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OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2016-16

May 17, 2016

CITY OF CALGARY

Case File Number F7383

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request to the City of Calgary for records relating to the designation of the green space behind her property as an off leash area. She specified that she was seeking records created between 2004 and 2013.

The Public Body responded to her access request. It located responsive records, but severed some information under sections 17 (disclosure harmful to personal privacy), 24 (advice from officials) and 27 (privileged information).

The Applicant requested review by the Commissioner of the Public Body's response to her access request.

The Adjudicator determined that the Public Body had conducted an adequate search for responsive records. The Adjudicator found that the Applicant was entitled to receive the address information from complaints made about dogs in the green space behind her property as this information was necessary for the Applicant to understand the case she had to meet regarding the history of the designation of the green space. The Adjudicator supported some of the Public Body's severing decisions under section 24(1) but ordered disclosure of information that did not meet the requirements of this provision.

The Adjudicator confirmed the Public Body's decision to sever information under section 27(1)(a). Where it had erroneously applied section 24(1)(b) to information that revealed

the content of its solicitor-client communications, she decided that it should be allowed to sever this information under section 27(1)(a).

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 6, 7, 10, 11, 17, 24, 27, 72

Authorities Cited: AB: Orders 2001-016, F2006-006, F2007-029, F2013-17, F2013-13, F2013-46, F2015-10, F2015-029

Cases Cited: *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, [2010] 1 SCR 815; *John Doe v. Ontario (Finance)*, [2014] 2 SCR 3; *Canada v. Solosky* [1980] 1 S.C.R. 821

I. BACKGROUND

[para 1] The Applicant has resided in her home since 1980. Her yard abuts green space. In 2012, as a result of its "off leash area management plan", the City of Calgary (the Public Body) has posted signs to the effect that the green space is an "off leash area". Since that time, the Applicant has had an increased number of dogs in her yard, with the result that she is unable to enjoy her backyard or the green space behind it as she did prior to the posting of the signs.

[para 2] In order to find out more about the designation of the green space behind her house as an off leash area, the Applicant made a request to the Public Body on March 18, 2013 for access to records held by Parks, Animal and Bylaw Services and by Councillor MacLeod concerning the Edgemont off leash park "Edgedale Drive". She requested that the records include all decisions made concerning the park's status and include all correspondence and emails between parks, animal and bylaw services, and the Councillor for Ward 4, as well as the Edgemont Community Association (and other stakeholders involved), including all records of complaints made regarding Edgemont off leash parks. She also requested all consultation with "community stakeholders and public engagement process" concerning the Edgedale Drive North West off leash park, including Edgehill Cres. She stated that she was seeking records created between 2004 and the current date.

[para 3] The Public Body located records responsive to the aspect of her request regarding complaints and responded to the Applicant. The Public Body applied sections 17 (disclosure harmful to personal privacy), 24 (advice from officials), and 27 (privileged information) to the information in the records.

[para 4] The Applicant requested review of the Public Body's response and its application of exceptions to disclosure to the records. The Commissioner authorized mediation to resolve the dispute. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

II. RECORDS AT ISSUE

[para 5] Records from which the Public Body has severed information under sections 17, 24, and 27 are at issue.

III. ISSUES

Issue A: Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)? In this case, the Commissioner will also consider whether the Public Body conducted an adequate search for responsive records.

Issue B: Does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the information the Public Body severed from the records under this provision?

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

Issue D: Did the Public Body properly apply section 27(1) of the Act (privileged information) to the information in the records?

IV. DISCUSSION OF ISSUES

Issue A: Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)? In this case, the Commissioner will also consider whether the Public Body conducted an adequate search for responsive records.

[para 6] Section 10 of the FOIP Act states, in part:

> *10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.*

[para 7] Prior orders of this office have determined that the duty to make every reasonable effort to assist applicants includes the duty to conduct a reasonable search for responsive records. In Order 2001-016, the Commissioner said:

> In Order 97-003, the Commissioner said that a public body must provide sufficient evidence that it has made a reasonable effort to identify and locate records responsive to the request to discharge its obligation under section 9(1) [now 10(1)] of the Act. In Order 97-006, the Commissioner said that the public body has the burden of proving that it has fulfilled its duty under section 9(1) [now 10(1)].
>
> Previous orders ... say that the public body must show that it conducted an adequate search to fulfill its obligation under section 9(1) [now 10(1)] of the Act. An adequate search has two components: (1) every reasonable effort must be made to search for the actual record requested and (2) the applicant must be informed in a timely fashion about what has been done.

[para 8] As discussed in the foregoing excerpt, a public body bears the burden of proving that it conducted a reasonable or adequate search for responsive records.

[para 9] In Order F2007-029, former Commissioner Work described the kind of evidence that assists a decision-maker to determine whether a public body has made reasonable efforts to search for records. He said:

> In general, evidence as to the adequacy of a search should cover the following points:
>
> - The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request
> - The scope of the search conducted - for example: physical sites, program areas, specific databases, off-site storage areas, etc.
> - The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
> - Who did the search
> - Why the Public Body believes no more responsive records exist than what has been found or produced

[para 10] The Applicant argues:

> I shall summarize the issue in an attempt to help you understand the problem, as we see it. The City of Calgary nullifies our situation and complaints by arguing incorrect and incomplete information, while ignoring significant questions. We need corrected and complete information. Residents and the media have only received unsubstantiated evidence of city misinformation which is presented as factual, effectively negating our arguments. The city directly contradicts and denies the existence of about 28 years of dog leash protection governance we have experienced under previous administrations. Our particular living conditions have now changed to being physically and mentally intolerable. We need truthful and unaltered records together with requested information. To date, the City has responded with contradictory information, refused to provide correct information, evidence, or disclose answers to significant questions. The city cut off our communication and told us to go to FOIP.
>
> It is my understanding that the few following examples will show different forms of city search and response inadequacies.
>
> An example of City misinformation intent is FOIP p. 19 "despite all the research and information ... we cannot find anything specific that shows when Edgemont was designated off leash". FOIP page 19 the City stated they were going to enforce their off leash designation on us anyway. They enforce knowingly incorrect information.
>
> An example of falsified and conflicting information is FOIP p. 18 "Parks has advised Edgemont has been an off-leash park since the 1980's when council approved it." That statement is completely false and cannot be substantiated because all of us lived the experience of on leash from the 1980's until 2012 when the city arbitrarily activated a change to off leash for our area. Previously via 311 and FOIP p. 263- 280 etc., the city gave us three other dates of changing our park to off leash. We need Parks to provide evidence.

An example of disclosure avoidance is FOIP p. 162 by a City Consultant […] "advise … we need to be aware of FOIP as we share or comment on this email". The referenced "Below is my advice" is also missing. Warnings about not disclosing information in emails and advice to discuss answers to my questions with other taxpayer funded individuals over coffee or the phone is common. They get the questions answered and I do not. I have experienced unabashed disclosure avoidance from the city.

An example of intent to dismiss and reject disclosure or action is found in FOIP p. 78 "develop a strategy to shut her down once and for all" or FOIP p. 226 .... "we cannot weaken to her issues even if the mayor himself calls us out!" or … "they want to know who was consulted in the [stakeholder] consultation, and what happened to the meeting? ... I told her I'd see what I could find out …" FOIP shows that I received no response. Sec.17(1) cancelled the rest of the city correspondence.

We sincerely appreciate everything FOIP has done for us and ask that you help us receive our requested information. We hope our sample of having no or inadequate response with no evidence of fact, meets with your approval.

Further to this, could you please have the Public Body confirm City Policy, Mandate or Practice on the following:

1. What Process governs Resident Consultation Requirements for change of park use for affected residents whose homes back unto a public park.
2. What Policy requires equality of rights between affected residents with the same situation in different parks? Who accounts for the resulting discrepancies of living conditions?
3. What is the Number required for objection refusal -- as too few residents affected by the change?
4. What is the Acreage Density Distribution limits, including numbers, of Off leash Parks for Communities? (We have 5 off leash parks utilizing record acreage area within approximately 2 miles.)
5. The OLAMP includes off-leash park qualification criteria. Are there any exceptions to these criteria or additional criteria? What are they? Are there any additional management exceptions or additions? What are they?
6. What is the process to determine off leash criteria and policy compliance for each park?
7. What is the approval process of an off leash park?
8. Is there any other policy or plan on off-leash park requirements?
9. Why is Edgedale Dr. Park not included in the February 2011 Council Off-Leash Approval Document?
10. Was this park designated as a multi-use park or an off leash park only?

CPS2011-08- outlines the 2008 to 2011 history of beginning the concept of defining rules and standards that could apply to a few dog parks, to be established with community support up to the completion of a Management Plan to deal with the establishment of off leash park areas passed ln 2011 and executed upon us in 2012. Taxpayer funded people involved with this process confirmed to us this was the establishment of Calgary's off leash parks.

Evidence Required

FOIP page 18 "Parks has advised Edgemont has been an off leash park since the 1980's when council approved it." This is presented as a fact throughout FOIP and represented as fact to us and the media. Please provide the evidence relied upon to confirm the fact of council approving Edgemont and naming our park as being designated off-leash in the 1980s.

FOIP page 17 "Why you have to engage a community for offleash redesignation" Please provide the City Policy on off-leash designation and off-leash redesignation community and affected resident stakeholder consultation requirement and process.

