

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER F2015-07

March 27, 2015

### CITY OF CALGARY

Case File Number F6959

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** An applicant made a request to the City of Calgary (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for “all records related to Livery Transport Service, Black Top Taxi and [a named individual]” for the time frame January 1, 2003 to January 14, 2013.

The Public Body informed the Applicant that it located 147 pages of records but that most of those records would be withheld under sections 17 and 27. The Public Body also stated that a few pages were not responsive to the Applicant’s request. The Applicant received one page of records in its entirety, and one page with some information withheld. The Applicant requested a review of the Public Body’s response.

The Adjudicator found that much of the information withheld by the Public Body under section 17 was not information about an individual but was information about an organization. The Adjudicator also found that some information was personal information as defined in the Act, but was not personal information to which section 17 could be applied as it was about an individual performing work duties and lacked a personal dimension. The Adjudicator ordered the Public Body to disclose this information to the Applicant.

However, some information in the records was personal information to which section 17 could be applied and the Adjudicator upheld the Public Body’s decision to withhold that information as no factors weighed in favour of disclosure.

With respect to the Public Body's application of section 27, the Adjudicator found that the Public Body had properly applied section 27(1)(a) to information that was protected under solicitor-client privilege. However, the Adjudicator was not satisfied that other information withheld under section 27(2) was protected by settlement privilege and ordered the Public Body to disclose that information.

As the records contained a significant amount of information about an organization (rather than about an individual, as the Public Body had claimed), the Adjudicator's order to disclose information to the Applicant was made subject to any application of section 16, which the Public Body was ordered to consider.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 17, 27, 71, 72, Livery Transport Bylaw 6M2007, s. 160.

**Authorities Cited: AB:** F2006-030, F2007-014, F2008-020, F2008-028, F2010-007, F2010-036, F2012-08.

**Cases Cited:** *Imperial Oil Limited v. Alberta (Information and Privacy Commissioner)*, 2014 ABCA 231, *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (CanLII), *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37, *Solosky v. The Queen* [1980] 1. S.C.R. 821, *Union Carbide Canada Inc. v. Bombardier Inc.*, 2014 SCC 35.

## I. BACKGROUND

[para 1] An applicant made a request, dated January 14, 2013, to the City of Calgary (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for "all records related to Livery Transport Service, Black Top Taxi and [a named individual]" for the time frame January 1, 2003 to January 14, 2013.

[para 2] By letter dated February 14, 2013, the Public Body informed the Applicant that it had contacted a third party affected by the request, as set out in section 30 of the Act. By letter dated March 13, 2013, the Public Body informed the Applicant that it located 147 pages of records but that most of those records would be withheld under sections 17 and 27(2). The Public Body also stated that a few pages were not responsive to the Applicant's request. The Applicant received one page of records in its entirety, and one page with some information withheld.

[para 3] The Applicant requested a review of the Public Body's response. A portfolio officer was authorized to investigate and attempt to settle the matter. This was not successful and an inquiry was set down.

[para 4] The individual named in the request was invited to participate in the inquiry. Although he indicated an interest in doing so, he did not provide submissions or respond to questions I had sent to the Applicant and Public Body in the course of the inquiry.

## II. RECORDS AT ISSUE

[para 5] The records at issue consist of 142 pages of records withheld in their entirety, three pages of records withheld as non-responsive (pages 13, 16 and 17), and one page of records partially withheld (page 2). One page of records was disclosed in its entirety (page 1) and is therefore not at issue.

## III. ISSUES

[para 6] The issues as set out in the Notice of Inquiry, dated September 17, 2014, are as follows:

1. Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information in the records?
2. Does section 27(2) the Act (privileged information of a person other than a public body) apply to information in the records?
3. Did the Public Body properly withhold information as non-responsive to the Applicant's request?

[para 7] In its initial submissions, the Public Body applied section 27(1)(a) to some information in the records. By letter dated November 14, 2014, I added the following issue:

Does section 27(1)(a) of the Act (privileged information) apply to information in the records?

[para 8] I will consider the issues in the following order:

- 1. Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information in the records?**
- 2. Does section 27(2) the Act (privileged information of a person other than a public body) apply to information in the records?**
- 3. Does section 27(1)(a) of the Act (privileged information) apply to information in the records?**
- 4. Did the Public Body properly withhold information as non-responsive to the Applicant's request?**

## IV. DISCUSSION OF ISSUES

**Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information in the records?**

[para 9] The Public Body applied section 17 to information on pages 2-12, 14, 15, 18-30, and 33-147.

