

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2015-10

April 20, 2015

ALBERTA HEALTH SERVICES

Case File Numbers F6724, F6725, F6726, F6727 and F6728

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Summary: Five Applicants made access requests to Alberta Health Services (“AHS” or “the Public Body”) for records relating to the expense claims filed by a person who had been the CEO of the Calgary Health Region. AHS located responsive records, and severed some personal information from them, and notified the person (the “Third Party”) that it was proposing to disclose most of the records.

The Third Party objected to the disclosure on the basis that the records were inaccurate or unreliable within the terms of section 17(5)(g) of the Act, and could unfairly damage his reputation within the terms of section 17(5)(h), in that they were poorly organized, and did not show with sufficient clarity records that were related not to his personal expense claims but to the expenses of others, or that claimed expenses had been reimbursed, or that funds apparently claimed had not actually been expended.

The Adjudicator found that the expense claims were for the most part not the Third Party’s personal information but rather recorded an aspect of the Third Party’s fulfillment of his job responsibilities. As such, there was no basis for withholding them under section 17, which applies only to personal information.

The Adjudicator found in the alternative that if the records were personal information, most of them should be disclosed for the purpose of permitting public scrutiny of the expenditure of public funds.

With respect to expenses that had been reimbursed, the Adjudicator found that some of the personal information in those records should not be disclosed.

With respect to information in the records that consisted of the personal, or possibly personal, information of other third parties, the Adjudicator had earlier decided to deal with this information in a second stage of the inquiry, after these other third parties had been given an opportunity to make submissions as to whether their information should be disclosed.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 17, 17(1), 17(2)(e), 17(4)(g)(i), 17(5)(a), 17(5)(g), 17(5)(h), 30, 72.

Orders Cited: AB: 2001-020, 97-002, F2004-015, F2006-008, F2006-030, F2008-028, F2009-037, F2011-014, F2013-10, F2014-23.

Court Cases Cited: *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3; *University of Alberta v. Pylypiuk*, 2002 ABQB 22.

I. BACKGROUND

[para 1] This inquiry arises from requests to the Public Body under the *Freedom of Information and Protection of Privacy Act* (“the FOIP Act”, or “the Act”), in August and September 2012, by five Requestors. The requests were somewhat variable, as follows:

All expense claims and receipts for [the Third Party]. Date range 2004-2008.

Detailed expense claims of [the Third Party] while at Calgary Health region as CEO. Date range Jan 1, 1999 – July 1, 2008.

Records of expenses and receipts by [the Third Party], former CEO of the former Calgary Health Region. Date range July 1999 – July 2008.

All records as defined by Section 1(q) of the Act related to expense claims filed by [the Third Party]. Date range Jan. 1, 2005 – Dec. 31, 2009.

I request all records related to expense claims made by executives at Calgary Health Region and Capital Health Region. Date range Jan 1, 2005 to Oct 1, 2008.

[para 2] The Public Body located records responsive to all five of these requests. (With respect to the last of them, this inquiry relates only to the expense claims by the Third Party and not by other executives.)

[para 3] On November 1, 2012, the Public Body notified the Third Party indicating its intention to disclose the records with some severing of particular kinds of personal information, which it highlighted. The Third Party objected to disclosure of all of the records. The Public Body then decided, on December 10, 2012, to disclose most of the

records with redactions as originally proposed by the Public Body. The Third Party requested a review of this decision by this office on January 8, 2013. A portfolio officer was appointed to try to resolve the matter, but this was not successful, though the Public Body agreed to some further redactions. The Third Party requested an inquiry on January 6, 2014. The Requestors were invited to participate as affected parties, and two of them agreed to do so.

[para 4] After receiving submissions and reviewing the records in this inquiry, I noted that the records contained the names of third parties other than the Third Party, and information about them which might be personal information. I wrote to the Public Body to inquire whether it had notified these persons in accordance with its obligations under section 30 of the Act, and if not, why not. The Public Body responded that it had not notified these other third parties because, in its view, disclosure of their information in this case would not, “on a balance of probabilities”, be an unreasonable invasion of their personal privacy.

[para 5] My understanding of the test that triggers the duty to notify third parties whose personal information is contained in requested records (as set out in *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, at para 84) is that there be some reason (in contrast to no reason) for believing that the information is subject to disclosure. As in this case there appeared to be some doubt as to whether the information should be disclosed, I notified the parties in the inquiry that I believed it to be necessary to notify these other third parties, either pursuant to section 30, or as affected parties in the inquiry, and to provide them an opportunity to make submissions as to whether disclosure of this information would unreasonably invade their privacy.

