[para 44] The Applicant notes that the *Edmonton Journal* and other media outlets have published numerous articles expressing the view that greater transparency is required in relation to the records of children who have died in care. She further notes that certain politicians and government spokespersons in Alberta have said that the public has a right to know information about children who have died in care, and have called for greater openness and transparency.

[para 45] The Applicant notes the overrepresentation of aboriginal children in care. She submits that knowledge of the circumstances of aboriginal children who die in care

will help the public understand any distinct issues related to such cases, and work toward solving any concerns in this regard.

[para 46] For its part, the Public Body submits that the privacy of children, their families and other third parties involved in child intervention matters must not be sacrificed for the purpose of public scrutiny. The Public Body cites *R. v. Canadian Broadcasting Corp. Radio One*, 2007 ABPC 168 (at para 98; emphasis of the Public Body):

> The scheme of the [*Child, Youth and Family Enhancement*] *Act* is supportive of the interpretation that the protection afforded a child who has come to the attention of the Minister or director is extended in perpetuity. As I have already indicated, the scheme of the *Act* supports the principle that children who are in danger must be protected. The intervention of the Minister, a director, or any of the Ministry's employees is based upon a need of the child for intervention services. These services are provided only to children who are [in] danger because of risk. Their needs are best protected where children, and those providing information concerning them for these purposes, are dealt with in a confidential manner. Abused or potentially abused children should be protected, and their families assisted and rehabilitated where possible. Publishing information that serves to identi[f]y them can only create difficulties for successful treatment. <u>The public has a right to be informed of issues concerning the care of children in need of intervention, but this objective must be accomplished without releasing information that serves to identi[f]y a given child or his or her guardian</u>.

[para 47] Consistent with the above case excerpt, the Child and Youth Advocate endorses and supports the need for public discussion and commentary as it relates to the care of children in Alberta, provided that any personal information regarding such children or that would serve to identify them is redacted. The Advocate says that the scope of released information should be narrowed to the process of a Special Case Review, and the summary and conclusions regarding the death of the child. The Family Law Office similarly submits that there is public interest concerning the measures taken by the province to protect children who have come into its care, but adds that public scrutiny can be achieved without the Applicant having unfettered access to the records at issue.

[para 48] The Public Body further submits that it can be held accountable without releasing the information that is has withheld in the records at issue, as public scrutiny is available through other avenues. It first explains that the *Fatality Inquiries Act* requires that, unless the Medical Examiner determines that a child's death occurred through natural causes, all deaths of children in the care of the province are brought before the Fatality Review Board. The Board is required to recommend a public fatality inquiry unless satisfied that the death was not preventable and the public interest would not be served by an inquiry, or there was no connection between the death and the care being provided. At the conclusion of a fatality inquiry, the judge makes a written report that is released to the public. Second, the Public Body explains that the *Child and Youth Advocate Act* authorizes the Child and Youth Advocate to

investigate the death of a child in care, to prepare a report, and to make it available to the public.

[para 49] In response, the Applicant says that, while the judge in a fatality inquiry may make recommendations based on the particular case, the inquiry is not designed to be a review of the activities of the Public Body, or of the child protection system, as a whole. She submits that the narrow focus of a specific fatality inquiry does not permit any broader analysis of the deaths of children in care. In respect of the Child and Youth Advocate, the Applicant says that there is no requirement for the Advocate to provide a report in a given case. In short, the Applicant argues that the public should be able to scrutinize the circumstances surrounding children who die in care without the "filter" of a judge in a fatality inquiry or the Child and Youth Advocate.