> FOIP page 1 “Issue of off leash areas was recently reviewed by Council and additional areas designated following consultation with the communities." Please provide evidence that before our park was designated or redesignated as an off leash park, the City consulted with residents on and around our park. Include how affected residents were notified, when and where meeting took place, consulting input and output plus the consultation results together with dates and times.
>
> FOIP page 203 “… we have some very outdated information on there and wondering who we should be informing to remove it”. Please provide City Policy on records and data removal including who is authorized to order removal and who is authorized to remove data. Also what are the standards and process?
>
> FOIP page 115 “… conclude not sufficient demonstrated community support to re-designate this site." Provide evidence that affected stakeholder residents (excluding all taxpayer funded individuals) a) That public engagement took place as part of this decision making public process b) Residents adjoining the park received notice and consultation resulting in non-support to non -leash designation.
>
> FOIP p. 115 Please provide a resident signed copy of your Request to Re-designate Off Leash Area at Edgedale Dr NW
>
> Please provide the above noted information together with the previous appeal information request.

[para 11] The issue before me is whether the Public Body conducted an adequate search for responsive records. The concerns the Applicant expresses in her submissions relate to the Public Body’s decision to designate the green space abutting her property as an off leash dog park, which is not a decision made under the FOIP Act. My powers to conduct this inquiry are created by the FOIP Act. I have no authority under the FOIP Act to adjudicate the Public Body’s designation of the area to determine whether it was a reasonable exercise of the Public Body’s authority.

[para 12] The Applicant requests specific records and evidence in her submissions; however, the records to which she refers do not form part of the access request that is the subject of this inquiry. Rather, they are records that would serve to answer questions she now has as a result of reviewing the records she received, but that are not responsive to her access request as she framed it. It is certainly open to the Applicant to make an access request for such records; however, the access request must be made to the Public Body under section 7 of the FOIP Act and not to the Commissioner. Until the Applicant has made an access request to the Public Body for the records she now seeks, and the Public Body has either responded or the time limit set out in section 11 has been exceeded, I have no jurisdiction to decide issues regarding those records.

[para 13] The FOIP Act enables applicants to obtain records that will assist them to know more about the processes under which public bodies operate and make decisions. In some cases, obtaining information through an access request will enable an applicant to challenge a public body’s decisions. For example, if the Applicant requests and obtains records documenting the decision the Public Body indicates its council made in the 1980s, she will be able to test the Public Body’s assertions as to the legal force and effect

of that decision. (Record 77 indicates that the Public Body provided information to the Applicant in an email dated June 25, 2012 about requesting the minutes of the council meetings giving rise to the off leash designation. According to the email, the relevant council meetings took place in 1989.)

[para 14] The Commissioner may decide under the FOIP Act whether the Public Body has conducted an adequate search for records responsive to an access request including requests for copies of a public body's decisions; however, the FOIP Act does not give the Commissioner or her delegated adjudicators power to decide the question of the legal effect of a public body's decision that is not made under the FOIP Act. The latter type of question is for the Court or an authorized tribunal to decide.

[para 15] The issues I am authorized by the FOIP Act to decide are whether the Public Body met its duty to assist the Applicant by conducting an adequate search for the records the Applicant requested and whether its severing decisions are authorized by the FOIP Act. I turn now to the Public Body's submissions regarding the search it conducted.

[para 16] The Public Body's FOIP Coordinator describes the search conducted for responsive records in the following terms:

> Public Body's Procedure
>
> 11. The Public Body is comprised of a number of business units which operate within various departments. Each business unit is responsible for records that pertain to that business unit's operations. When the Public Body receives an access request, the Public Body's FOIP Officer reviews the access request and determines which business units may have records that are relevant to the applicant's request ("responsive records").
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> 12. A FOIP Business Unit Records Request Form ("Form") is then sent to the relevant business units. It is through this process that the relevant Business Units are advised of the nature of the records requested in the access request. The Form indicates who conducted the search and the areas/locations searched. The Forms are returned to the Public Body's FOIP Office.
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> 13. Each Business Unit has a FOIP Program Administrator. The role of the FOIP Program Administrator is to direct the search for responsive records within the Business Unit.
>
> 14. Records that are identified as being responsive are then forwarded to the FOIP Office. The FOIP Officer numbers the records with a FOIP number as these records will form the Public Body's information release to an applicant pursuant to an access request.
>
> Searches Conducted to Find Responsive Records
>
> 15. I reviewed the Applicant's Access Request in order to determine which business units within the Public Body might have records responsive to the request.
>
> 16. The Access Request stated: "It should also include ... all consultation with community stakeholders and public engagement process *concerning this Edgedale Drive NW [off] leash park."* I determined that the process the Applicant was referring to was not the *general* consultation process, which may or may not occur, but consultation regarding the off-leash Park *specifically.* Therefore, policies would not apply, as policies are of general application and not specific to this situation.

17. Based on the wording of the Applicant's Access Request, I initially requested that two business units, Parks and Animal & Bylaw Services ("ABS") which operate within the Community Services & Protective Services ("CSPS") department, as well as the Ward 4 Aldermanic Office ("Councillor's Office"), conduct searches for responsive records.

18. I subsequently requested that another business unit, Community & Neighbourhood Services ("CNS"), of the CSPS department, conduct a search as it may have records which may be responsive to the Access Request.

19. In addition, I requested that the search be broadened within CSPS, to include the General Manager's office, Strategic Services, and Communications.

20. In general, each Business Unit and the Councillor's Office were asked to search for records or decisions made regarding the status of the Park as an off-leash dog park, including correspondence or consultations with community stakeholders and any complaints made regarding the Park.

Search - Councillor's Office -Ward 4

21 . Attached to my Affidavit and labeled collectively as Exhibit "A" is a copy of the Form and subsequent email that I received from the Councillor's Office, which details the key words that were used to conduct the search for responsive records. Included in the key word search were the names of three complainants known to the Councillor's Office regarding the Park's status as an off-leash park. The Applicant was one of these names. The FOIP Office did not supply the Applicant's name to the Councillor's Office and the names of the other individuals have been redacted from the email.

22. The Form outlines who conducted the search for records and the areas searched. The Form indicates searches of emails were conducted by the Executive Assistant and the Constituent Assistant in the Councillor's Office.

23. I am advised by the Executive Assistant and the Constituent Assistant for the Councillor's Office and do verily believe that the key words used in the search were: Edgemont Off-Leash; Edgemont Off Leash; Edgemont Park; Edgedale Off Leash Park; Edgemont; Off Leash Area; Off-Leash; Off Leash.

24. Records prior to 2011 were not located as the Ward 4 Councillor had been in office only since the October 2010 municipal election. Councillor's Office emails are deleted and email accounts are decommissioned whenever the Ward Councillor changes following an election.

Search - Animal & Bylaw Services (" ABS")

25. Attached to my Affidavit and labeled collectively as Exhibit "B" are copies of the Forms that I received from ABS.

26. The Forms indicates [*sic*] that searches were conducted by both the Operations Coordinator in ABS and the Manager of ABS North Operations, where the Park is located. The Forms outline the locations searched within ABS and the key words that were used such as Edgemont Off Leash Park, Edgemont, Edgedale Drive and Edgedale Off Leash Park.

Search – Parks

27. Attached as Exhibit "C" to my Affidavit is a copy of the Form that I received from the Parks business unit.

28. The Form indicates who conducted searches within the business unit and indicates that all named individuals searched the S-drive (Shared), personal drives, Outlook email accounts, and hard copies at each of their work stations.

29. The Form indicates the key words used in the search were: Edgemont Off Leash Park, Edgedale Off Leash Park, Edgemont Community Association, Edgemont, Off Leash, Off Leash Area Management Plan and Dog Complaints.

Search (CSPS) - CNS. General Manager's office. Strategic Services & Communications

30. Attached and labeled collectively as Exhibit "D" to my Affidavit are copies of the Forms that I received from the CSPS department which included the CNS business unit, General Manager's office, Strategic Services, and Communications, concerning the search for records.

31. The Forms set out the locations searched, key words used and who conducted the search.

32. I am advised by […] the FOIP Program Administrator for CNS, and do verily believe, that there were no responsive records located in CNS as they were destroyed in accordance with the Public Body's Corporate Record Classification and Retention Schedule.

33. Attached to my affidavit and labeled collectively as Exhibit "E" is an excerpt of the Public Body's Corporate Record Classification and Retention Schedule and an email I received from [the FOIP Program Administrator for CNS] which explains the record type and classification code. The classification code for records regarding The City's involvement with communities is classification code PS-04-02. The retention schedule for these records is five years from when the specific development project is completed or City representation is ended.

34. Attached to my affidavit as Exhibit "F" is a copy of the Certificate of Destruction and the excerpt from the disposition report which indicates that records classified as PS-04-02 were destroyed.

Duty to Assist

35. The Applicant contacted me via email on August 6, 2013, inquiring about the exceptions applied to the released Records. I explained my use of each exception, and explained the Applicant's right of review under the Act. I also provided the Applicant with the contact information to the Public Body's Whistleblower Office (City Auditor's Office).

36. Attached as Exhibit "G" to my Affidavit is a copy of the email I sent to the Applicant explaining the exceptions to disclosure that I applied to the Records

The FOIP Officer attached to his affidavit the requests for records he sent to the Public Body's business units and their responses.

[para 17] The Applicant questions whether she has received all responsive records, given that record 1 refers to community consultations as having taken place and she has not received copies of records documenting any consultations. Record 1 states, in part:

> Thank you for your note concerning the off leash area recently introduced into Edgemont. The whole issue of off leash areas was recently reviewed by Council and additional areas designated following consultation with the communities. The Ward Boundaries changed prior to the last election and I no longer represent Edgemont and I will forward your comments to Alderman Gael MacLeod who is the Alderman for Ward 4, and your representative on Council.