*Is the information personal information?*

[para 10] Section 1(n) defines personal information under the Act:

*1 In this Act,*

...

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

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

*(ii) the individual’s race, national or ethnic origin, colour or religious or political beliefs or associations,*

*(iii) the individual’s age, sex, marital status or family status,*

*(iv) an identifying number, symbol or other particular assigned to the individual,*

*(v) the individual’s fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*

*(vi) information about the individual’s health and health care history, including information about a physical or mental disability,*

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

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

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

[para 11] The Public Body withheld all records in their entirety, with the exception of page 2, which was disclosed with only a name, position title, and contact information withheld. The records consist of letters and emails

- between Public Body employees;
- sent from individuals to Public Body employees and/or Public Body officials;
- sent from an organization to the Public Body; and
- sent to individuals and/or an organization by the Public Body.

[para 12] The records also contain numerous pages of handwritten notes of Public Body employees, primarily an investigator looking into complaints made about the Affected Party’s taxi company.

[para 13] The personal information contained in the records consists primarily of names and contact information of individuals, as well as opinions.

[para 14] Names and contact information of third parties is personal information under the FOIP Act. However, previous orders from this office have found that section 17 does not apply to information that reveals only that an individual was acting in a formal, representative, professional, official, public or employment capacity, unless that information also has a personal dimension (Order F2008-028, para. 54). Such information may have a personal dimension if there is associated information suggesting that

an individual performing work-related or business responsibilities was acting improperly, there are allegations that the work-related act of an individual was wrongful, or disclosure of information is likely to have an adverse effect on the individual (see Orders F2006-030 at paras. 12, 13, and 16; F2008-020 at para. 28).

[para 15] The Public Body did not address the possibility that some of the information in the records at issue withheld under section 17 is not about an individual, but is about an organization (the Affected Party's taxi company). This is true even though the Public Body refers to records of discussions, withheld under section 17, as discussions between the Public Body and the taxi company, rather than between the Public Body and the individual (for example, the Public Body's letter of February 11, 2015 regarding pages 31-32 referred to communications between the Public Body and counsel for the taxi company).

[para 16] In my view, many of the records relate to the taxi company, represented by an individual (the Affected Party). The information in those records is not about the Affected Party as an individual; rather, it is about the taxi company as an organization. Although the Affected Party's name appears in this context, it does so because he is a representative of the taxi company. In other words, there is no personal dimension to that information such that it is personal information that can be withheld under section 17. I say this despite the fact that the records relate to an investigation by the Public Body into alleged wrongdoing by the organization (the taxi company); in other words, despite the fact that the name of the Affected Party appear in the context of alleged wrongdoing. This is because it is the *organization*, and not the Affected Party as an individual, that is being investigated and against which wrongdoing is alleged. Therefore, this situation is different from a situation in which the information at issue suggests an *individual* performing work duties was acting improperly.

[para 17] That said, some of the information in the records appears to relate to the Affected Party's business plans outside of his relationship with the taxi company. This applies to the information as follows:

- page 6 – halfway through the 14<sup>th</sup> line from the top (starting with a name) to the end of line 20
- page 29 – last line of the 3<sup>rd</sup> paragraph from the bottom of the page

In my view, this is the Affected Party's personal information and I will consider whether the disclosure of that information would be an unreasonable invasion of privacy.

[para 18] In the notes of the investigator, the investigator spoke to taxi drivers associated with the Affected Party's taxi company (pages 45-90, 92-101, 103-47). The information provided by the drivers is primarily information about the drivers' financial agreements with the taxi company and is arguably not about the drivers in a personal sense. The context of the information is that it is being provided during an investigation into the Affected Party's activities and, based on the investigator's notes, the drivers being questioned express concern about being identified as providing information to the investigator for fear that their employment (or contractual arrangements) with the taxi company could be terminated if they were found out. In my view, this context lends a personal dimension to the information such that the information provided by the drivers is their personal information. That said, the drivers are identified in the investigator's notes by their TDL numbers (taxi drivers licence numbers) and occasionally their car numbers. Once these numbers are removed, the associated comments are

sufficiently general that they do not identify any particular individual. I will therefore consider whether the disclosure of the identifiers (TDL or car numbers) would be an unreasonable invasion of their privacy under section 17. I note that TDL numbers and car numbers appear elsewhere in the records at issue. As these numbers appear to be linked to an identifiable individual wherever they appear in the records, I will also consider whether their disclosure would be an unreasonable invasion of privacy under section 17.

