ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2016-21

June 17, 2016

ALBERTA ENVIRONMENT AND PARKS

Case File Number F7701

Office URL: www.oipc.ab.ca

Summary: The Applicant requested access to "all records and communications relating to unauthorized drainage of water" on certain areas of land. Alberta Environment and Parks (the "Public Body") responded to his request and withheld certain records under sections of the *Freedom of Information and Protection of Privacy Act* (the Act). The Applicant requested a review of the Public Body's decision to withold records.

The Adjudicator found the Public Body properly withheld most of the information contained in the records. She found that some of the information could reasonably be severed from certain records in order to provide the Applicant with access to the remainder of the records.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 6, 4, 17, 24, 71, 72

Cases Cited: *University of Alberta v. Pylypiuk*, 2002 ABQB 22

Authorities Cited: AB: Orders 96-006, 96-020, 98-008, 99-028, 2000-013, F2006-006, F2008-009, F2008-028, F2012-24

I. BACKGROUND

[para 1] On July 10, 2013, the Applicant made an access request of the Public Body. On November 12, 2013, the Public Body responded and provided the Applicant with some responsive records. It severed information in reliance on sections 4, 17 and 24 of the Act and also withheld information it felt was not responsive. On November 25, 2013, the Applicant requested a review of the Public Body's response. Mediation was not successful in resolving the issues and the Applicant requested an inquiry.

[para 2] Potential affected parties were identified by this office and invited to participate, but did not respond to the invitation.

II. INFORMATION AT ISSUE

[para 3] The Public Body withheld information in 17 pages of records.

[para 4] The Public Body considered section 17(2)(c). That section states:

> *17(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if*
> …
> *(c) an Act of Alberta or Canada authorizes or requires the disclosure*

[para 5] The Public Body informed me:

> S. 15 of the *Water (Ministerial) Regulation* requires the disclosure of application information provided to the Department by a person who applies for, or holds a *Water Act* approval. Some of [named party's] personal information has been disclosed as a consequence of the fact that this personal information is contained in *Water Act* approvals, and, subject to s.15 of the *Water (Ministerial) Regulation* must be publically available by AEP. [Named individual's] name, property location and registration number are, consequently, all publicly available on the AEP website. Any of [named individual's] personal information which has already been made publically available as a consequence of se. 14 of the *Water (Ministerial) Regulation* is also being disclosed to the applicant in the responsive records.

[para 6] The information the Public Body lists above is therefore, not at issue in this inquiry.

III. ISSUES

[para 7] The issues in this inquiry are:

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

2. Are the records excluded from the application of the Act by section 4(1)?

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

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

IV. DISCUSSION OF ISSUES

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

[para 8] The Public Body indicated, upon further review, it had no reason to withhold production of the records it initially considered non-responsive (pages 42, 44). However, on review of the records, I see that the Public Body has also applied section 17(1)(4(g)(ii) to these records.

[para 9] I am assuming what the Public Body means by its statement is it is no longer applying the term "non-responsive" to justify withholding the records. It is clear on the face of the records they contain personal information of an identifiable individual that is not the Applicant. The application of section 17 to the information will be discussed below.

[para 10] Therefore, I find the issue of the whether the Public Body properly withheld information as non-responsive is no longer an issue in this inquiry.

2. Are the records excluded from the application of the Act by section 4(1)?

[para 11] The Public Body applied section 4(1)(q)(i) to page 85 in its entirety.

[para 12] That section is as follows:

> *4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*
> …
>
> *(q) a record created by or for*
>
> *(i) a member of the Executive Council*
>
> …

> *that has been sent or is to be sent to a member of the Executive Council, a Member of the Legislative Assembly or a chair of a Provincial agency as defined in the Financial Administration Act who is a Member of the Legislative Assembly;*
>
> …

[para 13] If section 4(1)(q) applies to the record, I have no jurisdiction over that record and the Applicant cannot obtain access to that record. Previous orders of this office have determined in order for the record to fall within the section, it must be created by or for any of the persons listed in 4(1)(q)(i) to (iii), and must also be sent or intended to be sent to one of those persons (Order 2000-013 at para 16, Order F2008-028 at para 15).

[para 14] On examination of the record (page 85), it is evident on its face it was created by or for a member of the Executive Council and was sent to another member of the Executive Council.