[para 50] I find that the relevant circumstance set out in section 17(5)(a) exists in this inquiry. The activities of the Public Body have been called into question, often simply by virtue of the fact that a child has died while in the care of the province, but also due to concerns regarding the manner in which the Public Body has dealt with the deaths of children in the care of the province, generally. Further, the Applicant's concerns relate to the Public Body, and even the Government of Alberta, as a whole. Others apart from the Applicant – including politicians, government spokespersons, other journalists and some of the interveners – have suggested a need for more public scrutiny. Although the Public Body released additional information to the Applicant in August 2011, which allowed a degree of public scrutiny, I find that the Public Body has not disclosed enough information. Although the Public Body has investigated the deaths of children in care, the concerns of the Applicant relate to those investigations themselves, so the fact that there have already been Special Case Reviews, for instance, is not an answer to the Applicant's call for public scrutiny. Moreover, Special Case Reviews are not held in every case, making it desirable, in the interest of public scrutiny, to know why they are not conducted in particular cases. Finally, the fact that there are fatality inquiries in certain cases, and that there is a new Child and Youth Advocate in the province, does not give rise to a sufficient degree of public scrutiny, as the activities of the Public Body that are desirable to publicly scrutinize relate to all, not just some, of the instances when a child dies in care. In short, I find that there is a sufficient element of public interest and public accountability, as per *University of Alberta v. Pylypiuk*.

[para 51] I am also mindful of the value of freedom of expression under section 2(b) of the *Charter*, as it pertains to access to information for the purpose of public discussion and debate, and the interpretation of statutory provisions that may impede such access. The Applicant cites *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (at para. 37), in which the Supreme Court of Canada stated:

> In sum, there is a *prima facie* case that s. 2(*b*) may require disclosure of documents in government hands where it is shown that, without the desired access, meaningful public discussion and criticism on matters of public interest would be substantially impeded. As Louis D. Brandeis famously wrote in his 1913 article in *Harper's Weekly* entitled "What Publicity Can Do": "Sunlight is said to be the best of disinfectants ... ." Open government requires that the

> citizenry be granted access to government records when it is necessary to meaningful public debate on the conduct of government institutions.

[para 52] At the same time, just because a matter warrants public scrutiny, this does not mean that all of the personal information in the records needs to be disclosed. Even where the activities of a public body or the government have been called into question, the disclosure of personal information must be necessary in order to subject those activities to public scrutiny (Order 97-002 at para. 94; Order F2004-015 at para. 88). In other words, and as noted by the Family Law Office, section 17(5)(a) of the Act militates in favour of disclosing only that amount of personal information as is required for public scrutiny to be achieved (Order F2008-020 at para. 58).

[para 53] In the next section of this Order, I will discuss the degree to which information in the records at issue is required to be disclosed in order to subject the activities of the Government of Alberta or the Public Body to public scrutiny, as well as balance this against the relevant circumstances weighing against disclosure of the personal information of third parties.

(d) Balancing the relevant circumstances

[para 54] The Applicant places the information to which she seeks access in the following five categories:

a. Details of the chronology of significant events leading to the death of the child, which would presumably provide the necessary understanding of the child's circumstances ultimately leading to the death of the child in care. This includes details and the dates of screening, investigations, and circumstances of custody agreements and guardianship or apprehension orders which are the focus of the Public Body's involvement with the child [I will refer to this as the "Chronology of Significant Events", although I note that one of the Special Case Review Reports uses the heading "Chronology of Significant Information"];

b. Details about the children such as their age, gender and ethnicity, which would contextualize their particular circumstances and allow for statistical analysis of the types of children dying in care;

c. Details of the interviews conducted and the documents reviewed during the investigation, which would presumably outline the very evidence upon which conclusions are made regarding each individual case [I will refer to this as the "Summary of Interviews and/or Documents Reviewed", although I note that two of the Special Case Review Reports also include similar information under the heading "Factors for Consideration"];

d. Large portions of the Case Summary which would also likely provide the necessary understanding of the entire case [I will refer to this as the "Case Summary", although I note that one of the Special Case Review Reports uses the heading "Case Analysis"]; and

e. Large portions of the findings, recommendations and general comments which again summarize the Public Body's conclusions and are crucial in understanding its response. Such information would also be an important component of any debate over whether changes are required in terms of the Public Body's own assessment of each case [I will refer to this as the "Findings, Recommendations, Rationale and Comments", although variations of that heading appear in each of the Special Case Review Reports].

