ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2016-51

October 31, 2016

TOWN OF HIGH RIVER

Case File Numbers 001083 and 001980

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the Town of High River (the Public Body) for information relating to the 2013 floods in High River. He requested:

> […] any and all [information] pertaining to actions, water levels, sewage backups caused directly or indirectly by actions during 2013 flood in the context of [an engineer's] comments, including satellite photos, LiDAR, or aerial photos.

He also requested previous arbitration results, settlement and compensation paid in relation to other similarly affected residences, including but not limited to any and all documents, emails, notes.

The Applicant also requested a fee waiver on the basis that the records relate to a matter of public interest.

The Adjudicator determined that the Applicant was not entitled to a fee waiver as it had not been established that the records related to a matter of public interest. She reviewed the fees the Public Body had estimated and determined that some of them were for services that public bodies are not authorized to require under the FOIP Act or the Regulation. She ordered the Public Body to prepare a new fee estimate for the Applicant.

The Applicant had also made a request for information regarding property assessments. During the inquiry, the Public Body made the argument that section 301.1 of the

Municipal Government Act (the MGA) applied to the property assessment information the Applicant had requested. If section 301.1 of the MGA applies to information, then the FOIP Act does not apply. It was unclear from the Public Body's evidence that the names of assessed persons and their addresses were subject to section 301.1, although the Adjudicator considered it to be possible. With regard to the Public Body's application of section 17 to the information, the Adjudicator noted that many of the addresses belonged to corporate and government entities, in which case the address information was not personal information. She also noted that it was possible that section 17 would permit disclosure of the personal information in some cases.

The Adjudicator ordered the Public Body to make a new determination as to whether section 301.1 of the MGA applies. In the event it decides that it does not, she directed the Public Body to make a new decision in relation to section 17 of the FOIP Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 6, 10, 17, 29, 30, 31, 72, 93, 95; *Municipal Government Act*, R.S.A. 2000 ss. 299, 300, 301, 301.1, 303, 307; Freedom of Information and Protection of Privacy Regulation, A.R. 186 / 2008 s. 11, Fees Schedule

Authorities Cited: AB: Orders F2005-029, F2006-032, F2011-015, F2012-19, F2013-10, F2013-27, F2014-05 **BC:** 01-24

I. BACKGROUND

Request for Review 001083

[para 1] On April 15, 2015, the Applicant made a request to the Public Body for information relating to the 2013 floods in High River. He requested:

> Any and all [information] pertaining to actions, water levels, sewage backups caused directly or indirectly by actions during 2013 flood in the context of [an engineer's] comments, including satellite photos, LiDAR, or aerial photos.

He also requested previous arbitration results, settlement and compensation paid to other similarly affected residences including but not limited to any and all documents, emails, notes […]

[para 2] The Applicant provided the following clarification regarding the information he was requesting:

> In the wake of the floods of 2013 and more specifically in the context of [an engineer's] infamous comments regarding the "sacrificing" of your area, I am respectfully requesting ANY and ALL information with regard to the berm, subsequent water movement / changes in levels, sewer back up with associated dates / timelines, capacities, etc. Additionally, any information pertaining to exacerbated sewage concentration (E. coli, etc) in Sunrise / Hamptons and any back flow into other [communities] as a result of this berm and subsequent changes in water levels (head) or other actions / inactions i.e. missing sewer caps in Hamptons.

> Additionally, this FOIP request also includes any other actions / inactions that could be reasonably deemed pre-emptive or co-emptive.
>
> Also, pumping equipment utilized dates / timelines / place rates of flow. (i.e. when was water pumped into the Sunrise / Hamptons area and when was it subsequently pumped out)
>
> […]
>
> Also, please advise of any other GOA division / other pertinent agency / entity / person(s) that has or is likely to have any other information that would pertain to this request but not be provided / available with this specific access request.
>
> I trust this request was broad enough to be all inclusive however I only require the salient information that will accurately reflect what happened to the water levels in the days after the 2nd Avenue and 498 Ave berms were built.