[para 18] The reference in record 1 to consultations does not support finding that the Public Body failed to search for or produce responsive records. The Applicant requested records documenting community consultations in relation to the designation of the park abutting her property and not consultations regarding other parks. The consultations referred to in the foregoing excerpt refer to consultations regarding newly designated *additional* off leash areas. However, the position of the Public Body, as evidenced by the content of the records, is that the green space that is the subject of the Applicant's access request was designated as an "off leash" area in 1989 and that consultation was therefore neither required nor conducted within the time frame of the Applicant's access request. (The Applicant specified in her access request that she was seeking records created between 2004 and 2013.) Because the Public Body did not consult with the community as to whether the park abutting the Applicant's property should be designated "off leash" during this time period, there are no records documenting such consultation.

[para 19] The Applicant also questions why she has not received records documenting the consultation conducted regarding the request to "redesignate" the green space to an "on leash" park. The records indicate that this process was largely verbal and informal. In other words, it was not a process by which citizens were required to express their views in writing and a tally of views or votes conducted. It is not clear from the records how the Public Body came to its conclusions regarding community support for the proposed "redesignation" of the green space; however, that appears to be a function of the informality of the process rather than any flaws in its search for responsive records.

[para 20] The Public Body has provided satisfactory evidence within the terms of Order F2007-029 regarding the search it conducted. I conclude from that evidence that the Public Body searched in all areas where it was likely to locate records responsive to the Applicant's access request and that it has produced the records it located.

[para 21] As discussed above, the records indicate that the designation decision the Applicant seeks to challenge was originally made in 1989. Were she to make an access for records relating to and including this decision, or alternatively, for all decisions made relating to the designation of the green space in question without restricting the time period (but excluding the records she has already received), the Applicant may receive records that will enable her to better understand and possibly test the process by which the Public Body designated the green space behind her home as an off leash area. As discussed above, she may also request the records to which she refers in her submissions.

Issue B: Does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the information the Public Body severed from the records under this provision?

[para 22] Section 17 sets out the circumstances in which a public body may or must not disclose the personal information of a third party in response to an access request. It 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

[…]

(g) the personal information consists of the third party's name when
(i) it appears with other personal information about the third party, or
(ii) the disclosure of the name itself would reveal personal information about the third party[…]

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,

(b) the disclosure is likely to promote public health and safety or the protection of the environment,

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

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

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

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and

(i) the personal information was originally provided by the applicant.

[para 23] Section 17 does not say that a public body is never allowed to disclose third party personal information. It is only when the disclosure of personal information

would be an unreasonable invasion of a third party's personal privacy that a public body must refuse to disclose the information to an applicant (such as the Applicant in this case) under section 17(1). Section 17(2) (not reproduced) establishes that disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.

[para 24] When the specific types of personal information set out in section 17(4) are involved, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. To determine whether disclosure of personal information would be an unreasonable invasion of the personal privacy of a third party, a public body must consider and weigh all relevant circumstances under section 17(5), (unless section 17(3), which is restricted in its application, applies). Section 17(5) is not an exhaustive list and any other relevant circumstances must be considered.

[para 25] Section 17(1) requires a public body to withhold information once all relevant interests in disclosing and withholding information have been weighed under section 17(5) and, having engaged in this process, the head of the public body concludes that it would be an unreasonable invasion of the personal privacy of a third party to disclose his or her personal information.

[para 26] Once the decision is made that a presumption set out in section 17(4) applies to information, then it is necessary to consider all relevant factors under section 17(5) to determine whether it would, or would not, be an unreasonable invasion of a third party's personal privacy to disclose the information. If the decision is made that it would be an unreasonable invasion of personal privacy to disclose the personal information of a third party, the Public Body must then consider whether it is possible to sever the personally identifying information from the record and to provide the remainder to the Applicant, as required by section 6(2) of the FOIP Act.

[para 27] With the exception of the address information of complainants severed from records 126 – 156, and some information severed from records 73 and 119, which I will address separately, the Public Body severed the names of identifiable individuals from the records, where the names appear in the context of other information about the individuals. Such information falls within the terms of section 17(4)(g), reproduced above. The Public Body also severed information such as personal cell phone numbers and email addresses of third parties. This personal information also falls within the terms of section 17(4)(g). As section 17(4)(g) applies to this kind of information, the information is subject to a presumption that it would be an unreasonable invasion of personal privacy to disclose it.

[para 28] As the Public Body notes in its submissions, there do not appear to be any factors under section 17(5) weighing in favor of disclosing the names or personal cell phone numbers or emails of third parties in this case. Moreover, the Applicant does not appear to be seeking this kind of information, as she is primarily seeking the substance of complaints and decisions, rather than the names and contact information of people who have made complaints or who have sought information about decisions.

[para 29] I find that section 17(1) applies to the information to which the Public Body applied this provision with the exception of the addresses of complainants where they appear in records 126 – 156, and to information severed from records 73 and 119, and I will confirm its decision to sever information under section 17 with regard to records other than these.

Records 126 – 156 Addresses of Complainants

[para 30] Records 126 to 156 contain complaints made about dogs in or near the green space abutting the Applicant's property from 2001 onward. The Public Body severed the names and addresses of individuals who made complaints regarding dogs in the green space in addition to the names and address information of dog owners whose dogs were the subject of complaints.

[para 31] Clearly, the name and address of complainants is their personal information within the terms of section 1(n) of the FOIP Act. A third party could learn that an individual made a complaint to the Public Body regarding a dog or dogs if the information from these records is disclosed in its entirety. Such personal information is subject to section 17(4)(g).

[para 32] The address information of complainants in some of the records is responsive to the Applicant's access request as it provides additional information about the location of "off leash" areas and "on leash" areas in the Applicant's neighbourhood prior to the institution of the Public Body's off leash management policy. For example, some complaints regarding "off leash" dogs are made from addresses on the Applicant's street. The Public Body's responses to these complaints shed some light regarding its position at the time of the complaint as to the boundaries of the "off leash" area and the rules regarding it. If these addresses are deleted, then the records have very little utility for the Applicant.

[para 33] If the names of complainants are severed, and the addresses from which complaints were made are provided to the Applicant, it would not necessarily be possible to identify with precision or at all the identity of the complainant. In cases where a single home owner has resided in a house for the past twenty years, it might be possible to guess that the home owner made the complaint, although a guest or renter might equally have made the complaint. If the home has had more than one occupant over the past fifteen years, then disclosing the address does not necessarily identify the person who made the complaint.

[para 34] Assuming that it is possible to identify the complainants in these cases from their addresses despite severing their names from the records, I find that the fact that these records contain the only evidence regarding the historical designation of the green space weighs strongly in favor of providing the addresses in these records to the Applicant.

[para 35] The Applicant made her access request to the Public Body in order to obtain information that will allow her to challenge the "off leash" designation of the green space abutting her property. As she notes in her submissions, the proximity of the "off leash" area to her property affects her ability to enjoy her property in addition to diminishing the value of her property. Her rights as a property owner are therefore affected by the designation.

[para 36] Previous decisions of this office have considered four factors when determining whether section 17(5)(c) applies. (See Order F2013-46) These factors are the following:

1. The right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds;

2. The right is related to a proceeding which is either existing or contemplated, not one which has already been completed;

3. The personal information which the applicant is seeking access to has some bearing on or is significant to the determination of the right in question; and

4. The personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

In this case, the right in question is the Applicant's right to the quiet enjoyment of her property. While the Applicant has not yet undertaken legal proceedings, the records indicate that she is contemplating suing the Public Body. The addresses from which complaints were made have a bearing on any proceedings as these provide background information as to the extent that the green space abutting the Applicant's property was considered "off leash" historically. Finally, such information would be necessary for the Applicant to have available to her in order to evaluate and prepare her case.

[para 37] In my view, section 17(5)(c) applies to the address information in the complaints and weighs strongly in favor of disclosure.

[para 38] In addition, severing the names of the persons who made the complaints serves to mitigate the possibility that the identities of complainants would be disclosed.

[para 39] It is my decision that the two factors above shift the balance in favor of disclosing the address information of complainants from records 126 – 156 to the Applicant and I will order the Public Body to do so.

Records 73 and 119

[para 40] Record 73 contains an email written by a representative for the Edgemont Community Association and an executive assistant to a ward councillor for Ward 4. The content of this email has been exchanged, but for two sentences containing a suggestion and an opinion, both of which are about the Applicant in association with other

homeowners who object to the Public Body's designation of the green space behind their homes as an off leash area.

[para 41] The opinion expressed in the email about the Applicant is the Applicant's personal information under section 1(n)(ix). This provision states:

> *1 In this Act,*
>
> > *(n) personal information means recorded information about an identifiable individual, including*
> >
> > > *(ix) the individual's personal views or opinions, except if they are about someone else;*

[para 42] Under section 1(n) of the FOIP Act, personal opinions about someone else are the personal information of the individual who is the subject of the opinion and not the personal information of the opinion holder. However, the fact that an individual holds a personal opinion about someone else may be his or her own personal information. In Order F2006-006, the Adjudicator stated:

> A third party's personal views or opinions about the Applicant - *by that reason alone* - are expressly not their personal information under section 1(n)(ix). However, the identification of the person providing the view or opinion may nonetheless result in there being personal information about him or her. Section 1(n)(ix) of the Act does not preclude this conclusion, as that section only means that the content of a view or opinion is not personal information where it is about someone else. In other words, the *substance* of the view or opinion of a third party about the Applicant is not third party personal information, but the *identity* of the person who provided it is third party personal information. [emphasis in original]

[para 43] However, previous orders of this office have held that information about an individual acting in a representative capacity that lacks a personal dimension is not personal information within the terms of section 17. For example, in Order F2015-10, the Director of Adjudication reviewed cases from this office addressing information about individuals acting in representative capacities and said:

> 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.
>
> 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.
>
> 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.