As noted in the square brackets above, the foregoing categories essentially coincide with sections of the Special Case Review Reports (except for the request for ages, genders and ethnicities). I will also refer below to other sections of the Reports, namely the Introduction or Executive Summary, the Terms of Reference and the Genograms. In addition to the information in the Special Case Review Reports, I will also consider the Reports of Death, the Special Case Reviews Pending Summary, the document entitled Special Case Reviews for Consideration, the Contact Notes, the Memorandum, and the Child Youth Information Module Summary.

[para 55] In order to achieve an appropriate degree of public scrutiny, which is a relevant circumstance weighing in favour of disclosure under section 17(5)(a), it is not necessary for the Public Body to disclose the names, identification numbers and birthdates (although I discuss age below) of the children who have died while in care, or disclose those of their parents, guardians, biological family members, foster parents and foster siblings. It is also not necessary to disclose the other personal information of these third parties appearing in the section of the Special Case Review Reports entitled Significant Persons Involved, and in the Genograms. Still, even if the foregoing information is removed, there remains contextual information in the records that can serve to identify the aforementioned third parties, so there remains third party personal information to which section 17(1) can apply.

[para 56] I will first discuss the dates that the Public Body redacted, such as the date that a child died and the dates of agreements or orders relating to him or her. I generally agree that a complete date unreasonably risks identifying the child in question, such as through a news report or court record. However, I note that, in some instances, the Public Body disclosed the years, which I consider appropriate. I find that the Public Body should generally do this throughout the records at issue, as the years provide general information regarding the duration of the child's care and when agreements and orders were made.

[para 57] I find that the desirability of public scrutiny does not require the disclosure of what is usually very detailed and sensitive information appearing in the Chronology of Significant Events, and in the Summary of Interviews and/or Documents Reviewed. While it should reveal the years, the Public Body generally appropriately redacted the third party personal information in the foregoing sections, while still disclosing portions that provide an indication of the background to the case (e.g., that there was a particular sequence of screenings, investigations, agreements, orders and the like).

[para 58] I say the same in respect of the Case Summaries, and the Introduction or Executive Summary of the Special Case Review Reports. In these sections of the sample Reports before me, the Public Body withheld detailed or sensitive information, which is not necessary for public scrutiny, while revealing general facts about the third parties, along with information about the activities of government staff, which permit a sufficient degree of scrutiny (e.g., the cause of death, the type of guardianship, and the general process surrounding the Special Case Review). The only exception is that the Public Body should have disclosed, in my view, the second- and third- last paragraphs in the Case Summary appearing on page 47 (except for names and complete dates). This information is precisely about the activities of the Public Body that I have found to warrant public scrutiny within the terms of section 17(5)(a).

[para 59] I find that the Public Body often improperly withheld information appearing in the sections of the Special Case Review Reports variably entitled Findings, Recommendations, Rationale and Comments. The disclosure of the information about the third parties would generally not be an unreasonable invasion of their personal privacy, as the relevant circumstance weighing in favour of disclosure under section 17(5)(a) outweighs the relevant circumstances weighing against disclosure. For instance, the information that the Public Body withheld in the Findings, Recommendations and Comments appearing on pages 17, 43-44, 1517-18 of the sample records indicate, in the interest of public scrutiny, what may or may not have gone wrong in the respective cases.

[para 60] I also find that the Public Body withheld too much information in the Special Case Reviews Pending Summary, and the document entitled Special Case Reviews for Consideration. Once names are redacted, the remaining general information has a low risk of identifying the third parties, and if the third parties are not identifiable, there is no personal information to which section 17 can apply in the first place. To the extent that a third party might be identified by virtue of even these more general facts, I again find that the circumstance relating to public scrutiny militates in favour of disclosure. Much of the information redacted by the Public Body would serve to explain why the Public Body did or did not decide to conduct a Special Case Review in the particular case.