The Public Body estimated that the fees for processing the access request would be $1514.00. The Public Body required the Applicant to pay the fees in accordance with its bylaw.

[para 3] The Applicant requested a fee waiver on the basis that the records he had requested related to a matter of public interest. The Public Body refused to waive the fees.

[para 4] The Applicant requested review by the Commissioner of the Public Body's decision to deny a fee waiver.

[para 5] The matter proceeded directly to inquiry.

Request for Review 001980

[para 6] On September 24, 2015, the Applicant made a request for property valuations. Specifically, he requested the assessed values, addresses, sale prices, and dates sold of all homes in High River from January 2011 to the present.

[para 7] The Public Body responded to the Applicant under the FOIP Act. The Public Body provided a list of sale prices and dates sold of all homes in High River from January 2011 to the present. The Public Body provided plan-block-lot numbers but did not provide the street addresses of the homes. (Subsequently, the Public Body explained that it had decided it could not provide the street address of the homes by application of section 17(1) of the FOIP Act.) With regard to tax assessments, the Public Body explained that tax assessments are public documents and that these could be viewed at the Town office. The Public Body provided the name of an employee who could book a room at the Town Office where the Applicant could view the tax roll. The Public Body stated that section 29 of the FOIP Act applied to the tax roll and for that reason, the information would not be provided to the Applicant. The Public Body also provided a link at which the tax roll could be viewed online.

[para 8] The Applicant requested review of the Public Body's decision to sever the street address information from the records.

[para 9] The matter proceeded directly to inquiry.

II. RECORDS AT ISSUE

[para 10] The addresses contained in the Public Body's assessment database for the years 2011 – 2015 are at issue in request for review 001980.

III. ISSUES

Request for Review 001083

Issue A: Did the Public Body properly estimate the amount of fees in accordance with sections 93(1) and 93(6) and 95 of the Act, and the Regulation?

Issue B: Should the Applicant be excused from paying all or part of a fee, as provided by section 93(4) of the Act?

Issue C: Did the Public Body meet its duty to the Applicant as provided by section 10(1) of the Act (duty to assist applicants)?

Request for Review 001980

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

IV. DISCUSSION OF ISSUES

Request for Review 001083

Issue A: Did the Public Body properly estimate the amount of fees in accordance with sections 93(1) and 93(6) and 95 of the Act, and the Regulation?

[para 11] Section 93 of the FOIP Act authorizes public bodies to require applicants to pay fees. It states:

> *93(1) The head of a public body may require an applicant to pay to the public body fees for services as provided for in the regulations.*
>
> *(2) Subsection (1) does not apply to a request for the applicant's own personal information, except for the cost of producing the copy.*

(3) If an applicant is required to pay fees for services under subsection (1), the public body must give the applicant an estimate of the total fee before providing the services.

(3.1) An applicant may, in writing, request that the head of a public body excuse the applicant from paying all or part of a fee for services under subsection (1).

(4) The head of a public body may excuse the applicant from paying all or part of a fee if, in the opinion of the head,

(a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or

(b) the record relates to a matter of public interest, including the environment or public health or safety.

(4.1) If an applicant has, under subsection (3.1), requested the head of a public body to excuse the applicant from paying all or part of a fee, the head must give written notice of the head's decision to grant or refuse the request to the applicant within 30 days after receiving the request.

(5) If the head of a public body refuses an applicant's request under subsection (3.1), the notice referred to in subsection (4.1) must state that the applicant may ask for a review under Part 5.

(6) The fees referred to in subsection (1) must not exceed the actual costs of the services.

[para 12] Section 95 authorizes a local public body, such as the Public Body, to create bylaws setting the fees it requires to be paid. This provision states:

95 A local public body, by bylaw or other legal instrument by which the local public body acts,

(a) must designate a person or group of persons as the head of the local public body for the purposes of this Act, and

(b) may set any fees the local public body requires to be paid under section 93, which must not exceed the fees provided for in the regulations.