[para 6] Accordingly, I wrote to the parties, including the Affected Parties who had decided to participate (two of the five original Requestors), proposing to hold the inquiry in two parts: the first part would be in relation to all the information in the records other than information that relates to ‘other’ third parties; the second part would deal with information in the records that does relate to these third parties.

[para 7] As I received no objections, I decided to proceed on the basis I had proposed. This order is Part 1 of the process; the proceeding and order for Part 2 will follow in due course.

[para 8] I received both exchangeable and *in camera* initial submissions from the Third Party, as well as a rebuttal submission. I received an initial submission and a rebuttal submission from the Public Body. I also received an initial submission from one of the two participating Affected Parties; the other provided a confirmation of intention to rely on that party’s “previously (sic) submissions”, but no such submission had been received by this office nor, apparently, copied to the other side. I also received a rebuttal from one of the Affected Parties.

II. RECORDS AT ISSUE

[para 9] The records at issue in Part 1 are those the Public Body proposes to disclose, consisting of records relating to expense claims filed by the Third Party who has requested this inquiry (but excepting information in these records that is the personal information of third parties other than the Third Party).

[para 10] The Third Party has expressed some concerns about the accuracy of the numbering of the records, especially given that there was initially an error such that records were numbered erroneously. I will deal with this question at the conclusion of this decision.

III. ISSUES

[para 11] The issue stated in the Notice of Inquiry is:

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

[para 12] A second issue was raised by the Third Party, with which I will deal before proceeding with the issue as stated in the Notice. This is whether some of the records are unresponsive to the access requests of the Requestors.

The responsiveness of the records

[para 13] In his initial submission the Third Party says he believes that some of the information the Public Body proposed to disclose is outside of the parameters of what was requested (hence, these records should not be released in his view). The Third Party believes that expenses that are not his personal expenses are not responsive to the requests. He states:

In many instances the records do not reflect my actual expenses in my role as CEO. There are numerous examples of general office expenses which include stationary and office supplies purchased by administration staff with credit cards assigned to the Office of the CEO. As well, travel and workshop expenses for individuals working in my office that have also been included in the material. These types of expenses are not my personal travel and hosting expenses and add confusion to what are the actual amounts of my expenses and are deemed misleading.

[para 14] The Public Body explains its choice of records for inclusion in its response as follows (at p. 4 of its initial submission):

The access request for the Third Party's expenses were for "expense claims". AHS defined expenses to mean the costs incurred by the public body that were submitted by the Third Party for payment by the public body, as a result of the Third Party fulfilling his employment duties as CEO. All costs incurred would be approved by the public body and paid back to either the Third Party (reimbursement), or to the vendor (payment of expenses charged to the Third Party's corporate credit cards). The incurred costs include

disbursements made by the Third Party by cash, personal cheque, personal credit or debit card, corporate credit or procurement card (p-card) or through the use of invoices or purchase orders. Regardless of which instrument was used to incur the cost, public funds were used to satisfy the outstanding payment and the Third Party was responsible for committing the public body to these costs.

[para 15] One cannot necessarily discern from the face of the records that they are as the Public Body describes, but I have no reason for thinking they contain information other than as described. According to the Public Body, all of them are expenses submitted for payment by the Third Party.

[para 16] The requests as set out above are, as a totality, sufficiently broad to encompass expenses which were paid for by any of the mechanisms described above by the Public Body, or, in the Third Party's words in his initial submission at page 2, "through the CEO office", even where an expense was not the Third Party's direct personal expense. I say this having particular regard to the broad nature of the following request of one of the participating Requestors, which was set out verbatim in the Public Body's initial submission:

All records as defined by Section 1(q) of the Act related to expense claims filed by [the Third Party].

In my view, it is reasonable to read expense claims "filed by" the Third Party as those claimed or filed by him (or by his staff under his authority), whether or not they were his own personal expenses.

[para 17] The Third Party states in his initial submission that he understood the requests to be as summarized in the Public Body's first communication to him. In that letter, dated November 1, 2012, the requests were said to be for "information related to records of [his] expenses while CEO of the former Calgary Health Region for the period of 1999 to 2008".