> 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.
>
> 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 44] From the foregoing, I conclude that the identity of a person who provides an opinion about someone else can be personal information in circumstances where the opinion is provided in a personal capacity. However, if the opinion provided reflects the views of a person or body that is not an individual and is offered by an individual acting in a representative capacity, then the identity of an individual providing an opinion is not that person's personal information.

[para 45] From my review of the email, I conclude that the recommendation and the opinion are provided in the community association member's representative capacity as a member of the community association. In other words, the member spoke on behalf of the community association when she provided the suggestion and opinion, just as she did in the portions of the email that the Public Body disclosed. I find that the information severed from the body of the email appearing on record 73 is not personal information and I will require the Public Body to disclose it.

[para 46] Record 119 contains an email created by the executive assistant to the councillor for Ward 4. The email states that a reporter for the Calgary Sun is in the process of writing an article regarding the Edgemont off leash dog park. The article was subsequently published in the Calgary Sun. The email was disclosed to the Applicant with the exception of the reporter's name. There is nothing to suggest that the reporter was acting in any other capacity than as a reporter for the Calgary Sun when he researched and published the article. As there is no personal dimension to the fact that a reporter with the Calgary Sun was publishing an article, section 17 does not apply to the information. I will therefore require the Public Body to disclose the information it severed regarding the identity of the reporter.

Issue C: Did the Public Body properly apply section 27(1) of the Act (privileged information) to the information in the records?

[para 47] The Public Body applied section 27(1)(a) to record 105. Section 27(1) authorizes public bodies to withhold privileged information and other kinds of information prepared by lawyers and agents of a public body. It states, in part:

> *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,*
> > *[…]*

In this case, the Public Body argues that section 27(1)(a) applies because the record in question is subject to solicitor-client privilege.

[para 48] The test for determining whether solicitor-client privilege applies to records is that set out in *Canada v. Solosky* [1980] 1 S.C.R. 821. According to this case, a record is subject to solicitor-client privilege if it is a communication between solicitor and client, which entails the seeking or giving of legal advice; and which is intended to be confidential by the parties.

[para 49] Record 105 contains email communications between an employee of the Public Body and a lawyer for the Public Body. Disclosing this record would reveal the issues for which the lawyer's advice was sought and the lawyer's advice. In other words, record 105 contains a communication between a solicitor and client entailing the seeking and giving of legal advice.

[para 50] The Public Body's FOIP Officer states:

> In reviewing Record 00105, I determined that Section 27(1)(a) of the Act applied to the Record. The Record contains legal advice provided in confidence by a lawyer employed with the Public Body to an employee of the Public Body (the client).
>
> […]
>
> I considered the purpose and the nature of the solicitor-client relationship and believe that the public interest in maintaining the confidentiality of this relationship outweighs a private interest in disclosure.

[para 51] The FOIP Officer's view that the communications in record 105 originated in confidence arise from his review of the record and his understanding that the solicitor-client relationship is a confidential one.

[para 52] I note that the substance of the email discussion with the lawyer was communicated to other employees of the Public Body in records 101 and 110. However, there is nothing in these records to suggest that the questions for the lawyer or the lawyer's advice were communicated outside the Public Body. Rather, the information was provided to other employees as it was intended to benefit them also.

[para 53] Although the FOIP Officer's affidavit evidence in relation to record 105 appears to be argument, as opposed to evidence, I do agree that the solicitor-client relationship is a confidential one where legal advice is discussed. As there is no reason to assume that the employee of the Public Body and the lawyer did not consider the communications regarding legal advice to be confidential, I accept that the communications were confidential.

Exercise of Discretion

[para 54] In *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, [2010] 1 SCR 815the Supreme Court of Canada discussed the extent to which decisions to withhold information under solicitor-client privilege should be reviewed. The Court said:

> We view the records falling under the s. 19 solicitor-client exemption differently. Under the established rules on solicitor-client privilege, and based on the facts and interests at stake before us, it is difficult to see how these records could have been disclosed. Indeed, Major J., speaking for this Court in *McClure*, stressed the categorical nature of the privilege:
>
> > . . . solicitor-client privilege must be as close to absolute as possible to ensure public confidence and retain relevance. As such, it will only yield in certain clearly defined circumstances, and does not involve a balancing of interests on a case-by-case basis. [Emphasis added; para. 35.]
>
> (See also *Goodis*, at paras. 15-17, and *Blood Tribe*, at paras. 9-11.)

[para 55] The Court held that the public interest in protecting solicitor-client privilege will almost always outweigh any competing interests in information that is subject to this privilege. As a result, exercising discretion to withhold information that is subject to solicitor-client privilege does not require balancing interests on a case-by-case basis.

[para 56] Given that the Public Body has applied section 27(1)(a) to withhold record 105 on the basis that it is subject to solicitor-client privilege, it follows that it exercised its discretion to sever this record appropriately.

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

[para 57] Section 24(1) authorizes a public body to withhold information from an applicant when the information would reveal advice. It states, in part:

> *24(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal*
>
> > *(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council,*
> >
> > *(b) consultations or deliberations involving*
> >
> > > *(i) officers or employees of a public body,*
> > >
> > > *(ii) a member of the Executive Council, or*
> > >
> > > *(iii) the staff of a member of the Executive Council […]*

[para 58] The Public Body determined that section 24(1)(b) applied to information in some of the records and it withheld this information from the Applicant. It provided the following rationale in its submissions:

> The Supreme Court of Canada ("SCC") found that where different terms are used in an act, each term must be given a distinct meaning *(John Doe v. Ontario (Finance),* 2014 SCC 36 at para. 24 Tab 5):
>
> > "However, it appears to me that the approach taken in *MOT* and by the Adjudicator left no room for "advice" to have a distinct meaning from "recommendation". A recommendation, whether express or inferable, is still a recommendation. "[A]d-vice" must have a distinct meaning. I agree with Evans J.A. in *3430901 Canada Inc. v. Canada (Minister of Industry),* 2001 FCA 254, [2002] 1 F.C. 421 ("*Telezone*"), that in exempting "advice or recommendations" from disclosure, the legislative intention must be that the term "advice" has a broader meaning than the term "recommendations" (para. 50 (emphasis deleted)). Otherwise, it would be redundant by leaving no room for "advice" to have a distinct meaning from "recommendation", the Adjudicator's decision was unreasonable."
>
> The Public Body submits that the wording of Section 24(1)(b) of the Act is broad and the purpose of this section is to protect the consultative and deliberative processes that occurs within a public body. The exception to disclosure, as set out in Section 24(1)(b), does not require that there is evidence that a deliberation or consultation was acted upon by the public body, but applies when disclosure of information would reveal consultations or deliberations that occurred between employees of the public body regarding a matter which they could reasonably be expected to discuss. As noted by the SCC (in *John Doe*) and the Alberta Court of Queen's Bench in *Covenant Health v. Alberta* (Information and Privacy Commissioner), 2014 ABQB 562 at para. 142-143 & footnote 87 [Tab 6] it is important to have regard to the purpose of an exception from disclosure and give effect to that purpose. Imposing additional requirements can unduly narrow the purpose of the exemption and is not in accordance with the plain wording of the Act.
>
> In *John Doe (supra)* the SCC found when reviewing Section 13 of Ontario *Freedom of Information and Protection of Privacy Act* R.S.O 1990; c. F-31 ("FIPPA") that it was unreasonable for the Privacy Commissioner to have required that there be evidence that "advice" was communicated in order to meet the exemption stating at para. 50-51:
>
> > [50] "No words in s. 13(1) express a requirement that the advice or recommendations be communicated In order to qualify for exemption from disclosure. A public servant may engage in writing any number of drafts before communicating part or all of their content to another person. The nature of the deliberative process is to draft and redraft advice or recommendations until the writer is sufficiently satisfied that he is prepared to communicate the results to someone else. All the information in those earlier drafts informs the end result even if the content of any one draft is not included in the final version.
> >
> > [51] Protection from disclosure would indeed be illusory if only a communicated document was protected and not prior drafts. It would also be illusory if drafts were only protected where there is evidence that they led to a final, communicated version. In order to achieve the purpose of the exemption, to provide for the full, free and frank participation of public servants or consultants in the deliberative process, the applicability of s. 13(1) must be ascertainable as of the time the public servant or consultant prepares the advice or recommendations. At that point, there will not have been communication. Accordingly, evidence of actual communication cannot be a requirement for the invocation of s. 13(1). Further, it is implicit in the job of policy

development, whether by a public servant or any other person employed in the service of an institution or a consultant retained by the institution, that there is an intention to communicate any resulting advice or recommendations that may be produced. Accordingly, evidence of an intention to communicate is not required for s. 13(1) to apply as that intention is inherent to the job or retainer.*"*

The excepted Records demonstrate that communications occurred between individuals who, as part of their employment duties, would reasonably be expected to consult and deliberate upon the information. This is evidenced by the employees' job positions (e.g. consultant, liaison, executive assistant) which are set out in the Records, as well as· the type of information contained in the Records. The words in the exception do not require that the Records reveal a suggested course of action that one of the persons involved in the deliberation or consultation has the ability to take or to implement.[my emphasis]

The Records to which the Public Body has applied Section 24 of the Act reveal information that properly falls within the exception to disclosure.

The Public Body submits that deliberations and consultations, envisioned under Section 24(1)(b) of the Act, refers to the deliberative or consultative process undertaken by the Public Body. Consequently, information assembled for the specific purpose of forming the basis for a deliberation or consultation is excluded along with the information that forms part of the deliberation itself. Section 24(1)(b) protects the process.