[para 61] At this juncture, I note that the various circumstances weighing against disclosure of the third party personal information in the records – being those regarding personal information supplied in confidence under section 17(5)(f), inaccurate or unreliable personal information under section 17(5)(g), unfair damage to reputation under section 17(5)(h), and the sensitivity of personal information – are generally relevant to only the more detailed information appearing in, for instance, the Chronology of Significant Events and the Summary of Interviews and/or Documents Reviewed, which information the Public Body generally properly withheld. These circumstances have much less weight in respect of the less detailed or summary information appearing in the Findings, Recommendations, Rationale and Comments, the Special Case Reviews Pending Summary, and the document entitled Special Case Reviews for Consideration. The result, in my view, is that they are outweighed by the factor relating to public scrutiny.

[para 62] As for the Reports of Death, they consist of two main sections entitled Alleged Cause of Death and Summary of Circumstances Surrounding the Death. I find that the Public Body properly withheld sensitive or more detailed information appearing in the latter section of the Reports, as the information, such as detailed health histories, is not required to achieve public scrutiny. Conversely, the Public Body should have disclosed more information regarding the alleged causes of death. On pages 2 and 958 of the sample records, for instance, the information that the Public Body released does not sufficiently explain how the child died.

[para 63] The Contact Notes address whether one particular matter should proceed to a Special Case Review and I find that information was properly redacted under section 17(1). The cause of the child's death, the reason for not proceeding with a Review and the final disposition of the file were released, which permits a sufficient degree of public scrutiny.

[para 64] The Public Body properly redacted the Memorandum, as the withheld information consists of the name of the child who died in care and that of a sibling, and details, as opposed to general information, regarding a temporary guardianship order. Turning to the attached Child Youth Information Module Summary, I find that the Identifying Data, Family Information and Children's Services History were generally properly redacted, as they are analogous to the section on Significant Persons Involved and the Chronology of Significant Events in the Special Case Review Reports, which I discussed above. Conversely, the information under the heading Incident is general enough to warrant disclosure in order to understand background pertaining to the case (short of the child's name, complete dates, and information about his parents and sibling).

[para 65] The Public Body withheld information that would reveal the ages, genders and ethnicities of children who died in care throughout the records, and the Applicant specifically seeks access to this information. The Child and Youth Advocate does not object to the age, gender and ethnicity of children who have died in care being released. Conversely, the Alberta Foster Parent Association argues that release of age, gender and ethnicity can serve to identify the child in question.

[para 66] In my view, even if the age, gender or ethnicity of a child who died in care risks identifying him or her, the desirability of public scrutiny militates in favour of disclosure. I agree with the Applicant that such information would assist in knowing whether there are certain patterns in relation to the deaths of children in care that warrant public discussion and debate.

[para 67] I now turn to the names of organizations and entities, and the names of individuals acting in a work-related capacity. The names of the organizations and entities should be disclosed, notwithstanding that they risk identifying individuals, given that the role of these organizations and entities can be an important factor in understanding the cases. Given this, the Public Body – which otherwise properly disclosed virtually the entirety of the Terms of Reference in each Special Case Review Report – should disclose the names of the entity appearing on pages 11-13 of the sample records. Throughout the

records, the names of individuals acting in a work-related capacity should also be disclosed, notwithstanding that there may be damage to their reputation or other adverse consequence on disclosure. The desirability of public scrutiny militates in favour of a conclusion that disclosure of the foregoing information would not be an unreasonable invasion of personal privacy. The foregoing does not apply to the names of the foster parents, as their names can serve to identify the children who died.

[para 68] The Family Law Office and Alberta Foster Parent Association note that certain provisions of the *Child, Youth and Family Enhancement Act* preclude disclosure of particular information that would identify third parties. For instance, section 126.1(1) stipulates that the name of a person who reports that a child may be in need of intervention or protective services is privileged. It goes without saying that the Public Body should be mindful of this. As far as my conclusions in this Order are concerned, the identity of a person who makes a report about a child is not relevant to public scrutiny, in any event.