[para 18] However, the Third Party is aware of the wording of the request quoted at para 16, and of how the Public Body has interpreted its scope. He has not suggested that this request should be (nor explained how it could be) interpreted more narrowly to include only his personal expenses.

[para 19] I believe the summary in the Public Body's initial response letter was an inaccurate summary of the requests it had received. However, that does not alter their actual scope, which was, at its broadest, for "all records ...related to expense claims filed".

[para 20] I understand it is very important to the Third Party that there be clarity about precisely who benefited from particular payments made through his accounts or "through the CEO office". I will discuss this question further below, in particular relative to the Third Party's argument that the records are "inaccurate and unreliable", and his argument that this is a factor, under section 17 of the Act, that weighs against disclosure.

[para 21] I will also comment below as to whether individualized responses must be given to each of the Requestors, providing for each case only the records specifically requested and no more.

[para 22] Finally, I will also deal separately below with reimbursed expenses.

[para 23] An additional issue with which I will deal at the conclusion of this order is the disclosure of the names appearing in the records of third parties who are, as obvious from the face of the records, acting in a representative capacity.

IV. DISCUSSION OF ISSUES

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

[para 24] The relevant parts of section 17 provide:

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

(e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an...employee...of a public body...

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

(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,

17(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,

(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... .*

[para 25] I begin my analysis for this case by noting that section 17(1) is an exception to disclosure that can be applied to personal information only, and not to general information. To the extent the information at issue is not the Third Party's (or anyone else's) personal information, section 17 does not apply.

Is the information personal?

[para 26] In accordance with many earlier decisions of this office, information about what an individual does in the course of fulfilling their employment responsibilities is not their personal information, unless it has a personal dimension. A person's name is their personal information by virtue of the definition in section 1(n) of the Act, but the description of their employment-related activities is not. (See, for example, Order F2008-028 at para 55, Order F2006-030 at para 12.)

[para 27] The Third Party states on the closing page of his rebuttal submission:

My expenses always related to me carrying out my responsibilities as outlined by my Employment Agreement and as directed by the Board of the Calgary Health Region. My travel and expenses were approved in advance and were receipted and approved again after the expenses were incurred. My expenses were not only approved by the Chairs of the Calgary Health Region, they were signed off by the Chief Financial Officer and they were the subject to audit by the Office of the Auditor General at any time if concerns were raised. At no time have my expenses as contained in the record been questioned by the Public Body, the successor organization to the Calgary Health Region.

[para 28] This statement supports the view that the expense information contained in the records at issue is a record of, or a record of an aspect of, the Third Party's fulfillment of his employment responsibilities, acting in a representative and not a personal capacity and simply conducting the business of government, and hence is not his personal information. If this is the proper characterization of the information, section 17 does not apply to the parts of the records that record these activities. (Likewise, section 17(5)(g) and (h) on which the Third Party relies, which apply only to the balancing of factors relative to *personal* information under section 17, do not apply in considering whether this information should be disclosed.)

[para 29] Despite this, possibly it is more true to say in this case that the legitimacy of the Third Party's expense claims has been cast into doubt, in that he is one among several executives of the Calgary Health Region whose expenses have come under scrutiny. To this extent, the information might be more properly considered to the Third Party's personal information. The Public Body says the following in this regard (at p. 5 of its initial submission):

... there was significant public interest in the expenses claimed by former executives of the former health regions and of the expenses incurred by executives of Alberta Health Services. Since May 22, 2012 the Public Body has received a multitude of similarly

worded requests for the expenses of former and current executives and board members. Tab #7 is a print out of the FOIP Request Responses that can be accessed on Alberta Health Services' website. It demonstrates that at the time of the Applicants' access requests in 2012 and to the present day the continued public interest regarding the expenditure by the public body of public money for expenses incurred by the public body's executive ranks as a whole.

[para 30] I note as well that one of the Affected Parties states:

... we did not seek [the Third Party's] expense records on a whim. Several of his former staff told us about his expenses and encouraged us to seek them. They believed some of his expenses were an inappropriate use of taxpayers' money and they strongly believed it should be made public. So while [the Third Party] may believe it would be unfair to his privacy and reputation to release the records, I think it would be unfair to the public not to know how he spent their money.

[para 31] Depending whether the information in the documents that record this aspect of the Third Party's discharge of his employment responsibilities is or is not his personal information, it is either necessary, or not, to weigh the relevant factors under section 17 to decide if it should be disclosed. If it is best characterized as not his personal information, there is no weighing to be done.

