

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2015-23

September 1, 2015

ALBERTA HEALTH SERVICES

Case File Number F7905

Office URL: www.oipc.ab.ca

Summary: The Applicant requested information from Alberta Health Services (“the Public Body”). The Public Body responded to the Applicant’s request but withheld some information contained in a briefing note pursuant to section 24(1)(a) of the Act.

The Adjudicator found that the Public Body did not properly apply section 24(1)(a) of the Act to the severed information because the information in the briefing note was provided to senior leadership of the Public Body for information only and not in order to take an action.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 24 and 72.

Authorities Cited: **AB:** Orders 96-006, 96-012 and F2007-013.

I. BACKGROUND

[para 1] On October 31, 2013, the Applicant made an access request to Alberta Health Services (“the Public Body”) pursuant to the *Freedom of Information and Protection of Privacy Act* (“the Act”) for:

Protective Services complete file in it’s (*sic*) entirety (uncentered) (*sic*). This includes (*sic*) from [a named employee of the Public Body] down. Everything

(3rd party, dialysis reports and notes, ect. (*sic*). This is in respect to Protective Services).

[para 2] On January 10, 2014, the Public Body provided the Applicant with 13 pages of responsive records. The Public Body noted that these pages were the responsive records that had not yet been provided to the Applicant. Some of the information was severed pursuant to section 24(1)(a) of the Act.

[para 3] On January 17, 2014, the Applicant asked the Office of the Information and Privacy Commissioner (“this Office”) to review the Public Body’s response. The Commissioner authorized mediation but that was not successful in resolving the issues between the parties and an inquiry was requested. I received initial submissions from both parties and rebuttal submissions from the Applicant.

II. RECORDS AT ISSUE

[para 4] The records at issue in this inquiry are the 13 pages of responsive records that were provided to the Applicant on January 10, 2014. The information specifically at issue are the portions of those records severed by the Public Body pursuant to section 24(1)(a) of the Act.

III. ISSUES

[para 5] The Notice of Inquiry dated March 9, 2015 lists the issue in this inquiry as follows:

Did the Public Body properly apply section 24(1) of the Act (advice from officials) to the information in the records?

IV. DISCUSSION OF ISSUES

Did the Public Body properly apply section 24(1) of the Act (advice from officials) to the information in the records?

[para 6] In its submission, the Public Body states that the only exception applied to the records at issue was section 24(1)(a) of the Act.

[para 7] Section 24(1)(a) of the Act states:

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,

[para 8] In order for section 24(1)(a) of the Act to apply, the Public Body must show that there is advice, proposals, recommendations, analyses or policy options developed by or for a public body and the advice, proposals, recommendations, analyses or policy options must be:

1. Sought or expected, or be part of the responsibility of a person by virtue of that person's position;
2. Directed toward taking an action; and
3. Made to someone who can take or implement the action.

Order 96-006 at page 9

[para 9] The information at issue was severed from a briefing note that was drafted by the Director of Protective Services and provided to the Public Body's senior leadership. The Public Body argues that the briefing note contains "...advice and recommendations which may be withheld as the briefing note reports on the plan to issue a trespass notice to the Applicant" (Public Body's submission at para 7). The Public Body also argues that severed portions of the responsive records contain the analysis of the Director of Protective Services and expert analysis on the Applicant's behaviour and the effect his behaviour has on employees of the Public Body.

[para 10] Under the heading of "Issue", the unsevered portions of the briefing note state, "A trespass notice will be given to [the Applicant]..." Under the heading "Recommendation", the unsevered portions of the briefing note state, "[t]his Briefing Note is for Information Purposes so [Public Body] senior leadership is aware of the situation and relevant background".

[para 11] While most of the information that was severed by the Public Body is factual information, there are some of the severed portions of the briefing note that could be defined as analyses. Therefore, the information falls within the list set out in section 24(1)(a).

[para 12] As well, the information that was severed by the Public Body was contained in a briefing note prepared for the Public Body's senior leadership by the Director of Protective Services. Certainly, I would expect that senior leadership would seek or expect information of the type that was in the briefing note by virtue of their position. Therefore, the first part of the test set out in Order 96-006 is satisfied. As well, if it were true to say that an action was being proposed, presumably, the Public Body's senior leadership would be able to implement the proposed action.

[para 13] However, the second part of the test is not met. This Office has long held that section 24(1)(a) only applies to information that, "...relate[s] to a suggested course of action that will ultimately be accepted or rejected by its recipient during the deliberative process." (see Order F2007-013 at para 108). The information in the briefing

note was not directed toward taking an action. An action had already been decided on. The briefing note provides information that will assist the senior leadership in reacting should one of the consequences mentioned in the briefing note occur but does not even suggest how senior leadership should react.

[para 14] Also see Order 96-012, in which the former Commissioner found that section 23(1)(a) of the Act (now section 24(1)(a) of the Act) is meant to protect from disclosure information generated during the decision making process. He stated:

Further, I do not believe that the information on page 38-2 was correctly severed under section 23(1)(a). I take that section to contemplate the protection of information generated during the decision-making process. The information here clearly indicates that decisions have already been made...

Order 96-012 at para 24

[para 15] Although in its submission, the Public Body continually refers to issuing the trespass notice as the “proposed course of action”, the passages cited at para 10, and others like it in the briefing note, clearly indicate that the decision to issue a trespass notice had already been made, and that the briefing note was for information purposes only. The briefing note contains information for senior leadership about an action that will happen, the background leading up to the decision, the reasons for the decision and possible consequences of the decision. Nothing in the briefing note (including the severed portions) indicate that issuing the trespass notice is a “proposed course of action” in the sense that it is being *proposed to* decision makers, nor are any actual recommendations being made or advice being given. There was no decision to be made by the recipients of the note.

[para 16] Therefore, I find that the briefing note was provided to senior leadership for information purposes and not directed toward taking an action. Based on the past interpretation of the Act, and the fact that I have rejected the argument of the Public Body that the information is protected from disclosure by section 24(1)(a) because it sets out a proposed course of action (issuing a trespass order), I find that section 24(1)(a) of the Act does not apply to the information severed from the responsive records. As no other sections of the Act were applied to the responsive records, I order the Public Body to disclose the severed information to the Applicant.

V. ORDER

[para 17] I make this Order under section 72 of the Act.

[para 18] I find that section 24(1)(a) of the Act does not apply to the information severed from the responsive records and order the Public Body to disclose that information to the Applicant.

[para 19] I 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.

Keri H. Ridley
Adjudicator