[para 69] Finally, I emphasize that all of the foregoing is intended to set out general guidance for the Public Body to follow when reconsidering the relevant circumstances weighing for and against disclosure, as required by section 17(5) of the Act. It may be, for instance, that the disclosure of certain information found in similar Findings, Recommendations, Rationale and Comments, similar Special Case Reviews Pending Summaries, or documents comparable to the one entitled Special Case Reviews for Consideration would be an unreasonable invasion of personal privacy of third parties, due to the sensitivity of the information. For instance, even in the Special Case Reviews Pending Summary before me, the Public Body properly redacted information in the lower right-hand box of the chart on page 665. Further, in respect of records not forming part of the sample set that I reviewed for the purpose of this Order, there may be other relevant circumstances weighing against disclosure that did not present themselves here.

[para 70] The main point for the Public Body to bear in mind is that more of the information in the records at issue should be released to the Applicant, on the basis that its disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny. While I acknowledge that it disclosed information that goes some way in achieving public scrutiny, particularly in its revised release to the Applicant in August 2011, the Public Body still did not give full and proper consideration to the relevant circumstance under section 17(5)(a) of the Act.

B. Did the Public Body properly apply section 24 of the Act (advice, etc.) to the records/information?

[para 71] Section 24 of the Act reads, in part, as follows:

> *24(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal*

> *(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council,*
>
> *(b) consultations or deliberations involving*
>
> *(i) officers or employees of a public body,*
>
> *(ii) a member of the Executive Council, or*
>
> *(iii) the staff of a member of the Executive Council,*
>
> …
>
> *(2) This section does not apply to information that*
>
> *[various types of information, none of which exist here]*
>
> …

[para 72] Under section 71(1) of the Act, the Public Body has the burden of proving that the Applicant has no right of access to the information that it withheld under section 24.

[para 73] Section 24(2) states that section 24 does not apply to certain information, meaning that the Public Body cannot withhold that information in reliance on that section. I considered whether any of the provisions of section 24(2) were relevant in this inquiry, but found that none of them were.

1. Does the information fall within the terms of section 24(1)?

[para 74] The Public Body withheld some of the information requested by the Applicant under sections 24(1)(a) and 24(1)(b) of the Act. The respective tests for withholding information under these two sections have been summarized as follows:

> In Order 96-006, the former Commissioner established a test to determine whether information is advice, recommendations, analyses or policy options within the scope of section 24(1)(a). He said:
>
> > Accordingly, in determining whether section 23(1)(a) [now section 24(1)(a)] will be applicable to information, the advice, proposals, recommendations, analyses or policy options ("advice") must meet the following criteria.
> >
> > The [advice, proposals, recommendations, analyses and policy options] should:
> >
> > > i. be sought or expected, or be part of the responsibility of a person by virtue of that person's position,
> > >
> > > ii. be directed toward taking an action,

iii. be made to someone who can take or implement the action.

> The three part test adopted by the former Commissioner Clark in Order 96-006 assists one to determine when advice, proposals, recommendations, analyses or policy options are "developed by or for a public body" within the terms of section 24(1)(a).
>
> (Order F2012-17 at para. 168)
>
> and
>
> A consultation within the terms of section 24(1)(b) takes place when one of the persons enumerated in that provision solicits information of the kind subject to section 24(1)(a) regarding that decision or action. A deliberation for the purposes of section 24(1)(b) takes place when a decision maker (or decision makers) weighs the reasons for or against a particular decision or action. Section 24(1)(b) protects the decision maker's request for advice or views to assist him or her in making the decision, and any information that would otherwise reveal the considerations involved in making the decision. Moreover, like section 24(1)(a), section 24(1)(b) does not apply so as to protect the final decision, but rather, the process by which a decision maker makes a decision.
>
> (Order F2012-10 at para. 37)

[para 75] The Public Body applied sections 24(1)(a) and 24(1)(b) to information in the two Briefing Notes and their attachments. Of note is that it did not withhold a document entitled Guidelines for Deciding to Proceed to Special Case Review, which was proper. Also of note is that the Public Body did not apply section 24(1) to any of the information in the Special Case Review Reports, including the information set out in the various recommendations and rationale. Rather, it withheld information in the Reports under section 17(1), the application of which I have already discussed.