[para 13] The Public Body submitted the bylaw it has enacted under section 95. This bylaw adopts the fees set out in the Fee Schedule as the maximum fees it will charge.

[para 14] The Public Body estimated that the fees for processing the Applicant's access request would be $1514.00. It estimated that it would take 17.5 hours of search time to locate all responsive records, and that the hourly rate charged for searching would be the maximum in its bylaws, $6.75 per quarter hour. The Public Body estimated that the cost of photocopies would be $25.00, based on a rate of $.25 per page. It calculated that the costs of preparing or handling a record for release would be $985. This was based on an estimate that it would take 36.5 hours to prepare the records at a rate of $6.75 per quarter hour. One of the costs included under the heading "preparing or handling a record for release" was "photocopy / scanning time", which the Public Body estimated would take 2.5 hours at a rate of $6.75 per quarter hour and amount to $67.50. The Public Body estimated the cost of shipping some of the records at $1 and the cost of the jump drive on which it intended to provide the bulk of the records at $30.00.

[para 15] The Public Body explains in its submissions:

> While the Town of High River manages these specific records electronically, given that some of the information may be contained in voluminous scribe notes, Incident Command Reports, and other relevant documents, it will take the public body a substantial amount of time to review the same to determine whether or not certain records are relevant to this particular request. That being said, in reviewing Order F2011-015, the public body notes that it cannot charge for reviewing records in order to assess their contents. Therefore, it is the public body's opinion that the amount included for searching, locating and retrieving a record is currently unreasonable given that it would likely only take 1-2 hours to locate and retrieve the records that are not yet scanned electronically.
>
> With respect to the photocopying charges, based on Order F2014-05, the actual incurred charge should be imposed, being 0.097 /copy. Based on this calculation, [the Applicant] may be required to pay $9.70 for photocopying expenses as the bulk of the information will be provided on a flash drive.
>
> In preparing or handling the records for release, the Town of High River is currently engaged in litigation with a third party. As such, the records will need to be reviewed and redacted with respect to legal privilege. In addition, the records likely contain personal information about other individuals other than the applicant, especially given that the scribe notes and other relevant flood records have personal phone numbers associated with names that were collected for the purposes of obtaining assistance in responding to this event. As mentioned, the records are relevant to a current litigation matter. The Town is currently engaged in negotiations with this third party and, as such, the records would need to be reviewed with this in mind.
>
> Despite the foregoing, in applying Order F2011-015, the amount currently calculated for the actual severing of documents is unreasonable. As such, based on the presumption that it only takes 5 seconds per page to redact the necessary information, the public body proposes the below calculation for the Commissioner's consideration:
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> 5 seconds/page x 5000 pages= 35000 seconds+ 60 seconds/minute= 416.67 minutes+ 60 minutes/hour= 6.94 hours (rounded to 7 hours) x $27.00/hr = $189.00 (Proposed cost for preparing or handling a record for release)
>
> In discussing this matter with the Records and Information Coordinator at the Town of High River, she advised that there were roughly two banker boxes that were filled with personal information.

> Therefore, this calculation is based on each box containing roughly 2500 pieces of paper. The writer believes that this calculation is in line with the spirit of this provision and is more than reasonable given the volume of records that will need to be reviewed as part of this request. The public body will take no further steps with respect to amending the estimate until having heard from the Commissioner.
>
> The public body is relying on Orders F2011-015 and F2014-05 for the purposes of estimating fees.

[para 16] The Public Body notes in its submissions that it reviewed Orders F2011-015 and F2014-05 after it provided the fee estimate. It acknowledges that the amount of its fee estimate may exceed the actual costs of providing services in relation to searching for records and in relation to preparing them for release.