[para 32] I believe the better characterization in this case is that the expense claim information is not the Third Party's personal information. The Public Body shows that there is broad public and media interest in such information generally. However, despite this and the second-hand allegation just quoted, which has not been substantiated and is lacking in detail, there has been nothing put before me to show that the Third Party's practices in this regard were inappropriate such as would make the information personal to him.

[para 33] This is not to say that no such suggestion will be made when the records are scrutinized by others – it is only to say there is no tangible information before me one way or the other.

[para 34] The result of this point of view is that section 17 cannot operate as an exception to the disclosure of the information about expense claims in the records.

[para 35] With respect to the Third Party's name as found in the context of the records, the name of an identifiable individual is their personal information by virtue of the definition of that term under section 1(n) of the Act. However, on what I believe is the better view, that the expense claims themselves are not the Third Party's personal information, he was acting in a representative capacity in submitting the claims.

[para 36] Earlier orders of this office have treated the name of a public official acting in a representative capacity as their personal information, but have held this is not an unjustified invasion of their privacy under section 17. (The same result is reached by applying alternative reasoning expressed in some recent cases from this office that the

name, and in some circumstances the signature, of a person acting in a representative capacity is not their personal information to begin with. See, for example, Order F2014-23.) The former line of thinking – that the name is personal but its disclosure does not unjustifiably invade privacy – is more easily reconciled with the definition of personal information under section 1(n) of the Act, in that under that definition, the name of an identifiable person is information about them. I will therefore consider below whether disclosure of the Third Party’s name, while he was acting in a representative capacity, is an unjustified invasion of his privacy.

[para 37] With respect to signatures, I have noted the Third Party wishes to have his signature removed from the documents, in his words “consistent with other redactions”. His signature appears on bills and credit cards and expense claim forms throughout the records, though there are a few places where his signature is redacted.

[para 38] Earlier orders of this office have held that signatures are personal information, but the fact a person signs in their representative capacity as a public official weighs in favour of disclosing it under section 17(5). (See, e.g. Order F2006-008.) Other orders have held that where a person signs a document in their statutory capacity (for example, as a commissioner for oaths), the signature is not personal information. (See Order F2011-014.)

[para 39] In the present case, the Third Party signed the claims in his official capacity, but it is the fact he signed, and not the appearance of his signature, that is important. The form of his signature has a personal dimension in that it potentially makes him more vulnerable to identity fraud. I will therefore consider below whether disclosure of the Third Party’s signature as it appears throughout the records would be an unreasonable invasion of his privacy.

Weighing the factors under section 17 (on the alternative assumption the information about the claims is personal)

[para 40] Despite my view that the expense claims information is better regarded as *not* the Third Party’s personal information, I have decided to conduct the balancing exercise under section 17 in this case. This is in case I am wrong to think the Third Party’s expense claims have not been called into question sufficiently to make this information personal. Thus, in the next section of this order, I will proceed on the assumption that the expense claims information *is* the Third Party’s personal information, because the multiple requests and related allegation are sufficient to give the information a personal dimension.

Section 17(4)(g)(i)

[para 41] On the theory the expense claims information is personal, the presumption under section 17(4)(g)(i), that disclosure of a name together with other personal information would be an unreasonable invasion of privacy, arises. I must go on to decide

whether there are any countervailing factors that outweigh this presumption. The primary such factor the Public Body raised is the desirability for public scrutiny.

Section 17(5)(a) public scrutiny

[para 42] For desirability of public scrutiny to be a relevant circumstance, there must be evidence the activities of the public body have been called into question, and that this necessitates the disclosure of personal information in order to subject the activities of the public body to public scrutiny. (See Order 97-002, para 94; Order F2004-015, para 88.)

[para 43] In determining whether public scrutiny is desirable, I may consider factors such as:

1. whether more than one person has suggested public scrutiny is necessary;
2. whether the applicant's [or Requestor's] concerns are about the actions of more than one person within the public body; and
3. whether the public body has not previously disclosed sufficient information or investigated the matter in question.

(Order 97-002, paras 94 and 95; Order F2004-015, para 88)

It is not necessary to meet all three of the foregoing criteria in order to establish there is a need for public scrutiny. (See *University of Alberta v. Pylypiuk*, 2002 ABQB 22, at para 49.)