[para 76] As for the information that the Public Body did withhold under section 24, section 24(1)(a) generally does not apply to the bare recitation of facts or summaries of information; these may only be withheld if they are sufficiently interwoven with information that constitutes advice, etc. so that they cannot reasonably be considered separate or distinct (Order 99-001 at paras. 17 and 18; Order F2007-013 at para. 108). These same principles apply in the context of consultations and deliberations under section 24(1)(b) (Order 96-006 at p. 10 or para. 50; Order F2004-026 at para. 78). Further, section 24(1) generally does not permit a public body to withhold the fact that advice was sought or given on a particular topic, or consultations or deliberations on a particular topic took place (Order F2004-026 at para. 71).

[para 77] Given this, I find that, while the Public Body generally did not withhold information in the Background sections of the Briefing Notes, it improperly withheld information appearing in the title of one of the Briefing Notes, in each of their sections entitled Issues and Current Status, and in the first paragraph of an Appendix entitled Terms of Reference: Deaths by Suicide. The Public Body should disclose topics and what amounts only to background factual information throughout the records at issue.

[para 78] In reference to the tests reproduced above, I find that the remaining information that the Public Body withheld in the Briefing Notes and attachments falls within the scope of section 24(1)(a). In both Briefing Notes, a recommendation is being made to the Minister of the Public Body, along with the reasons for it (including a sentence in one of the Background sections). The attached Proposal for an Innovative Approach to Special Case Reviews is properly characterized as precisely that – a proposal. The attached Special Case Reviews Pending Summary and attached document entitled Special Case Reviews for Consideration each set out recommendations as to whether or not a Special Case Review is warranted in various cases, and the reasons for those recommendations.

[para 79] I find that the information in the Briefing Notes and their attachments does not fall within the terms of section 24(1)(b), but it is sufficient for it to fall within the terms of section 24(1)(a). The Public Body had the discretion to withhold the information in reliance on section 24.

2. Did the Public Body properly exercise its discretion not to disclose?

[para 80] In order to properly exercise discretion relative to a particular provision of the Act, a public body should consider the Act's general purposes, the purpose of the particular provision on which it is relying, the interests that the provision attempts to balance, and whether withholding the records would meet the purpose of the Act and the provision in the circumstances of the particular case (Order F2004-026 at para. 46).

[para 81] The Public Body says very little about the exercise of its discretion not to disclose information under section 24(1). It merely notes that the section sets out an exception to disclosure "designed to protect the deliberative process involving officials of a Public Body and members of the Executive Council, in this case, the Minister of the Public Body".

[para 82] The Applicant argues the Public Body's decision to redact information under section 24(1) has restricted the ability of the public to comment on, discuss or critique suggestions that have been made regarding potential changes that might reduce or prevent the deaths of children in care. She submits that the public interest in understanding how the government has responded to the deaths outweighs any of the Public Body's concerns about revealing advice, proposals or recommendations.

[para 83] I am not satisfied that the Public Body properly exercised its discretion when it refused to disclose the information that I have found to fall within the terms of section 24(1). First, it failed to fully and adequately explain the reason for its exercise of discretion. Second, the following was stated in Order F2013-13 (at paras. 176 to 178):

> In *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, the Supreme Court of Canada explained the process for applying discretionary exceptions in freedom of information legislation and the considerations that are involved. The Court illustrated how discretion is to be

exercised by discussing the discretionary exception in relation to law enforcement:

> In making the decision, the first step the head must take is to determine whether disclosure could reasonably be expected to interfere with a law enforcement matter. If the determination is that it may, the second step is to decide whether, having regard to the significance of that risk and other relevant interests, disclosure should be made or refused. These determinations necessarily involve consideration of the public interest in open government, public debate and the proper functioning of government institutions. A finding at the first stage that disclosure may interfere with law enforcement is implicitly a finding that the public interest in law enforcement may trump public and private interests in disclosure. At the second stage, the head must weigh the public and private interests in disclosure and non-disclosure, and exercise his or her discretion accordingly.