Deliberations cannot occur in a vacuum. Draft documents were generated as part of the process of consultations and deliberations involving the employees of the Public Body. The drafts documents reveal the deliberative process.

As stated by the Supreme Court of Canada in *John Doe* (supra) the nature of the deliberative process is to draft and redraft advice.

Release of draft documents (Records 00102-00104 and Records 00107-00108) would reveal the deliberative process that occurred within the Public Body. These Records reveal the changes in the Records that occurred as a result of the consultations between employees of Public Body (e.g. Records 00207 and 00101).

[para 59] In *John Doe v. Ontario (Finance),* [2014] 2 SCR 3, cited in the excerpt above, the Supreme Court of Canada held that policy options developed for a decision maker fall within the terms "advice or recommendations". The Court stated at paragraph 34:

> Section 13(3) provides that despite s. 13(1), disclosure shall not be refused "where the head [of the institution] has publicly cited the record as the basis for making a decision or formulating a policy". The necessary implication is that where a record that does contain "the basis for making a decision or formulating a policy" has not been publicly cited, disclosure may be refused under s. 13(1). The basis for making a decision or formulating a policy is the foundation or support for the decision or policy. It is not necessarily an express or implied recommendation but could include policy options. This suggests that "advice" in s. 13(1) would include the public servant's view of policy options to be considered by the decision maker.

[para 60] In addition, the Court held that policy options developed for a decision maker need not be provided to the decision maker before Ontario's section 13 will apply to them. In other words, drafts of policy options were also to be afforded the protection of section 13. The Court stated at paragraphs 49 and 50:

> Rosenberg J.A. found that the requirement of the Adjudicator for communication was unreasonable. In his view there was no requirement "that the information in the records actually went to the final decision-maker" (para. 25). He explained by way of example that it would be "absurd and unreasonable" to protect a record from disclosure because there was evidence it was communicated to the decision maker but to not protect earlier drafts of similar content. Protecting the communicated version would provide an "illusory and meaningless" protection if earlier drafts were not also protected, whether there was evidence they were communicated or not (para. 28). In any event, he found that "[t]he circumstantial evidence in this case [was] overwhelming that all six records were part of the deliberative process that led to a decision by the Minister" (para. 27).
>
> No words in s. 13(1) express a requirement that the advice or recommendations be communicated in order to qualify for exemption from disclosure. A public servant may engage in writing any number of drafts before communicating part or all of their content to another person. The nature of the deliberative process is to draft and redraft advice or recommendations until the writer is sufficiently satisfied that he is prepared to communicate the results to someone else. All the information in those earlier drafts informs the end result even if the content of any one draft is not included in the final version.

The Court did not reject the position that policy options must be prepared for the benefit or use of a decision maker to qualify under section 13; rather, it rejected the position that policy options must be *communicated to* the decision maker before falling within the ambit of section 13.

[para 61] Section 24(1)(a) of Alberta's FOIP Act expressly includes policy options as falling within its scope. Moreover, orders of this office have never required that policy options be actually provided to a decision maker before section 24(1)(a) will apply to them[1], only that they be developed for the decision maker's use in decision making. As a result, the decision in *John Doe* confirms, rather than alters, this office's approach to section 24(1)(a) in previous orders.

[para 62] The Public Body argues that so long as communications occur between individuals and their positions are such that they can reasonably be expected to consult or deliberate, it need not be established that one of the individuals be in a position to make a decision or take an action. In my view, this interpretation is overly broad and does not give effect to the meaning of the terms "consultations" or "deliberations" where they appear in section 24(1)(b). Under the Public Body's interpretation, any communication involving an employee of a public body with a particular job description would fall within the terms of section 24(1)(b), regardless of the subject matter of the communication.

[para 63] The term "consultation," by definition, refers to the situation in which *advice* is sought from someone else.[2] "Advice", by definition, is an opinion provided

[1] See for example Order F2013-13 at paragraphs 122 - 123
[2] Kathleen Barber ed. *Canadian Oxford Dictionary* 2nd edition (Don Mills; Oxford University Press, 2004)

regarding a future course of action.[3] The term "deliberation", by definition, refers to the act of thinking carefully in order to make a decision[4].

[para 64] If neither party to a communication has any role in making a decision or taking an action, then neither party can said to be deliberating or engaging in a consultation.

[para 65] In Order F2015-029, the Director of Adjudication explained the purpose of sections 24(1)(a) and (b) of the FOIP Act and described the kinds of information that fall within the terms of these provisions. She said:

> The intent of section 24(1)(a) is to ensure that internal advice and like information may be *developed* for the use of a decision maker without interference. So long as the information described in section 24(1)(a) is developed by a public body, or for the benefit or use of a public body or a member of the Executive Counsel, by someone whose responsibility it is to do so, then the information falls under section 24(1)(a).
>
> A consultation within the terms of section 24(1)(b) takes place when one of the persons enumerated in that provision solicits information of the kind subject to section 24(1)(a) regarding that decision or action. A deliberation for the purposes of section 24(1)(b) takes place when a decision maker (or decision makers) weighs the reasons for or against a particular decision or action. Section 24(1)(b) protects the decision maker's request for advice or views to assist him or her in making the decision, and any information that would otherwise reveal the considerations involved in making the decision. Moreover, like section 24(1)(a), section 24(1)(b) does not apply so as to protect the final decision, but rather, the process by which a decision maker makes a decision.

[para 66] I agree with the analysis of the Director of Adjudication as to the purpose and interpretation of section 24(1)(b) and agree that it applies to information generated when a decision maker asks for advice regarding a decision, or evaluates a course of action. I turn now to the information the Public Body has severed under section 24(1)(b).

[para 67] The Public Body applied section 24(1)(a) to information in record 163 and section 24(1)(b) to information in records 40, 56, 61, 80 – 85, 87, 92, 95, 98, 101-104, 107 – 108, 110, 112 – 113, 162, 171, 178, 180, 182, 189, 192, 196 – 201, 207, 218, 231, 254, and 276.

Record 40

[para 68] Record 40 contains two emails. The Public Body severed a sentence from the email appearing on the middle of the page under section 24(1)(b). I am unable to find that the severed sentence reveals a consultation or deliberation. Rather it provides factual information regarding an external third party's organization's position. The information was provided by the employee who wrote the email in response to a procedural question.

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[3] *Ibid.*
[4] *Merriam-Webster Online Dictionary* http://www.merriam-webster.com/

[para 69] The information in question does not reflect a consultation or deliberation by the person who wrote it or by anyone else. Moreover, the information is not intended to advise or guide a decision which the employee or the Public Body is responsible for making. Rather, the factual information in question was provided for the benefit of an external third party organization. As a result, if there could be said to be a consultation or deliberation reflected in the email, the consultation or deliberation was not being made by one of the enumerated entities listed in section 24(1)(b).

[para 70] I find that section 24(1) does not apply to the information severed from record 40.

Record 56

[para 71] Record 56 contains a letter from a councillor to a constituent. Record 55 suggests that the letter appearing on record 56 may be a draft of a letter to be sent to a third party by the councillor. Alternatively, it may be the final version of the letter. Record 55, which is an email from an assistant to a councillor and to the councillor's executive assistant, indicates that once these two persons make changes, if any, the assistant will send the letter to the constituent.

[para 72] No evidence has been provided as to the responsibilities of the assistant or the recipients of the email in relation to the record or the history of the record. I am therefore unable to say whether the letter appearing on record 56 reflects the assistant's advice as to what the letter should say. It appears equally possible that she formatted the letter at the direction of someone else, such as the councillor.

[para 73] The Public Body's FOIP Officer swore an affidavit stating that record 55 shows that "input was asked for in drafting the letter responses, which is clearly consultation."

[para 74] The assistant who provided the letter to the councillor and the executive assistant told them to make any changes they saw fit and that she would then send out the letter once any changes were confirmed. These statements are not consistent with the Public Body's position that the assistant was responsible for deciding what the letter's contents were and then seeking advice. Rather, it appears that someone else, possibly the councillor, was responsible for determining the contents of the letter. However, there is no evidence that the councillor sought anyone's advice as to what the letter should contain. The letter may well reflect the councillor's final decision as to the contents and tone of the letter.

[para 75] There is no evidence that the letter reflects the deliberations of the councillor as to what the letter should say. As I noted in Order F2013-17, the fact that a draft (assuming the letter is a draft and not the final version) may differ from a final version of does not transform the information in the draft into advice, proposals, recommendations, analyses, policy options, consultations or deliberations: information must have that character to begin with. I acknowledge that the differences between a draft

version and a final version may allow a reader to determine what was changed and to speculate about the reasons for the changes. However, it does not follow from this possibility that any changes that were made are the result of information subject to section 24(1)(a) or (b), or that such information would be revealed by disclosing the draft version.

[para 76] For the foregoing reasons, I find that it has not been established that section 24(1) applies to the information severed from record 56.

Record 61

[para 77] Record 61 contains an email. The Public Body severed a sentence from the email under section 24(1)(b). The sentence in question contains a statement of fact regarding the position of a third party. There is no indication that the author of the email had a decision to make in relation to the factual statement or was deliberating it or seeking advice regarding it, nor that any advice was being given to the recipient of the email.

[para 78] I find that section 24(1) does not apply to the information severed from record 61.