[para 19] The Public Body did not claim in its submissions that any information related to Public Body employees is their personal information; however, some of the records withheld under section 17 do not contain information relating to any individual other than the Public Body investigator (e.g. page 101). I do not know what personal information the Public Body believes is contained in those pages, other than that of the investigator; therefore I will address whether information relating to Public Body employees in the records at issue is their personal information.

[para 20] Many of the records at issue are handwritten notes of the Public Body's investigator conducting an investigation into the Affected Party's taxi company. The notes include occasional personal references (e.g. vacation time) on pages 65 (last line of the second-last paragraph) and 78 (last sentence of the first paragraph). The investigator does not appear to be identified by name in the notes but the investigator is likely one of the employees mentioned in emails contained in the records at issue; further, the handwriting could identify him or her to coworkers or others. Therefore, the personal comments may be associated with a particular individual and I will consider whether their disclosure would be an unreasonable invasion.

[para 21] The records include letters sent by individuals to the Public Body and officials with the Government of Alberta about the Affected Party's taxi company. In some cases, the author of the letter is acting in a personal capacity; these letters appear on pages 10, 11, 12, 19, and 23-4 (these letters were withheld in their entirety). In some cases, identifying information can be severed and the remainder of the pages can be disclosed. On page 10, only the information in the subject line (and wherever it occurs in the letter) would identify the author, as would line 2 (after the comma) through line 6 in the main body of the letter and the signature line. The remainder of this page is not information that can be withheld under section 17.

[para 22] The letters comprising pages 11, 12, and 19 contain personal details of the author throughout. In my view, except for the "to" lines and date, severing the personal information from these pages would result in only meaningless snippets of information remaining. Therefore, I will consider whether these entire letters, except the "to" lines and date (and the "sent", "to", and "cc" lines of the email comprising page 12), ought to be withheld under section 17. Pages 23-24 repeat the letter on page 19 in an email chain. The first and second emails on page 23 do not contain information to which section 17 applies (except the third party's name, to which section 17 could apply), and only the "from" line of the third email identifies the third party such that section 17 could apply. My analysis of page 19 applies to the remainder of the third email on pages 23-24.

[para 23] The name of an individual who has made complaints against the Affected Party's taxi company occurs in many instances in the records at issue (for example, page 47, 55, 78-80, 82, and 98). Wherever that name refers to complaints made by an individual acting on his or her own behalf (rather than as a representative of an organization), section 17 could apply to withhold that name.

[para 24] In other cases, the author has signed the letter as the president of a named association. Therefore, it appears that the author is acting in a professional capacity, rather than as an individual. I find that those letters do not contain personal information that can be withheld under section 17. This applies to pages 1-2 (on which only the author's name and contact information was withheld), as well as pages 18 and 25-26.

[para 25] The Public Body has withheld in their entirety letters written to the president of the named association. These letters also do not have a personal dimension such that the information could be withheld under section 17. This applies to pages 20-22 and 28.

[para 26] Lastly, the Public Body has withheld pages 33-37, under sections 17 and 27(2), which constitute an attachment to a letter from the Affected Party's taxi company to the Public Body. These pages list owners of taxi licence plates, with contact information, as well as the plate numbers associated with each owner and the financial status of the payment made for the plates. The list of owners is a list of individuals, as opposed to a list of businesses. Presumably the owners of the plates intend to use them to operate a business (drive a taxi or lease the plate); however, it is not clear that this list is therefore business or work information such that section 17 could not apply. In my view, the fact that these individuals own taxi licence plates does not necessarily take the information outside the realm of personal information. Therefore, I find that the names and contact information (the two left-most columns in the list) are personal information to which section 17 may apply. The information in the remaining two (right-most) columns – as well as the column headers, and page headers and footers – do not refer to identifiable individuals and therefore cannot be withheld under section 17.