[para 44] As explained above, this part of the order is proceeding on the assumption that there is sufficient evidence before me calling the Third Party's expense claims into question to characterize this information as his personal information.

[para 45] What flows from that assumption is that the presence of these factors – the heightened interest on the part of the media and others about expenditures by the Public Body for expenses incurred by its executive ranks, together with the suggestion of impropriety made by one of the Requestors – is also sufficient to meet the first element in the criteria for making public scrutiny desirable under section 17(5)(a). The presence of these factors shows that the activities of a person acting in their capacity as an employee of the Public Body have been called into question.

[para 46] The first and third of the remaining elements of the test under section 17(5)(a), as set out in para 43 above, are also met for the information at issue. The requirement that the concerns be about the actions of more than one person within the public body is also met with regard to one of the requests. Therefore, on the assumption the information is personal, section 17(5)(a) is satisfied in my view.

[para 47] The desirability of public scrutiny is a factor weighing strongly in favour of disclosure in this case. The public has a powerful interest in seeing how taxpayer dollars are spent by government officials. In Order F2013-10, the Adjudicator commented at para 53 that “[t]he misappropriation of public money by employees of government ... is a

matter that is typically of great concern to the public, as it involves serious questions about accountability.” Whether or not money was misspent in fact, if a concern has been broadly raised that it may have been, or that it was spent unwisely or excessively, this is deserving of scrutiny to either expose this, or to restore the public’s confidence by demonstrating the contrary.

Sections 17(5)(g) and (h)

[para 48] The Third Party’s main point in this inquiry is that the information is inaccurate or unreliable, subject to misinterpretation, and therefore, by reference to sections 17(5)(g) and (h), should not be disclosed. He states this at various points throughout his submissions, for example:

There are still concerns related to the quality of the record in terms of its disorganization including duplication of material and lack of clarity regarding trips that were booked and not taken.

The Third Party has indicated the poor quality of the records and in particular their lack of organization makes it virtually impossible to have any type of accurate picture of [the Third Party’s] expenses. The Act clearly states that individuals should be protected from the release of information that is “inaccurate or unreliable” and “if disclosure may unfairly damage the reputation of any person referred to in the record”.

...

There are many examples of duplication of recorded expenses and in some cases triplicate recordings are in the material. This type of misleading record allows for the record to not accurately reflect actual expense amounts and makes the record incomplete and confusing.

There are numerous examples of travel for which I reimbursed all or part of the expense, or where the travel was booked and did not actually take place and the funds were in fact not expended or where third parties reimbursed the travel. The records are in such poor shape that these adjustments were missed or are recorded in such a disorganized manner that it is impossible to get an accurate picture of what was actually incurred as an expense, let alone incurred by me as an expense and as such disclosure of these records may unfairly damage the reputation of persons, including myself, referred to in this record.

[para 49] The Supreme Court of Canada has recently spoken about using the potential for misinterpretation of information as a factor for resisting its disclosure, in a somewhat different context (under the federal *Access to Information Act*). In (*Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, the third party contended that its information should not be released (under a provision equivalent to section 16 of the Alberta FOIP Act), on the basis that the information in the pages that were sought could lead to public misperceptions of the safety of a product. The Supreme Court of Canada responded as follows (at paras 223 - 224:

That leaves for consideration Merck’s submission that release of some of the pages could give an inaccurate perception of the product’s safety. Merck says that refusal to disclose

this sort of information under s. 20(1)(c) is not problematic because proper information in proper context is provided in the Product Monograph. ...

I do not accept the principles inherent in these submissions. The courts have often -- and rightly -- been sceptical about claims that the public misunderstanding of disclosed information will inflict harm on the third party: see, e.g., *Air Atonabee*, at pp. 280-81; *Canada Packers*, at pp. 64-65; *Coopérative fédérée du Québec v. Canada (Ministre de l'Agriculture et de l'Agroalimentaire)* (2000), [180 F.T.R. 205](#), at paras. 9-15. If taken too far, refusing to disclose for fear of public misunderstanding would undermine the fundamental purpose of access to information legislation. The point is to give the public access to information so that they can evaluate it for themselves, not to protect them from having it. In my view, it would be quite an unusual case in which this sort of claim for exemption could succeed.

[para 50] I believe this reasoning applies in the present case to the issue of whether the records should be withheld on the basis that their significance, in terms of such things as whose claims they were, might be misunderstood.