[para 15] The Applicant makes argument concerning a necessary legislated mandate for the writer of the record where none is readily apparent on the face of the document. He cites Order 96-020 for this argument. In this case, no such mandate is necessary as it is stated on the face of the document it was created for a member of the Executive Council.

[para 16] I find this record (page 85) is not subject to the Act.

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

[para 17] Section 17 requires a public body to withhold the personal information of an identifiable individual when it would be an unreasonable invasion of the individual's personal privacy to disclose his or her personal information.

[para 18] Section 1(n) of the Act defines personal information. It states:

> *1 In this Act,*
>
> > *(n) "personal information" means recorded information about an identifiable individual, including*
> >
> > > *(i) the individual's name, home or business address or home or business telephone number,*
> > > *(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*
> > > *(iii) the individual's age, sex, marital status or family status,*
> > > *(iv) an identifying number, symbol or other particular assigned to the individual,*
> > > *(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*

> *(vi) information about the individual's health and health care history, including information about a physical or mental disability,*
> *(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*
> *(viii) anyone else's opinions about the individual, and*
> *(ix) the individual's personal views or opinions, except if they are about someone else;*

[para 19] Information is personal information within the terms of the FOIP Act if it is recorded and is about an identifiable individual.

[para 20] Section 17 sets out the circumstances in which a public body 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.*

[para 21] The Public Body must then consider section 17(4):

> *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 …*
>
> …

[para 22] The Public Body states:

> Some of the records requested by the applicant contain the personal information of third parties. This personal information includes the names, home address, phone numbers, personal email addresses, family status, identifiying particulars assigned to the individual and the views and opinions of those individuals as held by others.

[para 23] The Applicant submitted the information may constitute opinions of third parties about someone else. He suggested the information is therefore not personal information as outlined in section 1(n)(ix).

[para 24] Under section 1(n)(ix) of the FOIP Act, personal opinions about someone else are the personal information of the subject of the opinion and not the personal information

of the opinion holder. However, the fact that an individual holds an opinion about another individual may be the personal information of the opinion holder. Order F2006-006 at para 115 states:

> 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.

[para 25] Where individuals express opinions about the Applicant in the records, the opinions are the personal information of the Applicant. However, the fact that the individuals hold these opinions, remain their personal information. From my review of the opinions to which the Public Body applied section 17, I agree that the individuals who expressed the opinions could be identifiable from the content of the opinions, and could be identified as holding those opinions. I agree that this information is personal information within the term of section 1(n)(ix).

[para 26] In examining the records, I agree with the Public Body that pages 1, 6, 7, 8, 41, 42-44, 74-77, 86, 87, 95, 99, 102-104 contain personal information of a third party and as such, release of this information is presumed to be an unreasonable invasion of privacy. I note that significant portions of this withheld information is personal information of the third parties and does not consist of opinions of the Applicant.

Section 17(5) circumstances

[para 27] In *University of Alberta v. Pylypiuk*, 2002 ABQB 22 the Court commented on the interpretation of what is now section 17. The Court said at paras. 42 and 43:

> In interpreting how these sections work together, the Commissioner noted that s. 16(4) lists a set of circumstances where disclosure of a third party's personal information is presumed to be an unreasonable invasion of a third party's personal privacy. Then, according to the Commissioner, the relevant circumstances listed in s. 16(5) and any other relevant factors, are factors that must be weighed either in favour of or against disclosure of personal information once it has been determined that the information comes within s. 16(1) and (4).
>
> In my opinion, that is a reasonable and correct interpretation of those provisions in s. 16. Once it is determined that the criteria in s.16(4) is met, the presumption is that disclosure will be an unreasonable invasion of personal privacy, subject to the other factors to be considered in s. 16(5). The factors in s. 16(5) must then be weighed against the presumption in s. 16(4).

[para 28] When personal information of the type described in section 17(4) appears in records, disclosure is presumed to be an unreasonable invasion of personal privacy. The public body must then consider and weigh all relevant circumstance under section 17(5). The list of circumstances set out in section 17(5) is not exhaustive and any other relevant circumstances must be considered.

[para 29] Section 17(5) states:

> *(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 30] In Order F2012-24, the Director of Adjudication said (at para 29):

> In an inquiry, once a public body has demonstrated that the information it has withheld is personal information, and has explained how it discharged its duty under section 17(5) in relation to that information, then, by reference to section 71(2), the burden falls to the Applicant to show that it would not be an unreasonable invasion of personal privacy to disclose information about a third party.