While the foregoing case was decided in relation to the law enforcement provisions in Ontario's legislation, it is clear from paragraphs 45 and 46 of this decision that its application extends beyond law enforcement provisions to the application of discretionary provisions in general and to the discretionary provisions in freedom of information legislation in particular. The provisions of section 24(1) of Alberta's FOIP Act are discretionary.

Applying the principles in *Ontario (Public Safety and Security),* a finding that section 24(1)(a) or (b) applies means that the public interest in ensuring that public bodies obtain candid advice *may* trump public or private interests in disclosing the information in question. After determining that section 24(1)(a) or (b) applies, the head of a public body must then consider and weigh the public and private interests in disclosure and non-disclosure in making the decision to withhold or disclose the information.

[para 84] I equally note *Ontario (Public Safety and Security) v. Criminal Lawyers' Association* – as does the Applicant – and adopt the comments made in the Order excerpted above. For this particular case, in deciding whether to rely on section 24(1) so as to withhold information, the Public Body should weigh the public interest in protecting what it briefly refers to as the "deliberative process" (assuming that there is a reason to protect that process in this case) against the public interest in allowing public discussion and debate of matters pertaining to the deaths of children who die while in the care of the province.

[para 85] I conclude that the Public Body did not properly exercise its discretion when it refused to disclose information in reliance on section 24(1). I will therefore order it to reconsider its decisions in this regard.

V. ORDER

[para 86] I make this Order under section 72 of the Act.

[para 87] I find that section 17(1) of the Act applies to some of the information that the Public Body withheld under that section in the sample records, as its disclosure would be an unreasonable invasion of the personal privacy of third parties. However, I find that section 17(1) does not apply to other information. I order the Public Body to comply with its duty under section 17(5) to consider all relevant circumstances in making the decision to disclose or withhold personal information under section 17, bearing in mind the guidance set out in this Order (at paras. 54 to 70). Under section 72(4), I specify, as a term of this Order, that the Public Body must apply the foregoing guidance to all of the records responsive to the Applicant's access request (i.e., the approximately 1,600 pages).

[para 88] I find that the Public Body did not properly apply section 24 of the Act to some of the information in the sample records, as the information is background factual information to which section 24(1) cannot apply. Under section 72(2)(a), I order the Public Body to give the Applicant access to such background factual information, although not any portions (generally restricted to names, although possibly extended to contextual information in certain instances) that would serve to identify third parties and the disclosure of which would be an unreasonable invasion of their personal privacy under section 17(1). Under section 72(4), I specify that the Public Body must review all of the records responsive to the Applicant's access request (i.e., the approximately 1,600 pages) and give the Applicant access to the portions that consist merely of background factual information.

[para 89] I find that other information that the Public Body withheld under section 24 constitutes information that could reasonably be expected to reveal advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council under section 24(1)(a). However, the Public Body did not properly exercise its discretion to withhold that information. Under section 72(2)(b), I order the Public Body to reconsider its decisions to refuse access to the information that it withheld under section 24, bearing in mind the guidance set out in this Order (at para. 84). Under section 72(4), I specify that, if the Public Body decides again to refuse access to any of the information that it has withheld under section 24, the Public Body must provide an adequate explanation to both the Applicant and me.

[para 90] I further 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.

[para 91] Finally, I will reserve jurisdiction over this matter in order to possibly resolve any disagreements between the Public Body and the Applicant as to how the guidance in this Order applies to any particular type or set of information in the records at issue.

Wade Raaflaub
Adjudicator