*Would disclosure of the personal information in the records just discussed be an unreasonable invasion of a third party's personal privacy?*

[para 27] Section 17 states in part:

*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.*

...

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

*(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,*

...

*(g) the personal information consists of the third party's name when*

*(i) it appears with other personal information about the third party, or*

*(ii) the disclosure of the name itself would reveal personal information about the third party,*

...

[para 28] Section 17 is a mandatory exception; if the information falls within the scope of the exception, it must be withheld.

[para 29] Section 71(2) states that if a record contains personal information of a third party, it is up to the applicant to prove that the disclosure would not be an unreasonable invasion of a third party's personal privacy.

[para 30] Neither party has argued that section 17(2) or (3) apply to any of the withheld information, and from the face of the records, neither provision appears to apply.

*Section 17(4)*

[para 31] The Public Body argues that sections 17(4)(b) and (g) apply to the personal information, creating a presumption that disclosing the information would be an unreasonable invasion of personal privacy. I agree that section 17(4)(g) applies to the information in the records, that I have held to be personal for the reasons given.

[para 32] Section 17(4)(b) applies where the personal information is identifiable as being part of a law enforcement record; it does not apply to information that *may* have been contained in a law enforcement record if it is not identifiable as having been part of that law enforcement record.

[para 33] Law enforcement is defined in section 1(h) of the Act, to include:

*1 In this Act,*

...

*(h) "law enforcement" means*

*(i) policing, including criminal intelligence operations,*

*(ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or*

*(iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceeding are referred;*

[para 34] The Public Body has stated that it was investigating the Affected Party's taxi company and its possible non-compliance with the City of Calgary's Livery Transport Bylaw 6M2007, and that the investigation could have led to a suspension or revocation of the Affected Party's taxi licenses. I agree that this investigation falls within the definition of law enforcement in the Act (specifically section 1(h)(ii)). Therefore, the presumption against disclosure in section 17(4)(b) applies to personal information contained in a record that is identifiable as being part of that investigation. This applies to the personal information contained in the notes of the Public Body investigator, as well as the personal information contained in some of the emails of the Public Body's employees.



[para 35] Some of the letters of complaint sent to the Public Body (and the letters sent from the Public Body in response to the complaints) are not identifiable as being part of a law enforcement record. While it is possible that these letters formed part of the investigation, this is not apparent from the records themselves. Therefore, I cannot find the presumption in section 17(4)(b) applies to the personal information in those records.

[para 36] The Applicant has not made any submissions regarding the Public Body's application of section 17, nor has he made any submissions as to why records containing third party personal information should be disclosed to him. It is not clear from the records themselves that any factors in favour of disclosing the information exist. The Applicant has not argued, for example, that the disclosure is desirable for the purpose of subjecting the activities of the Public Body to public scrutiny, and there is nothing in the records themselves that indicate a need to scrutinize the actions of the Public Body in relation to the records.

[para 37] As I cannot find any factors weighing in favour of disclosing the personal information in the records, I agree with the Public Body's application of section 17 to withhold that information.

**Does section 27(2) the Act (privileged information of a person other than a public body) apply to information in the records?**

[para 38] The Public Body applied section 27(2), citing settlement negotiation privilege, for withholding pages 31-37 and 43-44 in their entirety. In its initial submission, the Public Body cited *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37 and *Imperial Oil Limited v. Alberta (Information and Privacy Commissioner)*, 2014 ABCA 231 in its arguments for the application of section 27(2), but didn't state how the principles set out in these cases applied to the information in the records.

[para 39] By letter dated February 4, 2015, I said:

The test for settlement privilege is as follows:

- 1) A litigious dispute must be in existence or in contemplation;
- 2) The communication must be made with the express or implied intention that it would not be disclosed to the court in the event negotiations failed; and
- 3) The purpose of the communication must be to effect a settlement.  
(see *Hansraj v. Ao*, 2002 ABQB 385 (CanLII))

The Public Body has not provided any information regarding how this test is met. It is not sufficient to cite excerpts from recent court decisions regarding settlement privilege without explaining how those decisions apply to the relevant records. I therefore ask the Public Body to provide me with detailed arguments addressing how the information in pages 31-32 is subject to settlement privilege.