[para 31] Section 71(2):

> *71(2) Despite subsection (1), if the record or part of the record that the applicant is refused access to contains personal information about a third party, it is up to the applicant*

> *to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.*

[para 32] The Public Body indicates that a review of the relevant circumstances included consideration the third parties did not consent to disclosure of their personal information. Notices were sent to third parties informing them disclosure of their personal information was being considered. No consent to disclose was given by those parties.

[para 33] The Applicant raised specific circumstances he felt were not properly considered by the Public Body as follows:

Section 17(5)(a)

[para 34] The Applicant asserts the disclosure of third party information is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny – section 17(5)(a). He does not offer any further evidence or argument on this point.

[para 35] In Order F2008-009, the Adjudicator reviewed decisions addressing section 17(5)(a) and said at paragraphs 64 and 65:

> A factor weighing in favour of disclosure of the personal information of third parties is that disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny, under section 17(5)(a) of the Act. For the section to apply, there must be evidence that the activities of the public body have been called into question, which necessitates the disclosure of personal information to subject the activities of the public body to public scrutiny (Order 97-002 at para. 94; Order F2004-015 at para. 88).
>
> In determining whether public scrutiny is desirable, the following may be considered: (1) whether more than one person has suggested that public scrutiny is necessary; (2) whether the applicant's concerns are about the actions of more than one person within the public body; and (3) whether the public body has previously disclosed a substantial amount of information or has investigated the matter in issue (Order 97-002 at paras. 94 and 95; Order F2004-015 at para. 88). However, it is not necessary to meet all three of the foregoing criteria in order to establish that there is a need for public scrutiny (*University of Alberta v. Pylypiuk* at para. 49). What is most important to bear in mind is that the reference to public scrutiny of government or public body activities under section 17(5)(a) requires some public component, such as public accountability, public interest or public fairness (*University of Alberta v. Pylypiuk* at para. 48; Order F2005-016 at para. 104). (my emphasis)

[para 36] In the case before me, the Applicant has not provided me with any evidence or argument for me to consider section 17(5)(a) is a relevant circumstance which favours disclosing personal information. The personal information that is being withheld is not that of a public official or someone acting in an official capacity. I cannot see how release of

the personal information would be desirable for the purposes of subjecting the activities of the Public Body to scrutiny.

Section 17(5)(b)

[para 37] The Applicant seeks consideration of section 17(5)(b). He says:

> [S]ection 17(5)(b) asks consideration of whether the disclosure is likely to promote "protection of the environment". This section again has not been addressed by Alberta Environment. The illegal ditching which has created water problems on my land resulted from others draining wetlands in contravention of the *Water Act*. Alberta has a Wetland Policy, and wetland protection has been identified as important to overall protection of the environment. The Alberta Environment website … states the following in respect of wetland policy:
>
> > In response to the growing loss of wetlands on the landscape and the effect this may have on surface water management in Alberta, Cabinet in 1993 approved the Interim Policy for "Wetland Management in the Settled Area of Alberta."
> >
> > The policy identified as its goal that "the Government of Alberta is to sustain the social, economic and environmental benefits that functioning wetlands provide, now and in the furture.
>
> The disclosure of information should be considered in light of its importance to limiting wetland loss and the protection of the environment.

[para 38] The Applicant asserts the excluded information is "potentially relevant to stopping illegal drainage activities in breach of environmental laws and may be relevant to the fair determination of my rights under Alberta's environmental legislation and enforcement regime."

[para 39] The Public Body's response to the Applicant's submissions states:

> The applicant argues that the release of the third party's personal information would not be an unreasonable invasion of personal privacy as a consequence of the application of S. 17(5)(b). The applicant grounds this assertion on the fact that this personal information is related to the alleged draining of wetlands and, consequently, should be released as it relates to the protection of the environment. The applicant has not provided any information or evidence as to how the release of this personal information would result in the protection of the environment.
>
> S. 17(5)(b) is considered when the act of releasing personal information will, itself, result in the protection of public health or safety, or the protection of the environment. It is not clear to the public body how the release of this personal information will protect or promote either the public health and safety, or the environment. Further … if a particular activity is occurring which may pose a risk to the environment; the proper course of action is not to release the personal information of a third party who may, or may not, be responsible for the activity. Rather, Alberta Environment and Parks (EAP) has the ability to investigate complaints related to environmental action. The release of a third parties personal information is not required for this process to occur, and, indeed, could hinder it.