[para 51] Further, in my view, the fact someone might misinterpret information or reach inaccurate conclusions based upon it does not in itself make that information inaccurate or reliable. On the submissions before me, the records consist of the expense claims made by the Third Party or by his staff on his behalf. Regardless of how they are organized, or what comments may be made about them in terms of how clearly they reveal particular categories of information, I can only presume that each document is an accurate and reliable representation of the expense claim as submitted. The fact that, for instance, some of the expenses may have been personally reimbursed by the Third Party, does not make inaccurate or unreliable the document recording the fact the claim was originally made and processed through a particular expense account. Similarly, the fact a record that was created suggests that an expense was (or was to be) incurred when ultimately it was not in fact incurred (such as a planned trip not taken) does not make the record "inaccurate" as reflecting the proposed transaction, regardless what happened thereafter. With regard to duplicates, all copies of a responsive record are responsive, and the existence of more than one copy does not make any particular copy "inaccurate" as the recording of a given transaction. (I will return below to the question of reimbursed expenses and records that show trips that were not taken in fact.)

[para 52] Moreover, I do not think it would be appropriate for the Public Body to reorganize the records and data in some way that would be more suitable from the standpoint of the Third Party, or to insert commentary, or to add additional unrequested information that would shed light on the requested information of a type favourable to the Third Party. The Public Body's duty under the Act is to provide access to requested records -- no more or less. While its duty to assist requires it to be open, accurate and complete in terms of providing the records in its custody -- so that it must organize them in as readable a fashion as far as possible -- extraneous manipulation designed to achieve a particular purpose would, in my view, be a breach of its duty to the Requestors. I have no reason to think the Public Body did anything other than locate the records it believed to be responsive to the totality of the requests, number them, and provide them to the Third Party for his review.

[para 53] The same comments hold for the idea that the records in their present form would unfairly damage the reputation of the Third Party (section 17(5)(h)). The records fairly represent the transactions they record. If there are further transactions, such as reimbursements, this does not make the existence of the responsive records a factor that is damaging to reputation. I cannot tell if the Public Body did not locate records showing reimbursements (or did not do so consistently) or if it did not regard them as responsive because they are not expense claims. (To the extent it was the latter, I would agree they are not.)

Balancing the factors

[para 54] On the premise the information about expense claims is personal information, I believe the determinative factor for most of the records is the desirability of public scrutiny of this claims information under section 17(5)(a). This factor outweighs the presumption of unreasonable invasion of privacy that arises, on this same premise, by reference to section 17(4)(g)(i). As well, for the reasons given above, I find that section 17(5)(g) and (h) do not apply in favour of withholding these records.

[para 55] However, for records that are responsive in the sense that they record an expense claimed by, or through the office of, the Third Party, but which were reimbursed by the Third Party or by someone else, I do believe that some parts of such claims should be withheld, but for different reasons than those put forward by the Third Party. These records do not ultimately represent the expenditure of public funds, (other than the minor administrative costs of processing them and reimbursing them). For parts of such records, the need to permit scrutiny of the expenditure of public funds by public officials applies with less weight. I do not believe the more minor costs just mentioned justify the disclosure of what is, beyond this minor 'public expenditure' aspect, a purely personal expense and thus personal information.

[para 56] However, the foregoing comments about reimbursed expenses apply only to reimbursements that happened with sufficient proximity to the expense to show that this was intended from the outset, as opposed to, for example, after an access request has been made. That said, for such reimbursed expenses, I believe full disclosure would involve an unreasonable invasion of personal privacy.

[para 57] The same reasoning applies to records that show a trip was to be taken and expensed, where ultimately it was not taken and therefore was not paid for.

[para 58] This reasoning is in accord with an earlier decision of the former Commissioner, Order F2009-037. In that case the Commissioner concluded that for transactions on a government-issued credit card that were subsequently reimbursed, only the third party's name, the dates on which he used the credit card for personal purposes, and the dollar amounts of such personal purchases, had to be disclosed. The former Commissioner ordered the public body not to disclose the names and locations of the

vendors from which the personal purchases were made and the other transaction identifiers in respect of such purchases.

[para 59] I adopt this reasoning for the present case. Thus for expenses for which the Third Party can produce evidence of reimbursement, or that an apparent expense, such as for a trip, was not actually incurred. I will order disclosure only of the parts that do not reveal unnecessary personal information. (As the Third Party has not yet had an opportunity to provide all available evidence, I will provide an opportunity for this to happen in the final ‘order’ portion of this decision.)