[para 17] Both Orders F2011-015 and F2014-05 hold that section 93(6) of the FOIP Act limits public bodies from charging fees in excess of their actual costs in providing the services for which fees may be charged in the Freedom of Information and Protection of Privacy Regulation (the Regulation). The Fees Schedule in the Regulation sets out the maximum amounts that may be charged for providing services to an applicant; if a public body does not incur the maximum cost when it provides a service, it may not charge the maximum, but only the actual cost of the service. Conversely, if its actual costs of providing a service exceed the maximum in the Fee Schedule, a public body may charge only the maximum.

[para 18] I turn now to the question of whether the Public Body has estimated the costs of processing the Applicant's access request in accordance with the FOIP Act and its bylaw.

Searching for, locating and retrieving a record

[para 19] As noted above, the Public Body originally estimated that its search time would be 17.5 hours and that the costs of searching would be $472.50. In its submissions, it expressed concerns that the 17.5 hours it charged for searching included costs charged for reviewing the records. Section 11(6) of the Regulation prohibits public bodies from charging fees for the time spent reviewing records.

[para 20] In Order F2011-015, I decided that "reviewing" within the terms of section 11(6) of the Regulation "refers to the process of examining or assessing records *with a view to making changes to them as appropriate* [my emphasis], such as when a public body decides to sever information from the records."

[para 21] It is not clear to me that any time spent reading a record or a portion of it to determine whether it contains the information an applicant has requested constitutes "reviewing" a record, as no changes are contemplated to the record at that time. It does not appear to be possible to search for responsive records without reading at least some of the record to determine if it contains the information an applicant has requested. Reading a record for this purpose is not "reviewing". In my view, the time spent reading a record

to ensure that it falls within the terms of an access request is properly included in the time spent searching for records and a public body may charge fees for this time.

[para 22] While the Public Body proposes charging for 2 hours of search time, rather than the 17.5 hours it originally estimated, it is not clear to me whether this figure accurately reflects the time it will spend searching for records. If it is likely to spend 17.5 hours locating responsive records, including time spent reading the records for the purpose of determining whether they are responsive, then it may include fees for this time in its estimate.

[para 23] As it is not clear to me which of the times the Public Body has estimated it will spend searching for records is accurate, and as I find below that it has not been established that this is a case in which the fees should be waived, I will order the Public Body to make a new determination of the time it will spend searching for records, based on the time its employees are likely to spend searching for records.

Photocopies

[para 24] As noted above, the Public Body charged $.25 per page for photocopying and its total costs for photocopying were estimated at $25.00. It has now determined that a rate for photocopying that reflects its actual costs is $.097 per page. Applying this cost per page, it now calculates that the total cost of photocopying will be $9.70. In my view, the new rate is reasonable, and I will confirm the Public Body's estimate of its photocopying costs.

Preparing or handling a record for release

[para 25] The Public Body has acknowledged that it included the costs of reviewing the records in its original fee estimate. Its fee estimate included 136 hours dedicated to preparing and handling the records for release, and 10 hours spent photocopying and scanning the records. It now argues that the time spent preparing and handling the records would be approximately 7 hours and that the fees would be $189 for this service.

[para 26] The Public Body has estimated that it will take 5 seconds per page to delete information from the records. In Order F2011-015 I determined that 5 seconds per record was an appropriate amount of time for performing the severing likely to be done by the public body.

[para 27] In Order F2011-015, I said:

> Having reviewed the records submitted by the Applicant and which contain severing done by the Public Body, I am satisfied that a generous estimate for the time that would be spent removing information from them with a felt pen would be a total of 5 seconds per record, and not 120 seconds per record.

In the foregoing case, I determined that a fee estimate must estimate what a public body's actual costs for severing information from records is likely to be. I ordered the public body in that case to estimate its actual costs for severing using the following method:

> I order the Public Body to recalculate the time spent severing information by selecting a sample record the Public Body considers reflective of the average amount of severing required, and to measure the time it takes to draw a line with a felt pen through each piece of information the Public Body intends to sever. The Public Body may then add up the time taken for each instance of severing on that page and multiply that figure by the number of records to estimate the total costs for severing.