…
Having considered s.17(5)(b), the public body's position is that sufficent evidence has not been provided to justify rebutting the presumption that the release of the third parties' personal information is unreasonable.

[para 40] The Applicant has asserted that the information should be considered in light of its importance to limiting wetland loss and and the protection of the environment. He offers no evidence or submissions to show me how disclosure of personal information of third parties would protect the environment. Independently, I cannot see how disclosure of personal information of the type withheld by the Public Body would protect the loss of wetlands and protect the environment.

[para 41] While the Applicant asserts the withheld personal information is "potentially relevant" and "may be relevant", he provides no explanation of how it would be so. I do not understand the Public Body's assertion the release of a third parties' personal information may hinder investigations into complaints. The Public Body has not provided me with any information as to how investigations would be hindered. However, I do accept and agree with the Public Body the Applicant's submissions about this do not rebut the presumption of an unreasonable invasion of privacy.

Section 17(5)(c)

[para 42] The Applicant asserts he is in active and ongoing efforts to compel the Public Body to stop illegal ditching on neighbouring properties which is flooding his land. He suggests disclosure of personal information should be considered in light of section 17(5)(c) – the information is relevant to a fair determination of his rights to enforce provisions of the *Water Act.*

[para 43] The Public Body referred me to Order 99-028 with respect to the criteria to be met for section 17(5)(c) to be a relevant consideration. The order indicates all of the four following criteria must be fulfilled:

> (a) 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;
>
> (b) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed;
>
> (c) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
>
> (d) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

[para 44] The Public Body submits the Applicant's argument regarding this section fails on the first ground of the criteria set out above:

> The public body submits that, in relation to the applicants stated intent to enforce the Water Act… the applicant does not have a legal right to enforce the provisions of the Water Act. The investigation of potential offences under the *Water Act*, and the subsequent decision to take enforcement action is entirely within the purview of AEP. The applicant is a member of the public and has a legal right to report an alleged contravention under the Water Act; however the applicant does not require the release of personal third party information in order to make a complaint to AEP.
>
> As the applicant does not have a right to enforce the Water Act, nor did the applicant provide any evidence that they meet any of the 4 criteria set out above, the public body does not consider section 17(5)(c) to be a relevant circumstance which would allow for the release of the personal information.

[para 45] I accept the Public Body's submission the Applicant does not have the right to enforce provisions of the *Water Act*. The Applicant has not provided me with evidence or submissions to persuade me the release of third party personal information is necessary for a fair determination of his rights. The Applicant tells me he is attempting to persuade the Public Body to take action on an issue. However, I am not persuaded release of third party personal information would be of use in this attempt. I am also not persuaded that release of that information is related to any determination of the Applicant's rights, as the Applicant has not provided submissions or evidence as called for in Order 99-028.

Conclusion under section 17

[para 46] I find the Applicant has not discharged the burden to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy. The Applicant has not persuaded me that the disclosure of personal information is desirable for the purpose of subjecting the activities of the Public Body to scrutiny. He has also not persuaded me that the disclosure would likely promote the protection of the environment, nor has he persuaded me the disclosure is relevant to a fair determination of his rights.

[para 47] I find the Public Body properly considered relevant circumstances in determining whether disclosure of personal information would be an unreasonable invasion of privacy. I find the Public Body properly applied section 17 to withhold information.

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

[para 48] The Public Body applied section 24(1)(a) to a portion of page 101. Section 24(1)(a) states:

> *24(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal*
>
> > *(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of*

the Executive Council,

[para 49] For this section to be correctly applied, the Public Body must show the withheld information is advice, proposals, recommendations, analysis or policy options developed by or for a public body and the "advice" must be

1. Sought or expected, or be part of the responsibility of a person by virtue of that person's position;
2. Directed toward taking an action or making a decision; and
3. Made to someone who can take or implement the action [Order 96-006]

[para 50] The Public Body submits section 24 is:

> …a discretionary exception that is intended to recognize and protect internal deliberative processes involving the staff of a public body.
>
> Section 24(1)(a) of the FOIP Act is intended to protect candour in the giving of advice and formulation of proposals, analyses, policy options, recommendations and related alternatives for potntial course of action. It applies to statements of advice or recommendations that set out or analyze possible directions or options in dealing with an issue or problem, to establish a policy or to make a decision.