The Third Party’s name and signature

[para 60] The Third Party’s name is an integral element of the responsive information in this case, which I have found to be disclosable for the purposes of public scrutiny. I find the Third Party’s name cannot be withheld in reliance on section 17(1) in this case (nor would redacting it serve any purpose given the wording of the requests).

[para 61] With regard to the Third Party’s signature, the fact he signed particular records is important for the purposes of public scrutiny, and in the present circumstances there is no way this can be known from the records unless the signatures are disclosed. Furthermore, he was signing these records in the course of his duties, which is itself a factor weighing heavily in favour of disclosure. As well, the personal dimension his signature might have would be diminished by its presence on public documents such as a person in his position (the CEO of Calgary Health Region) would have been likely to sign. For these reasons, the Third Party’s signatures must, in my view, be disclosed.

Five separate requests

[para 62] An additional issue in this matter relates to the fact there were five separate requests. Given their variable wording, the records responsive to each of these is somewhat different. For example, some of the requests are for expense claims “for” or “of” the Third Party, which are better interpreted, in my view, as referring to the Third Party’s own expenses. The date ranges are also different for each request.

[para 63] While I recognize it will be more difficult for the Public Body to respond to each of the requests according to what was requested, rather than to fulfill only the broadest of them and supply the same records to each, I believe it has a duty under the Act to do so.

[para 64] I must, therefore, require the Public Body to respond accurately to each of the requests. Before it does this with respect to the information at issue in this first part of the inquiry, however, I will give an opportunity for the Public Body to consult with the Third Party and the Requestors, with the involvement of this office as necessary, as to whether this can be done in some manner involving less expenditure of effort than providing five different responses.

[para 65] This discussion will need to take into account that there is information at issue in this first part of the inquiry that consists of claims filed by the Third Party, for expenses of “other” third parties, that is not the personal information of the latter because they were acting in representative capacities.¹ Expenses for training of a staff member is a clear example, but there may be other instances in which it is evident to the Public Body, but is not evident from the face of the records alone, that the claims are for expenses of an individual acting in a representative capacity. Such information is not responsive to those of the requests that are only for the claims for expenses of the Third Party himself, but are responsive to the broader requests for all the expense claims he filed

[para 66] I will reserve my ability to make necessary directions after providing the parties with an opportunity to consider and discuss these questions.

Numbering of, and numbers of, records

[para 67] A final issue of serious concern to the Third Party relates to the numbering of the records that were supplied to him and this office for the purposes of the review and inquiry, as well as the total number of pages to be disclosed.

[para 68] An error had been made by the Public Body in numbering the smaller set of records consisting of 169 pages. The page that should have been numbered 134 was numbered 135, so that after page 133, every number was one number higher than it should have been, including the final page (incorrectly numbered 170). The same incorrectly numbered set was supplied both to this office and to the Third Party.

[para 69] With respect to the second set of records consisting of 1118 pages, the Third Party received an accurately-numbered set, but in the set provided to this office the page that should have been numbered 744 was incorrectly numbered 745, so that thereafter every page number was also one number too high and the final page number was 1119.

[para 70] The Third Party also says that, according to the Public Body, there are 1118 pages to be disclosed. That is what the Public Body stated in its initial submission, but in its rebuttal it corrected this and stated there is a second set of records consisting of 169 pages that are dated between 1999 and 2003. The Third Party (and this office) received two sets of records from the Public Body, one consisting of 169 pages and another of 1118 pages, though as described above, only the Third Party’s larger set is correctly numbered.

[para 71] Given these errors, I understand the Third Party’s desire to be certain what pages (and accordingly what information on particular pages) will be disclosed.

¹ As already discussed, claims filed by the Third Party for expenses of ‘other’ third parties where that expense information *is* the third parties’ personal information will be dealt with in Part 2.

[para 72] With regard to page numbering, this order does not refer to specific records for the smaller set. I would not need to be concerned about the error in any case because the sets supplied to this office and to the Third Party were the same.

[para 73] For the larger set, I do refer to some specific pages. Therefore, I will refer to the pages both as they were incorrectly numbered (my set), and as they were numbered in the Third Party's set (for example, to both my page 762 and the Third Party's page 761). If this explanation and manner of proceeding fails to satisfy the Third Party, I will reserve my ability to discuss this further with the parties and give any necessary direction, so that the Third Party may be satisfied he understands the information and records to be disclosed.