[para 28] In Order F2011-015, I also determined that a public body may charge only for the cost of deleting information from a record among the fees charged for preparing and handling records for release to an applicant. I determined that the public body's reliance in that case on the rate of 2 minutes per record referred to in "FOIP Bulletin Number One", published by Service Alberta, was inappropriate as the severing that was likely to be done would take, at most, 5 seconds per page. I determined that estimates of fees are to be based on what a public body's actual costs of processing an access request are likely to be.

[para 29] From the Public Body's submissions and the Applicant's access request, I conclude that many different kinds of records will be responsive to the Applicant's access request. Some records may require no severing, some will require severing, and some records may possibly be withheld in their entirety, depending on their content. Records that are withheld or provided in their entirety will require no severing time, but records that require severing might take more or less than 5 seconds per page to sever.

[para 30] It appears from its submissions that the Public Body may have used 5 seconds per page to estimate the time it will spend severing records because I referred to this figure in Order F2011-015. However, it is not clearly the case that this figure will accurately reflect the time the Public Body may need to sever information from the records. Five seconds per page could potentially result in either overestimation or underestimation of the time it will spend severing information from the records.

[para 31] To avoid the outcome that the Public Body overestimates or underestimates time it will spend deleting information from the records, and therefore the fees it will estimate, I will order it to calculate the time it will spend severing information from the records by selecting representative records, determining how much time it is likely to spend deleting information from the representative record, and multiplying that time by the number of records the record is likely to represent. For example, if it is likely that it will withhold certain kinds of records in their entirety, such as privileged records, it can determine that it will not charge fees for severing these records. If there are a number of records requiring it to delete the names and personally identifying information of individuals, it may determine how long it will take to remove information from a sample of the records, to calculate how much time it is likely to spend severing similar information from all of them. Again, if there are a number of records that are not likely to require severing, it should not charge for severing information from these records.

[para 32] Finally, I agree with the Public Body that it cannot charge fees for reviewing the records. In my view, it was correct to ensure that no fees are charged for reviewing. Section 11(6) of the Regulation prohibits a public body from charging fees for time spent reviewing records.

Photocopying and Scanning Records

[para 33] As noted above, the Public Body calculated that it would spend 2.5 hours photocopying and scanning the records, and it included the costs of photocopying and scanning in its estimate.

[para 34] In Order F2013-10, the Adjudicator rejected the argument that a public body may include its labour costs in the fees it calculates for producing a record. He reviewed the Fees Schedule and stated:

> In my view, labour costs may not be included in a public body's charge for photocopying. While other items set out in the Schedule to the Regulation are expressed as an hourly rate, the cost for producing a paper copy of a record is not. This suggests to me that the charge to make photocopies is intended to account only for the physical or material costs. I also note that it is very inconsistent, and therefore contrary to the intent of the Schedule, for a public body to charge a maximum of $27.00 per hour for other services, yet charge $50.00 per hour for photocopying.
>
> Moreover, in the case of many access requests, it would not take much time to photocopy records, in any event. Once the records have been prepared and handled for disclosure – which includes severing and collating the pages, and which are services for which a public body can charge – it would normally just be a matter of feeding the bundle into a photocopying machine and making the copy for the applicant in a matter of minutes. If it takes a more significant amount of time, it is my view that the public body must bear the associated labour costs. My interpretation is reinforced by the fact that item 3 of the Schedule to the Regulation authorizes a charge "per page", again without any reference to time, which is comparable to the references to "$5.00 per disk" and "$2.00 per slide" in item 4 of the Schedule. For instance, even if it took a Public Body a lengthy amount of time to download material from a variety of places onto a computer disk, it can only charge a maximum of $5.00, which small amount is surely not intended to cover any of the labour costs. I conclude that the authorized charges in relation to producing a copy of a record – in whatever format or medium – may account for the costs to create the physical or material object only.