[para 40] In response, the Public Body stated that an investigation was undertaken by the Public Body pursuant to the Livery Transport Bylaw, which resulted in a licence review hearing being scheduled. It states that this hearing is a quasi-judicial hearing that could result in sanctions against the Affected Party. The Public Body also states that during a licence review hearing, the Public Body and Affected Party are adverse in interest.

[para 41] Regarding the third part of the test, the Public Body argues that the scheduled review hearing was adjourned and while it was adjourned, the Affected Party and Public Body held discussions. The Public Body referred me to pages 5-6 of the records at issue, which consist of notes taken by a Public Body employee regarding a discussion the employee had with the Affected Party. The Public Body withheld these pages under section 17 only, and has not applied section 27.

[para 42] The Public Body states that the details of the settlement are outlined in pages 5-6 and that “legal counsel for [the Affected Party] corresponded with the Public Body (Records 31-32) and Records 31-32 give effect to the agreement.” (Public Body letter dated February 11, 2015, page 2). Pages 33-37 are attachments to the letter sent from the Affected Party’s counsel to the Public Body, reproduced as page 32.

[para 43] The Public Body also states that it did not pursue the review hearing as a result of the agreement. Lastly, the Public Body states that it consulted with the Affected Party in the course of processing the Applicant’s access request, and that the Affected Party objected to the disclosure of page 31 of the records on the basis that it is subject to settlement privilege.

[para 44] In *Union Carbide Canada Inc. v. Bombardier Inc.*, 2014 SCC 35, the Supreme Court of Canada confirmed that the purpose of settlement privilege is to enable “parties to participate in settlement negotiations without fear that information they disclose will be used against them in litigation” (at para 31). The Public Body also cited *Imperial Oil* in which the Alberta Court of Appeal noted that this purpose applied equally to public and private disputes.

[para 45] According to the Livery Transport Bylaw, provided by the Public Body, the Manager of Livery Transport Services can refuse to issue a licence, or suspend and revoke a licence, with or without a hearing (section 160). Livery Transport Services is a part of the Public Body. It is not clear that the Public Body’s discussions with the Affected Party regarding the Affected Party’s licences were discussions between *parties* to a litigious dispute, since the Public Body seems to be the decision maker in the dispute. It does not seem to be sufficient, as the Public Body argues, that the parties be in an adverse relationship.

[para 46] However, I do not have to decide that issue. The communications from the Affected Party to the Public Body in pages 31-37 and 43-44 do not support the argument that they were part of settlement discussions. The language used by the Affected Party’s counsel in the letters to the Public Body on these pages indicates that the Affected Party has made a decision to undertake a certain action and that the Public Body is being made aware of this decision on a “for your information” basis.

[para 47] I agree that the Affected Party’s decision, communicated in the letters, indicates an outcome that was discussed with the Public Body, to which the notes on pages 5-6 of the records relate. However, it is not clear that the discussion reflected on pages 5-6 was a settlement discussion between parties to a dispute.

[para 48] Further, settlement privilege applies to communications made for the purpose of effecting a settlement. There is no indication that the letters on pages 31 and 32 of the records consist of communications made between the Affected Party and the Public Body in order to reach a settlement;

rather, the Affected Party seems to have made a decision based on statements made by the Public Body (as recorded on pages 5 and 6, over which privilege has not been claimed) regarding the possible outcome of the investigation and/or hearing.

[para 49] Based on the information the parties have provided, I have no basis on which to conclude that the Affected Party's course of action described in the letters on pages 31 and 32 are communications being made to effect a settlement. Indeed, on its face, the letters seem not to contain any kind of offer, nor a description of a concluded agreement, but appear to contain a description of a decision made solely by the Affected Party, and communicated to the Public Body for its information. Whether or not that is accurate, I have nothing on which to base a contrary conclusion.

[para 50] As pages 33-37 are attachments to the letter on page 32, I find that section 27(2) also does not apply to the information in these pages.

[para 51] Pages 43-44 consist of a letter to the Affected Party from another organization, and a letter from a financial organization addressed "to whom it may concern". These letters relate to the letters in pages 31-32 insofar as they seem to follow from the actions taken by the Affected Party, communicated in the letters on those pages. However, the Public Body has not told me why it has these letters, who supplied them to the Public Body, when, or in what context. Therefore, I cannot conclude that section 27(2) applies to the information in these pages.