[para 51] Further, the Public Body explains to me its application of the section to the withheld portion of information:

> After undertaking a review of the records, and considering information provided during the program area consultation it was determined that information meets the criteria in the three part test and that S.24(1) can reasonably be applied to the information on page 101. The record forms a part of the Inspection Report made by Government of Alberta employees whose responsiblities, in the context of the report, required them to provide this advice (Part 1), was prepared as advice, analysis and recommendations relevant to future action and decision making regarding the report (Part 2), and specifically intended for other employees whose proper role would require them to take the relevant action or make the relevant decision (Part 3). The advice, analysis and recommendations were expected from the employee as part of the responsibilities of their position and were directed toward taking an action or making a decision by the Environmental Protection Officers, who can take or implement the action.

[para 52] Finally the Public Body submitted that none of the specific exceptions found in section 24(2) apply to the record.

[para 53] The Applicant submitted consideration should be given to "the purpose and intent of protecting the government decision or policy making process". He submits section 24(1)(a) should be applied carefully with this intent in mind. He refers me to Order 96-006 which I have also referred to above.

[para 54] I have reviewed the information withheld by the Public Body. I find that the information can reasonably be inferred to be advice prepared by an employee as part of their responsibility and was relevant to future action for other employees whose role would require them to take the relevant action.

[para 55] The Applicant submits section 24(2) should be considered:

> *24(2) This section does not apply to information that*
>
> *(a) has been in existence for 15 years or more,*
>
> *(b) is a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function,*
>
> *(c) is the result of product or environmental testing carried out by or for a public body, that is complete or on which no progress has been made for at least 3 years, unless the testing was done*
>
> *(i) for a fee as a service to a person other than a public body, or*
>
> *(ii) for the purpose of developing methods of testing or testing products for possible purchase,*
>
> *(d) is a statistical survey,*
>
> *(e) is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal, that is complete or on which no progress has been made for at least 3 years,*
>
> *(f) is an instruction or guideline issued to the officers or employees of a public body, or*
>
> *(g) is a substantive rule or statement of policy that has been adopted by a public body for the purpose of interpreting an Act or regulation or administering a program or activity of the public body.*

[para 56] It is clear from the date of the document, section 24(2)(a) does not apply. The information itself is not of the type contemplated by the restrictions in the rest of section 24(2). I find the Public Body correctly applied section 24(1)(a) to withhold information on page 101.

Application of section 6(2)

[para 57] Section 6(2):

> *6(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.*

[para 58] In Order F2006-006, the Adjudicator noted a Public Body must consider the context and the source of information when determining whether disclosing personal information is an unreasonable invasion of personal privacy under section 17(5). At para. 79, he said:

> In reviewing the records and severing information, it appears that the Public Body paid more attention to the form or type of information rather than the actual content or the context in which it appeared. The Public Body appears to have gone through the file and simply severed the names of all third parties, as well as pronouns referring to them, without considering whether disclosure was actually excepted under the Act on the basis of an unreasonable invasion of their personal privacy. At other times, the Public Body disclosed information that, in my view, would identify a third party or improperly convey his or her personal information**,** even though the words did not contain a name or other obvious clue. I remind the Public Body that it is often the context of disclosure that must be considered. A failure to consider context results in severing that is both over- and under-inclusive.

[para 59] In reviewing the records, I note the Public Body has severed portions of pages collectively titled "Incident Detail". There is no severing on pages 2, 3, 4, 9, 93, 94, 96, 97 and 98. On pages 6, 7, 8, and 95 the Public Body has severed names, pronouns and a few words that would identify third parties. I find the Public Body has correctly severed this information and released information that the Applicant would be entitled to access.

[para 60] On pages 41, 45, 77, 86, 87, the Public Body has correctly severed personal information from a letter, and released the remainder of the letter.

[para 61] Pages 99 and 100 have had names severed from them. The Public Body correctly withheld personal information.