Records 80 – 85, 87, 92

[para 79] Records 80 – 85 contain emails between a councillor, an executive assistant to a councillor, and employees of the Public Body. The FOIP officer states in his affidavit:

> FOIP [80]: The final line of the email indicates the Executive Assistant is consulting with the Ward 4 Councillor. The information was severed as it reveals the substance of the consultation.
>
> FOIP [81 – 85, 87, and 92]: These documents reveal the conversation in FOIP [80]. I severed information where no final decision was reached and consultations regarding the issue were ongoing at the time of the release of Records to the Applicant.

[para 80] Record 80 contains an email sent by an executive assistant to a city councillor. The Public Body disclosed a portion of the email that indicates that the Parks area of the Public Body had recommended that the councillor send an email in order to begin a process. The Public Body severed from the email an evaluative statement made by the executive assistant and a draft of an email for the councillor to edit.

[para 81] The FOIP Officer characterizes the communication severed from record 80 as a "consultation" in his affidavit. However, as discussed above, a consultation takes place where someone responsible for making a decision obtains the views of others regarding it; the information in record 80 is not a consultation, as the contents of the email do not support finding that the executive assistant had a decision to make and was consulting others regarding it, or deliberating the pros and cons in relation to it. Further, the record does not indicate that the councillor had asked the executive assistant for her

opinion. The content of the email supports finding that the executive assistant recommended that the Councillor take a particular course of action; that is, she made an implicit but unsolicited recommendation that the Councillor send the email she had drafted to initiate the process recommended by an employee of the Public Body. The assistant may be taken as recommending that the Councillor take a particular course of action and do it in a particular way. The information severed from record 80 could be said to fall within the terms of section 24(1)(a), although the Public Body has not applied this provision.

[para 82] Record 81 contains an email created by a councillor and contains what I consider to be a decision and a direction to the executive assistant to implement the decision. The email also includes a portion of an email sent by the executive assistant to the councillor. The first two paragraphs of this email contain background facts. The third paragraph contains analysis and an implied recommendation to take action. The decision of the councillor in the first part of the email appears to act on the recommendation of the executive assistant appearing in the third paragraph of the second part of the email. I find that the third paragraph is consistent with analysis and recommendations within the terms of section 24(1)(a), although the Public Body did not apply this provision to sever the information, relying instead on section 24(1)(b).

[para 83] Record 82 contains three emails. None of these emails contain information consistent with information falling within the terms of section 24(1). Rather, these amount to a conversation between two employees regarding a decision that has already been made.

[para 84] The Public Body severed two sentences from an email appearing on Record 83 under section 24(1)(b). I am unable to identify any information in these sentences that amounts to a consultation or deliberation, or other kinds of information to which a provision of section 24(1) could be said to apply. One sentence contains an account of an incident and the other contains a hope for the future regarding a matter outside the author's purview and that of the recipient.

[para 85] Records 84 and 85 contain three emails between an executive assistant to a councillor and an employee of the Parks department. The Public Body severed the first and third emails.

[para 86] The email dated January 29, 2013 at 11:43 AM recounts a decision that has been made and how it will be implemented. The email also documents the concerns of a third party that were expressed at a meeting.

[para 87] The email dated January 29, 2013 at 11:49 AM expresses a hope for the future and also speculates regarding the information another body might need from the Parks area of the Public Body.

[para 88] I am unable to identify any information in the emails appearing on records 84 and 85 that could be said to fall within the terms of section 24(1).

[para 89] Record 87 contains two emails. The Public Body severed the second email under section 24(1)(b). This email was written by the executive assistant to a councillor and sent to a coordinator for Animal and Bylaw Services. The email informs the coordinator of a decision to send a file to another area of the public body and asks whether the coordinator is aware of any written correspondence relating to the file.

[para 90] For the reasons given above, I find that section 24(1) is not engaged by the information the Public Body severed from record 87.

[para 91] Record 92 contains two emails. The first is written by an executive assistant for Ward 4 to a team lead, Security Advisory, and the second is from the team lead, Security Advisory to the executive assistant for Ward 4. The Public Body severed a sentence from the first paragraph of the first email and the first paragraph of the second email.

[para 92] The sentence the Public Body severed from the first email describes a course of action that the executive assistant has decided to take.

[para 93] The information severed from the second email recounts facts and provides an explanation of a process.

[para 94] None of the information the Public Body severed from record 92 is consistent with a consultation or deliberation. The emails reveal an exchange of information between two employees, but there is no indication that either employee (or anyone else for whom the employee acted) had a decision to make and was consulting others or deliberating regarding it. Consultations, deliberations, or any other information falling within the terms of a provision of section 24(1) are not revealed by the content that has been severed from the record.

[para 95] For these reasons, I find that none of the provisions of section 24(1) apply to the information the Public Body severed from record 92.

[para 96] To summarize, I have found that section 24(1)(a) applies to information severed from records 80 and 81, as discussed above, but not to the other information severed from records 80 – 85, 87, and 92.

[para 97] In Order F2013-17, I dealt with a situation in which the Public Body applied section 24(1)(b) to information to which section 24(1)(b) did not apply, but section 24(1)(a) did apply. I decided that it could rely on section 24(1)(a), despite the fact that the Public Body had only applied section 24(1)(b), given that its submissions indicated an intention to apply section 24(1)(a). I said:

> Each exception to disclosure recognizes that in some circumstances a public interest in withholding the information may outweigh the right of access. Section 24(1)(a) recognizes that there is a public interest in protecting a public body's ability to obtain frank advice and recommendations. I see no reason to deprive the Public Body from the protection created by

> section 24(1)(a), simply because it refers only to section 24(1)(b), when its reasons for applying section 24(1)(b) would support the application of section 24(1)(a).

I find this same principle applies in this case. Both sections 24(1)(a) and (b) have as their purpose the protection of governmental policy development and that is the reason the Public Body elected to apply section 24(1)(b) to information to which I have found section 24(1)(a) applies. The same will hold true for any other decisions that the Public Body has made in relation to section 24(1)(b) that I find are more properly made under section 24(1)(a).

Record 95

[para 98] Record 95 is an email created by an executive assistant for a councillor sent to an employee of the Public Body. The Public Body severed a sentence from this email that refers to a decision that has been made should a particular event transpire.

[para 99] The Public Body's FOIP Officer explains his decision to sever the sentence in his affidavit. He states:

> I withheld this information because it is a consultation / deliberation regarding options in dealing with residents.

[para 100] I disagree with the FOIP Officer's characterization of the email in his affidavit. There is no indication that the author of the email is seeking the views of the employee she emailed or deliberating whether to pursue different options. I interpret the severed sentence as written for the purpose of informing the employee of the course of action that has been decided so that it may be implemented should certain events transpire.

[para 101] I find that none of the provisions of section 24(1) applies to the information severed from record 95.

Records 98, 101

[para 102] Record 98 contains a suggested amendment for a letter that was to be sent by a community association to residents of the community. The suggested amendment was put forward by an employee of the Public Body.

[para 103] Record 101 contains two emails. The Public Body severed a sentence from the first email on the page.

[para 104] In his affidavit, the FOIP Officer describes these records in the following terms:

> I withheld information on these pages as it reveals the consultation that occurred between employees of the Public Body in drafting correspondence.

[para 105] I disagree that the severed information can be characterized as the FOIP officer does in his affidavit. The information was prepared for the use of a community association, so that it could decide whether to write a letter in the manner recommended by the Public Body's manager.

[para 106] There is nothing in evidence to suggest that the community association sought the manager's views in order to decide how it would write the letter, such that it could be said to have consulted with the manager. Even if there were, a community association is not an entity listed in section 24(1)(b). As a result, section 24(1)(b) cannot be applied to its consultations or deliberations.

[para 107] I turn now to the question of whether the sentence severed from record 98 could be considered to be advice or a recommendation prepared by the Public Body within the terms of section 24(1)(a). As discussed in the preceding paragraph, the severed information is a recommendation, as to the wording of a letter, made to a community association by an employee of the Public Body.

[para 108] Section 24(1)(a) applies to "advice, proposals, recommendations, analyses or policy options *developed by or for a public body*". Section 24(1)(a) does not expressly exclude a recommendation given by a public body to an entity that is not a public body, such as a community association. However, in my view, section 24(1)(a) cannot be interpreted sensibly as encompassing such information.

[para 109] Section 24(1) applies generally to information generated in the course of policy development. In *John Doe*, the Supreme Court of Canada interpreted section 13(1) of Ontario's *Freedom of Information and Protection of Privacy Act* which, as the Public Body notes, is similar in function to section 24(1) of Alberta's FOIP Act. Section 13(1) of Ontario's Act states:

> 13(1) A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

This provision is also silent as to whether it encompasses recommendations made by government to a third party. However, I note that Rothstein J., speaking for the Supreme Court of Canada, stated at paragraph 44:

> In my opinion, Evans J. (as he then was) in *Canadian Council of Christian Charities v. Canada (Minister of Finance)*, 1999 CanLII 8293 (FC), [1999] 4 F.C. 245, persuasively explained the rationale for the exemption for advice given by public servants. Although written about the equivalent federal exemption, the purpose and function of the federal and Ontario advice and recommendations exemptions are the same. I cannot improve upon the language of Evans J. and his explanation and I adopt them as my own:
>
> > *To permit or to require the disclosure of advice given by officials, either to other officials or to ministers, and the disclosure of confidential deliberations within the public service on policy options, would erode government's ability to formulate and to justify its policies.* [my emphasis]

> It would be an intolerable burden to force ministers and their advisors to disclose to public scrutiny the internal evolution of the policies ultimately adopted. Disclosure of such material would often reveal that the policy-making process included false starts, blind alleys, wrong turns, changes of mind, the solicitation and rejection of advice, and the re-evaluation of priorities and the re-weighing of the relative importance of the relevant factors as a problem is studied more closely. In the hands of journalists or political opponents this is combustible material liable to fuel a fire that could quickly destroy governmental credibility and effectiveness. [paras. 30-31]

The Court interpreted section 13 as applying to the internal governmental policy development process. It applies so as to protect from public scrutiny the "internal evolution of the policies ultimately adopted". In other words, the Legislature of Ontario's purpose in protecting advice and recommendations from disclosure was interpreted as intended to protect the internal process by which governmental policies are developed.