[para 35] In Order F2013-27, the Adjudicator applied the reasoning of the Adjudicator in Order F2013-10. She stated:

> The Public Body also disagreed with the adjudicator's conclusion in Order F2013-10 that labour costs could not be incorporated into the fee for photocopying. The Public Body's objections to that Order are that the Public Body takes time to ensure that records provided in response to an access request are of a high quality. I do not disagree that the time and care taken by a public body in responding to an access request is valuable and worthwhile. However, as stated in Service Alberta's *FOIP Guidelines and Practices Manual* (the Policy Manual), fees for processing an access request are not intended to recover all of the costs associated with that process. The Policy Manual states the following on page 72 (my emphasis):

> The *FOIP Act* allows public bodies to charge fees to help offset the cost of providing applicants with access to records.

The FOIP Act and Regulation set out which of the costs associated with processing an access request are to be passed on to the applicant. I agree with the adjudicator's interpretation in Order F2013-10, that labour costs associated with producing copies of records are not among the activities for which fees are assessed (see particularly paragraphs 79-86 of that Order). I do not accept the Public Body's rationale for charging 25 cents per page for photocopying or printing records. I will order the Public Body to calculate its actual costs for printing records.

[para 36] The Adjudicator in that case also found that scanning records in order to apply severing software is not a service to an applicant for which fees may be charged. She said:

> The Public Body also indicates that the time needed to scan the records includes time taken to compare the paper copy with the electronic copy to ensure accuracy and quality.
>
> In my view, scanning records in order to use severing software is an internal process of the Public Body, not dissimilar to creating working copies of records when processing a request.
>
> The BC Information and Privacy Commissioner's office has drawn a distinction between the activities performed for the applicant and the activities that are performed as part of the public body's own internal processes. The adjudicator in Order F09-05 considered fees for creating working copies of records:
>
>> I accept that it will generally be preferable for public bodies to work with copies of records rather than originals. I do not however consider that a public body is providing a "service" to an applicant under s. 75(1) or s. 7 of the Regulation when it makes working copies of records. Rather it is doing so because of a choice to preserve its original records, as well as part of its routine responsibilities under FIPPA. It was not in my view appropriate for the Law Society to charge FCT a per-page fee for making working copies of records. It may only charge FCT for copies of records made for disclosure to FCT.
>> (at para. 28)
>
> The appropriateness of charging an applicant for creating working copies of responsive records has not been addressed in past orders of this office. I agree with the reasoning in the BC order cited above, that it is inappropriate to charge an applicant for creating working copies of records. Similarly, I conclude that the Public Body cannot charge the Applicant fees for the time taken to scan paper copies of the records requested by the Applicant to create electronic copies for the Public Body's severing process. (This reasoning may not apply in every case where a public body scans records – for example, where a public body scans records in order to provide electronic records at the request of an applicant).

[para 37] I agree with the reasoning of the Adjudicators in Orders F2013-10 and F2013-27.

[para 38] While the Adjudicator in Order F2013-27 is clear that a public body cannot recoup the costs of scanning records in order to use severing software, she left it open as to whether fees may be charged for the labour involved in scanning records to provide them to an applicant electronically. In my view they cannot. Line 6 of the Fee Schedule authorizes a public body to charge its actual costs for producing a record by any process or any medium not otherwise referred to in the Fees Schedule. While this

provision allows a public body to charge its actual costs for producing a copy of a record, "actual costs" in this context refers to the cost of creating the physical or material copy only. Line 6 is clearly intended as a "catch all" to include copies that are made of records not specifically listed in sections 3 – 5, for which only the costs of making the physical record are included, exclusive of the labour involved in doing so. There is nothing in Line 6 to suggest that Cabinet intended to expand the types of fees that may be charged in relation to records not listed in sections 3 – 5, such that a public body may charge its labour costs for records falling within line 6, when it cannot for any of the other types of records it might produce from different media.

[para 39] In addition, Line 6 of the Fees Schedule refers to the costs of "producing a copy of a record *by any process or in any medium*" [my emphasis]. In my view, the fees to which provision refers are those relating to the process followed or the medium. In this case, the cost of the jump drive, which the Public Body states is $30.00, is the total amount that can be billed for scanning copies of records to put them on a jump drive or to prepare them for scanning.