Names and signatures of other third parties clearly acting in representative capacities

[para 74] As already discussed above, the name of an identifiable individual is their personal information by virtue of the definition of that term under section 1(n) of the Act. It is necessary to consider how to deal with the names and signatures of other third parties clearly acting in representative capacities, to the extent the parties are identifiable by reference to the context.

[para 75] As noted in paras 36 and 38 above, there are two lines of thought in orders of this office about whether names and signatures of public body officials acting in representative capacities are or are not personal information, each leading to the same outcome. On one theory, names and signatures are personal information, but disclosure of this information is not regarded as an unjustifiable disclosure by reference to the fact the individuals are acting on behalf of public bodies. On another theory, the information is not personal information, so may be disclosed without reference to section 17. As noted earlier, I believe the former theory is easier to reconcile with the definition section of the Act, as well as with the potential for signatures to make people vulnerable to identity theft.

[para 76] Either way, such names and signatures can be disclosed, but only where they appear in a context in which it is clear, for reasons the Public Body can articulate, that the persons whose names and/or signatures they are were acting in representative capacities.

[para 77] As already discussed above, any names appearing in the records for which this criterion is not met will be treated in Part 2 of this inquiry.

[para 78] The expenses for training of a staff member are not anyone's personal information and should be disclosed (Third Party's set of records 761, my set 762).

[para 79] Disclosure of job titles appearing in the records would not be an unreasonable invasion of the privacy of third parties by reference to section 17(2)(e), in that job titles describe employment responsibilities. (See Order 2001-020.)

Portions of the records that were redacted by the Public Body

[para 80] The material that has already been redacted is outside the scope of this inquiry, and I am making no determination as to the propriety of these existing redactions. Should the Requestors challenge such redactions after receiving the records, this may become the subject of a new request for review. It would be appropriate, should the Public Body make new decisions respecting information it has already redacted by proposing to disclose additional information, for it to notify the Third Party so that he may be given an opportunity to object.

V. ORDER

[para 81] I make this order under section 72 of the Act.

[para 82] I order the Public Body to deal with the records at issue, as follows:

I confirm its decision to disclose all the records to the Requestors that are at issue in Part 1 of this inquiry that are responsive to their particular requests, and require them to so disclose these records, subject to:

1. any agreements reached by the parties further to the consultations described in para 64 as to how to respond accurately to each of the five requests, and
2. any directions as to numbering of the records referred to in para 73, and
3. the withholding of any records that contain, or possibly contain, the personal information of third parties other than the Third Party; in this regard, the Public Body may use the list provided by the Third Party as a starting point, but must also redact, and reserve for Part 2 of this inquiry, the names, and any associated information of other third parties, that is or may be their personal information², and
4. redaction of the parts of records of expenses that were reimbursed, including those as listed by the Public Body in its rebuttal submission at para 2, as well as those regarding which the Third Party can provide proof of reimbursement, in accordance with the criteria described in paras 58-59, i.e., such as to show the name on and date of the expense, the mechanism for payment, and the amount, but withholding the name of the vendor and location, and any other elements in the record that can be redacted so as not to reveal personal elements in the transaction, and
5. redactions of the same kind as discussed in the previous paragraph for records relating to proposed or planned trips that were never taken in fact, and
6. redactions that have not yet been done (member number and expiry date) on my page 1073 (the Third Party's 1072) as requested by the Third Party in his initial submission at page 6.

² In this regard, I have noticed page 1094 of my set (the Third Party's 1093) has such information that the Third Party did not identify. There may be other such information throughout the records.

[para 83] Records containing other third party names and signatures with reference to which the Public Body can articulate the reason for believing the individual is acting in a representative capacity are to be disclosed.

[para 84] I reserve jurisdiction to make findings and give further direction about the matters listed in numbers 1 to 6 in para 82, and para 83, should the parties be unable to agree on matters about which they are to consult, or should such further directions be requested by a party, before the records are disclosed to the Requestors.

[para 85] I further order the Public Body to notify me within 50 days of the completion of the discussions described above (which this office will initiate), and the issuance of any further directions, that it has complied with this order.

Christina Gauk, Ph.D.
Adjudicator and Director of Adjudication