[para 110] In the case before me, the Public Body has applied section 24(1) to information that reveals nothing about the considerations that have given rise to its own internal policy making, given that the recommendation that was developed was not developed for the Public Body's own decision making, but for a third party's use. Moreover, the Public Body has elected to disclose the recommendation of its employee to a third party community association. The purpose to which the Supreme Court of Canada has ascribed to the Ontario equivalent of Alberta's section 24(1) is not served by applying section 24(1) to recommendation a public body has developed for the use of a third party and provided to the third party.

[para 111] Sections 24(1)(b) through (h) all deal with forms of advice and recommendations that a public body has developed for its own use. There is no reason to assume that section 24(1)(a) fulfills a different function, particularly as doing so does not serve the purpose of the provision as set out in *John Doe*.

[para 112] Finally, it would be illogical to permit the public body to withhold the information to protect advice when the external third party would be free to disclose the information.

[para 113] For these reasons, I find that the information severed from record 98 is not subject to section 24(1).

[para 114] Record 101 contains two emails. The Public Body severed a sentence from the first email under section 24(1)(b). As noted above, it severed the sentence on the basis that it revealed a consultation between employees.

[para 115] I disagree with the Public Body that the severed sentence reveals a consultation within the terms of section 24(1)(b). The author of the sentence in question states that he is taking a course of action. He does not ask the other employees' views of this action or indicate that he is debating whether to take this action. Rather, the author of the email indicates that the decision to take the action has already been made.

[para 116] While I find the information severed from record 101 is not subject to section 24(1)(b), I do consider this sentence to reveal the substance of privileged communications within the terms of section 27(1)(a). I address this record in my analysis in relation to record 110, below.

[para 117] To conclude, I find that the information severed from record 98 is not subject to section 24(1)(b). I also find that the information severed from record 101 is not subject to section 24(1)(b).

Records 102 – 105, 107 – 108, and 112 - 113

[para 118] The Public Body's FOIP Officer explains that he applied section 24(1)(b) to information in these records for the following reasons:

> I withheld these documents because they are drafts of a letter to third parties. Emails which precede and follow the draft letters reveal detailed consultations between Parks management and the Councillor's Office.

[para 119] The second email on record 101, which the Public Body has disclosed, requests that colleagues review and comment on the draft of a letter. Records 102 – 104 contain the draft letter. Records 102 – 104 contain the response a manager for the Public Body had originally decided to provide to parties, and therefore can be construed as revealing a deliberation within the terms of section 24(1)(b).

[para 120] The Public Body has applied section 27(1)(a) in addition to section 24(1)(b) to record 105 on the basis that disclosing this record would disclose solicitor-client communications. As I find below that the Public Body properly applied section 27(1)(a), I need not address its application of section 24(1)(b) to this record.

[para 121] Records 107 – 108 contain the draft of a response to be made on behalf of the Public Body. Record 109 indicates that the author of the draft was seeking the input of his colleagues as to the content and direction of the letter. I agree that records 107 and 108 reveal a consultation and deliberation within the terms of section 24(1)(b).

[para 122] Records 112 – 113 contain a draft of a letter. Record 111 contains an email that indicates the draft was to be "run by" another employee. The Public Body has not provided any information as to the role of the employee who was to review the draft. Record 110 refers to her having recommended "minor stylistic changes" and so it is not entirely clear that she was provided the letter for her input, such that the record could be considered a consultation, or to review the letter for style, in which case it might not be. That being said, it seems likely, given the direction to run the letter by the other employee that all aspects of the letter were to be reviewed, and not merely style or grammar. I therefore find that records 112 – 113 are consistent with a consultation or deliberation.

[para 123] I agree with the Public Body that records 102 – 105, 107 – 108, and 112 – 113 contain information consistent with information falling within the terms of section

24(1)(b). I will therefore review its exercise of discretion to withhold these records from the Applicant when I conclude my analysis of its application of section 24(1).

Records 101, 110

[para 124] The FOIP Officer states in his affidavit that he severed information from record 110 under section 24(1)(b) because it "reveals the consultation with the Public Body's Law Department". The information severed from record 110 recounts a discussion with legal counsel and the advice counsel provided.

[para 125] The information the Public Body severed from record 101 refers to the questions the Public Body's employee intended to ask its lawyer.

[para 126] Normally, a public body will withhold this kind of information under section 27(1)(a), as section 27(1)(a) (discussed above) applies to privileged *information* as opposed to privileged *records*. Disclosing a portion of an email conversation between two of the Public Body's employees describing legal advice one of them received on behalf of the Public Body would serve to disclose privileged information, even though the email record itself does not originate as a communication between a lawyer and a client.

[para 127] While I find that severed content of the email falls within section 27(1)(a), as with record 101, I am unable to find that the information severed from record 110 is a consultation or deliberation within the terms of section 24(1)(b), as there is nothing in it to indicate that the author of the email was seeking input in relation to a particular decision, or debating the merits of making a particular decision.

[para 128] However, because the Public Body did not apply section 27(1)(a), but section 24(1)(b), the question becomes whether I can uphold its decision to withhold the information from the Applicant.

[para 129] Unlike the situation in Order F2013-17, discussed above, the Public Body's stated reasons for applying section 24(1)(b) to records 101 and 110 do not support the application of section 27(1)(a) to these records. However, the content of the records and the specific information that was severed from them do suggest that the Public Body intended to protect its privileged communications from disclosure by severing the information. Moreover, the Public Body did apply section 27(1)(a) to record 105, a record containing information to which records 101 and 110 refer. If I were to order the disclosure of records 101 and 110, I would be ordering disclosure of information that reveals the content of record 105, even though I have found that this information is properly withheld as revealing solicitor-client privileged communications under section 27(1)(a), above.

[para 130] The Supreme Court of Canada has held that the public interest in preserving solicitor-client privilege is such that it outweighs other competing public interests in disclosing the information except in specific defined circumstances. (See

Ontario (Public Safety and Security) v. Criminal Lawyers' Association, [2010] 1 SCR 815 at paragraph 75.) As there are no specific circumstances in this case that would warrant overriding the privilege, the better result in this case then, would be allow the Public Body to withhold the portions of records 101 and 110 that it severed under section 24(1)(b), on the basis of section 27(1)(a), rather than to order disclosure of the information because the Public Body applied the wrong provision in error.

Record 162

[para 131] Record 162 contains an email from one employee of the Public Body to another. The Public Body severed a recommendation as to a course of action put forward by one employee to the other. The author of the email indicates that she intends for it be passed on to another employee with authority to make a decision regarding the recommendation. While I am not satisfied that section 24(1)(b) applies, given that the author of the email could not be said to be consulting or deliberating regarding a decision she was responsible for making, I find that section 24(1)(a) does apply.

Record 163

[para 132] Record 163 contains an email from one employee of the Public Body to other employees of the Public Body. The Public Body withheld the email from the Applicant under section 24(1)(a). The email provides recommendations as to the best way to address a situation that had arisen. The content of the email indicates that the employee who gave the advice was asked to do so by the recipients who planned to act on the recommendation.

[para 133] I find that the email contains recommendations within the terms of section 24(1)(a).

Record 171

[para 134] Record 171 contains an email recounting a conversation with a representative of a third party organization. The Public Body severed a portion of the email that describes what the representative would prefer to do under section 24(1)(b).

[para 135] Section 24(1)(b) applies to the consultations and deliberations of employees or officers of a public body, a member of the Executive Council or the staff of a member of the Executive Council. However, it does not apply to representatives of third party organizations external to government. Moreover, the information severed from the record does not appear to be a consultation or deliberation.

[para 136] I find that the information severed from record 171 does not fall within the terms of section 24(1).

Records 178, 180, 182, 189, 192, 196-201, 207, 218, 254, 260

[para 137] The Public Body applied section 24(1)(b) to sever some information from these records. The Public Body's FOIP Officer states in his affidavit:

> I withheld these documents because they are draft letters and reveal consultations / deliberations on options provided by Public Body employees.

Records 178, 196, 201

[para 138] Record 178 contains three emails. The Public Body severed information from the third email under section 24(1)(b). The information contains analysis of a situation that has arisen and reports on advice and recommendations provided by other employees regarding the situation. While I find that section 24(1)(b) does not apply, I find that section 24(1)(a) does apply to the portion of the email severed by the Public Body.

[para 139] As with Record 178, the Public Body applied section 24(1)(b) to sever information from record 196 that repeats advice developed by the Public Body. As with record 178, I find that section 24(1)(b) does not apply to the severed portion of the email appearing on record 196, but that section 24(1)(a) does apply.

[para 140] Like Records 178 and 196, the Public Body severed information from record 201 that repeats advice from an employee of a public body for the benefit of the public body. I find that the severed information is subject to section 24(1)(a) of the FOIP Act.

Records 180, 182, and 192

[para 141] The information severed from records 180, 182, 192 is either developed for an external third party for its use in writing a newsletter or refers to a position taken by an external third party. As discussed above, section 24(1) does not apply to information developed for the use of an external third party.

[para 142] I find that the information severed from records 180, 182, 192 under section 24(1)(b) is not subject to this provision or to a provision of section 24(1) and I will order its disclosure.