[para 52] I find that section 27(2) does not apply to the information in pages 31-37 and 43-44. No other exception has been applied to pages 31-32 so I will order the Public Body to disclose them to the Applicant. The Public Body also applied section 17 to the information on pages 33-37 and 43-44; however, earlier in this order I concluded that section 17 does not apply to the information in the two right-most columns on pages 33-37 or to the information in pages 43-44. As no further exception was applied to pages 33-37 and 43-44, I will order the Public Body to disclose two right-most columns on pages 33-37, and pages 43-44 to the Applicant.

**Does section 27(1)(a) of the Act (privileged information) apply to information in the records?**

[para 53] The Public Body applied section 27(1)(a) (solicitor-client privilege) to information on pages 3, 4, and 102.

[para 54] Section 27(1)(a) states the following:

*27(1) The head of a public body may refuse to disclose to an applicant*

*(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege;*

...

[para 55] The Supreme Court of Canada stated in *Solosky v. The Queen* [1980] 1 S.C.R. 821 that in order to correctly apply solicitor-client privilege, the following criteria must be met:

- a. the document must be a communication between a solicitor and client;

- b. which entails the seeking or giving of legal advice; and
- c. which is intended to be confidential by the parties.

[para 56] The Public Body argues that Public Body employees received advice from counsel, and that the information in pages 3, 4 and 102 are part of the communications between solicitor and client made in the course of communicating that advice.

[para 57] In its *in camera* affidavit, the Public Body told me the roles of the Public Body employees listed in the notes as being involved in the communications. Based on this explanation, as well as my review of the records, I am satisfied that the information in these pages meets the test for solicitor-client privilege.

#### *Exercise of discretion*

[para 58] Section 27(1)(a) is a discretionary exception to access, which means that after determining that the information at issue falls within the exception, the public body must then determine whether the information should nevertheless be disclosed.

[para 59] With respect to the exercise of discretion under section 27(1)(a), withholding information that is subject to solicitor-client privilege is usually justified for that reason alone (see Orders F2007-014, F2010-007, F2010-036). The adjudicator in Order F2012-08 stated (citing *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (CanLII)):

the public interest in maintaining solicitor-client privilege is such that it is unnecessary to balance the public interests in withholding records subject to this privilege and those in relation to disclosing them, as the public interest in withholding such records will always outweigh the interests associated with disclosing them.

[para 60] As I have found that the information on pages 3,4 and 102 is subject to solicitor-client privilege, I conclude that the Public Body properly exercised its discretion to withhold the information it withheld under section 27(1)(a).

#### **Did the Public Body properly withhold information as non-responsive to the Applicant's request?**

[para 61] The Public Body states that pages 13, 16 and 17 are not responsive to the Applicant's request, as they do not relate to either the company or the individual named in the Applicant's request. I agree with this assessment; the records relate to the taxi industry in a general way, but there is nothing in the records to indicate that they relate to the company or named individual. Therefore, I agree that these pages are not responsive to the Applicant's request.

#### **V. ORDER**

[para 62] I make this Order under section 72 of the Act.

[para 63] I find that section 17 applies to the information described at paragraphs 17, 18, 20-23, and 26, and uphold the Public Body's decision not to disclose that information.

[para 64] I find that section 17 does not apply to the remaining information in the records at issue and order the Public Body to disclose that information, with the exception of pages 3-4 and 102 (discussed below).

[para 65] I find that the Public Body properly applied section 27(1)(a) to the information on pages 3, 4 and 102.

[para 66] I find that section 27(2) does not apply to the information on pages 31-37 and 43-44. I order the Public Body to disclose the information on pages 31, 32, 43 and 44. I also order the Public Body to disclose the two right-most columns of information on pages 33-37, as well as the column headers, page headers and footers on those pages.

[para 67] As I have found that much of the information to which the Public Body applied section 17 is information about an organization rather than about an individual, the Public Body must determine whether section 16 applies to any of the information in the records. Therefore, my above orders to the Public Body to disclose information is subject to the application of section 16; if the Public Body determines that some information must be withheld under section 16, it is to inform the Applicant and explain its decision.

[para 68] I further order the Public Body to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

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Amanda Swanek  
Adjudicator