[para 62] The Public Body correctly severed one line on page 101 as discussed under issue 4 above and released the remainder of the information to the Applicant.

[para 63] The Public Body correctly withheld names and identifying information on page 102 and maps on pages 103, 104, 105 and 106.

[para 64] The Public Body withheld page 1 in its entirety. In reviewing the contents of this page, I find the personal information can be withheld; however some of it can reasonably be severed from other parts of the page. I will order the Public Body to release the following information from this record:

1. Date
2. All information in the Re: lines

[para 65] I find the rest of the page contains third party personal information so intertwined with the content of the rest of the page that it cannot be severed without making

the rest of the page meaningless. The former Commissioner referred to such circumstance in Order 98-008 as requiring an "all or nothing" decision. At para. 35:

> The question to be determined is whether the "identifying characteristics" are "events and facts discussed", such that a third party can be identified. If the third party can be identified (because it is "recorded information about an identifiable individual"), then it is the third party's personal information. The fact that it is intertwined with the Applicant's personal information means that the Public Body ultimately has to make an "all or nothing" decision regarding access. In this case, the Public Body had to weigh the Applicant's right of access to information against the Third Parties' right to protection of privacy. In so doing, the Public Body determined that the "identifying characteristics" could not be released to the Applicant without revealing the identity of one or more Third Parties.

[para 66] Pages 42 and 43 are email correspondence. I find personal information can be reasonably severed from these records and I will order the Public Body to do so. I find the Applicant may have access to the following information:

1. On page 42, the entire fourth paragraph starting with the words "The water does not stay on [the Applicant's] land"
2. On page 42, the last three sentences of paragraph 6 starting with "The ditch has been existence for many years..."
3. On page 42, the second sentence of paragraph 7 starting with "This ditch is close to seven feet…"
4. On page 43, the sentence starting with " Also since this ditch is part…"
5. On page 43, the entire paragraph starting with "I am also concerned that there was no problem…"
6. On page 43, the entire paragraph starting with "I feel there should be a further investigation …"

[para 67] I find page 44 properly withheld in its entirety as severing personal information would leave the remaining information meaningless as discussed in para. 64.

[para 68] The Public Body withheld portions of email correspondence from the Applicant. Pages 74 and 75 had portions withheld and page 76 was withheld entirely.

[para 69] From the portions withheld on page 74, I will order the Public Body to release portions that could reasonably be severed. I find the Applicant may have access to the following information on that page:

1. The last two sentences in the first paragraph that start with the words: "At the meeting it was determined…"
2. The first three sentences in the second paragraph that start with the words: "In dealing with Alberta Environment…"
3. The entire sentence in the third paragraph starting with "Neighbours will …"

4. The next entire paragraph starting with the words: “Also, the AB environment employees…”
5. The next entire paragraph starting with the words: “A third point is an AB environment investigation…
6. The next entire paragraph starting with the words: “This is a matter involving a person …”
7. This sentence continues to page 75 and the Applicant may have access to the entire sentence. The rest of page 75 has been reasonably severed by the Public Body.

[para 70] From page 76, I will order the Public Body to release portions that could reasonably be severed. I find the Applicant may have access to the following information on that page:

1. The first three sentences in the body of the email correspondence starting with the words “In recent weeks…”
2. The sentence beginning with the words “This waterway is …”
3. Eight continuous sentences beginning with the words “At an information gathering …” and ending with the sentence “Well, duh!”
4. Four sentences beginning with the words: “Furthermore, an investigation was done by AB Environ…” and ending with the words: “…stopped discussion.
5. Part of the next sentence that begins with the words “Mr.[Applicant’s initial] develops that” …and the following sentence.
6. The entire paragraph starting with “Finally, what about…”
7. The entire last paragraph save the names and addresses that close the correspondence.

V. ORDER

[para 71] I make this Order under section 72 of the Act.

[para 72] I confirm page 85 of the records is not subject to the Act.

[para 73] I confirm the Public Body properly applied section 24(1) to a portion of page 101.

[para 74] I confirm the Public Body properly applied section 17 to withhold personal information of third parties from the Applicant.

[para 75] I order certain records to be severed so as to withhold personal information of third parties and the remainder of the record to be disclosed to the Applicant as directed in paras. 64, 65, 66, 69 and 70.

[para 76] 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.

Neena Ahluwalia Q.C.
Adjudicator