Record 189

[para 143] Record 189 contains an email exchange between an executive assistant for a councillor and a park community liaison. The Public Body severed the executive assistant's email under section 24(1)(b) where it refers to the executive assistant's opinion.

[para 144] The Public Body has not provided sufficient evidence to establish that section 24(1)(b) applies to this email. It is unclear whether either of these individuals would have the ability to take the course of action referred to in the email or that the author of the email was responsible for providing advice on this issue.

[para 145] I am unable to find that section 24(1) applies to the information severed from record 189.

Records 197 – 200

[para 146] Records 197 – 200 contain copies of the same email. The Public Body severed the first sentence of the email under section 24(1)(b). I disagree with the Public Body that the sentence reveals a consultation or deliberation by an employee of the Public Body. Instead, the sentence states a fact and indicates that a meeting will take place in the future. Neither piece of information reveals information subject to section 24(1).

Record 207

[para 147] Record 207 is a duplicate of record 101. I found that the information severed under section 24(1)(b) is not subject to this provision, but rather, to section 27(1)(a). I also determined that as the severed information reveals information subject to solicitor-client privilege, the public interest weighs in favor of permitting the Public Body to withhold this information, even though it did not originally apply section 27(1)(a).

Record 231

[para 148] The Public Body severed record 231 in its entirety under section 24(1)(b). The FOIP Officer explains:

> I withheld this document as it reveals consultations or deliberations that occurred between Public Body employees in drafting a media response.

[para 149] Record 231 contains a draft media response. It is unclear that there are any differences between this response and the Public Body's actual response. If there were changes made, it is unclear that these would be the result of, and therefore reveal, consultations or deliberations within the terms of section 24(1)(b). In addition, I cannot say that any changes that could have been made would be the result of, and therefore reveal, information falling within the terms of the other provisions of section 24(1).

[para 150] Record 230 indicates that record 231 (with any edits) was to be provided to a superintendent who would address the media regarding the issues. However, record 230 does not indicate that policy advice was being sought or given in relation to record 231. The author of record 230 could be viewed as requesting that employees proof read the document to make grammar and editing changes.

[para 151] The Public Body argues in its submissions:

> What appears to be minor variations or punctuation changes to a document are in fact a careful consideration of the impact that these changes would have to the ultimate reading of the record. Stray commas and poor punctuation can have dramatic impact on the

> interpretation and meaning of a document. The Public Body submits that these changes are part of the deliberative process as they involved a careful review of the document and involved the weighing of what a word or an edit had on the ultimate reading.

It is unclear to which records the Public Body intended the foregoing excerpt to apply. I assume it intended this argument to encompass record 231, given that it is a draft document and the author of the email on record 230 asked other employees to edit it.

[para 152] While I agree with the Public Body that punctuation, grammar, and spelling can affect the meaning of a document, it does not follow that stylistic changes of this kind are the result of advice within the terms of section 24(1)(a), or consultations or deliberations under section 24(1)(b). If a draft document reveals policy options under consideration such information may fall within the terms of section 24(1). A grammatical change will not fall within the terms of section 24(1) in and of itself; it will only fall within section 24(1) if it, in the context of the information in which the grammatical change appears, reveals the development of government policy as described in *John Doe*, supra.

[para 153] I have not been told in this case what stylistic changes may have been made. I have also not been told what in this document constitutes, in the Public Body's view, information subject to section 24(1). I have also not been told what grammatical or punctuation changes were made in the final version. From the context provided by reord 230, it appears that the content of the key messages contained in record 231 had been finalized. I am unable to find that the author of record 230 was seeking policy advice in relation to the content of record 231 or providing it to anyone. I therefore find that section 24(1) does not apply to this record.

Record 254

[para 154] Record 254 contains two emails. The Public Body severed the first sentence of the first email and the body of the second email under section 24(1)(b).

[para 155] The sentence severed from the first email indicates that the author of the email intends to do work on a particular project in her role as a communications consultant. I am unable to read the sentence as intended to consult on or deliberate regarding a decision within the terms of section 24(1)(b) nor do I interpret this sentence as intended to advise or recommend a policy direction within the terms of section 24(1)(a).

[para 156] However, the body of the second email on this record does appear intended to make recommendations regarding a policy direction for the Public Body in relation to an issue that had arisen. I therefore find that section 24(1)(a) applies to this information.

Record 260

[para 157] Record 260 contains two emails. The Public Body severed the first email from this record under section 24(1)(b). The email contains a recommendation that the Public Body adopt a particular course of action in relation to an issue that had arisen.

Although I am unable to find that section 24(1)(b) applies to the severed information, I do find that it is consistent with a recommendation falling within the terms of section 24(1)(a).

Record 276

[para 158] The Public Body severed this record in its entirety. The FOIP Officer explains:

> I withheld this document as the information reveals proposed options that were discussed by Public Body employees.

Record 276 contains notes of a meeting that took place between employees of the Public Body. It contains proposed strategies to address a situation that had arisen. I accept that the information is consistent with a proposal developed for the Public Body and falls within the terms of section 24(1)(a).

[para 159] To conclude my review of the Public Body's application of section 24(1), I have found that section 24(1)(a) applies to information severed from records 80, 81, 162, 163, 178, 196, 201, 254, 260 and 276. I have also found that section 24(1)(b) applies to information severed from records 101, 102, 104, 107, 108, 112, and 113. I have also found that section 27(1)(a) applies to records 101, 110, and 207.

Exercise of Discretion

[para 160] In *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, [2010] 1 SCR 815 the Supreme Court of Canada explained the process for applying discretionary exceptions in freedom of information legislation and the considerations that are involved. The Court illustrated how discretion is to be exercised by discussing the discretionary exception in relation to law enforcement:

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

[para 161] While the foregoing case was decided in relation to the law enforcement provisions in Ontario's legislation, it is clear from paragraphs 45 and 46 of this decision that its application extends beyond law enforcement provisions to the application of discretionary provisions in general and to the discretionary provisions in freedom of information legislation in particular. The provisions of section 24(1) of Alberta's FOIP Act are discretionary.

[para 162] Applying the principles in *Ontario (Public Safety and Security)*, a finding that section 24(1)(a) or (b) applies means that the public interest in ensuring that public bodies obtain candid advice *may* trump public or private interests in disclosing the information in question. After determining that section 24(1)(a) or (b) applies, the head of a public body must then consider and weigh the public and private interests in disclosure and non-disclosure in making the decision to withhold or disclose the information.

[para 163] The Public Body's FOIP Officer explains that he followed the following process in exercising discretion to withhold information to which section 24(1) applies:

> In applying the exceptions to disclosure set out in the Act:
>
> a. I considered the purpose of the Act, which is to allow an individual access to general information about the activity of a Public Body in the interests of transparency in governance, within limited and specific exceptions;
> b. that in applying the exceptions to disclosure, I carefully severed information in the Records in a manner that that would allow the Applicant a right of access to the remainder of the Records;
> c. I considered that the Records reveal the deliberative process of employees of the Public Body and that the purpose of the exception to disclosure set out in Section 24 is to allow employees to have open and frank discussions;

[para 164] I note that in exercising his discretion the FOIP Officer took into account an irrelevant consideration, given that he considered the fact that information to which an exception does not apply was given to the Applicant in exercising discretion. A public body is under a duty to provide responsive information to an applicant to which exceptions are inapplicable. The fact that it does so has no bearing on the decision to withhold or provide information to which an exception applies.

[para 165] The FOIP Officer also appears to have failed to take into consideration a relevant consideration; that is, whether withholding the information would in fact protect the deliberative process and promote frank discussions. For example, the provisions of section 24(1) are broad enough to encompass innocuous information that would not necessarily harm a public body's decision making processes or affect the frankness of advice if disclosed.

[para 166] However, despite these errors, I have decided not to order the Public Body to redo the exercise of its discretion in relation to section 24(1). Ultimately, the information severed relates to decisions that are only tangentially related to the designation, or "redesignation" of the green space abutting the Applicant's property. In other words, the information severed under section 24(1) does not serve to answer any of the Applicant's questions. While it is not obvious to me that the Public Body's policy development processes would be harmed by disclosing the information to which I have found that section 24(1) applies, it is clear to me that this information is not what the Applicant hoped to obtain in making her access request. To put this point another way, it does not appear that any public or private interests would be served if the information in question were disclosed. I will therefore confirm the Public Body's decision to sever this information.

[para 167] With regard to the information in records 101, 110, and 207 that I have found is subject to solicitor client privilege, I find that discretion to sever this information was appropriately exercised, for the same reasons that I find that the Public Body's exercise of discretion was appropriate with regard to record 105.

V. ORDER

[para 168] I make this Order under section 72 of the Act.

[para 169] I confirm the decisions of the Public Body to withhold personal information of third parties from the Applicant under section 17(1) but for the address information of complainants where it appears in records 126 – 156, and information severed from records 73 and 119.

[para 170] I confirm the decision of the Public Body to sever information from records 80, 81, 162, 163, 178, 196, 201, 254, 260 and 276 under section 24(1)(a).

[para 171] I confirm the decision of the Public Body to sever information from records 101, 102, 104, 107, 108, 112, and 113 under section 24(1)(b).

[para 172] I confirm the decision of the Public Body to sever information under section 27(1)(a) from records 101, 105, 110, and 207.

[para 173] I order the Public Body to disclose all other information to the Applicant including the address information of complainants from records 126 – 156, and the information it severed from records 73 and 119 under section 17.

[para 174] I order the Public Body to notify me in writing within 50 days of being given a copy of this Order, that it has complied with it.

_____

Teresa Cunningham
Adjudicator