Conclusion

[para 40] I have decided to direct the Public Body to provide a new fee estimate. The Public Body may charge fees for searching for records that include reasonable amounts of time spent reading the records to determine whether the record is responsive. I confirm the Public Body's proposed cost per page of photocopying. I accept the Public Body's submission that $.097 per page is a figure that accurately reflects its costs for photocopying and it may include this figure in its new estimate. I will direct the Public Body to calculate its costs for severing information based on the time it takes to sever or remove information from samples of records without reviewing the information, then multiplying this time by the number of records the samples represent, and then adding the totals together. Finally, while I confirm the $30 cost of the jump drive, I disallow any fees intended to offset the labour costs of photocopying and scanning.

Issue B: Should the Applicant be excused from paying all or part of a fee, as provided by section 93(4) of the Act?

[para 41] Section 93(4) (reproduced above) authorizes the head of a public body to excuse an applicant from paying all or part of a fee, if, in the opinion of the head, the record relates to a matter of public interest.

[para 42] In Order F2006-032, the Director of Adjudication set out a set of factors and questions to be considered when determining whether fees should be excused on the basis that a matter relates to the public interest. She said:

> The first set of criteria (numbers 1 to 3) is relevant to decide if a record "relates to a matter of public interest":

1. Will the records contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be, if the public knew about it?

The following may be relevant:

- Have others besides the applicant sought or expressed an interest in the records?
- Are there other indicators that the public has or would have an interest in the records?

2. Is the applicant motivated by commercial or other private interests or purposes, or by a concern on behalf of the public, or a sector of the public?

The following may be relevant:

- Do the records relate to a conflict between the applicant and government?
- What is the likelihood the applicant will disseminate the contents of the records?

3. If the records are about the process or functioning of government, will they contribute to open, transparent and accountable government?

The following may be relevant:

- Do the records contain information that will show how the Government of Alberta or a public body reached or will reach a decision?
- Are the records desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to scrutiny?
- Will the records shed light on an activity of the Government of Alberta or a public body that have been called into question?

4. The following additional factors may be relevant to decide if a waiver is warranted on grounds of fairness:

1. If others have asked for similar records, have they been given at no cost?
2. Would the waiver of the fee significantly interfere with the operations of the public body, including other programs of the public body?
3. Are there other less expensive sources of the information?
4. Is the request as narrow as possible?
5. Has the public body helped the applicant to define his request?

[para 43] I turn now to the question of whether the records the Applicant has requested relate to a matter of public interest.

1. Will the records contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be, if the public knew about it?

[para 44] Acknowledging the difficulty in determining when records can be said to relate to a matter of "public interest", both the Alberta and the British Columbia Offices of the Information and Privacy Commissioner have developed tests for determining when records relate to a matter of public interest. Alberta's test is set out in Order F2006-032 and reproduced above. British Columbia's test is set out in British Columbia Order 01-24. Like Alberta's legislation, British Columbia's legislation specifically includes the environment and public health or safety as falling within the public interest category.

However, the public interest under both legislative schemes is not limited to these topics, and other topics may fall within the notion of "the public interest".

[para 45] The British Columbia test is helpful as it makes specific reference to the environment and public health and safety, and creates a procedure for a public body to follow in order to determine whether to grant a fee waiver on the basis of public interest:

> 1. The head of the Ministry must examine the requested records and decide whether they relate to a matter of public interest (a matter of public interest may be an environmental or public health or safety matter, but matters of public interest are not restricted to those kinds of matters). The following factors should be considered in making this decision:
>
> (a) has the subject of the records been a matter of recent public debate?;
> (b) does the subject of the records relate directly to the environment, public health or safety?;
> (c) could dissemination or use of the information in the records reasonably be expected to yield a public benefit by:
>
> > (i) disclosing an environmental concern or a public health or safety concern?;
> > (ii) contributing to the development or public understanding of, or debate on, an important environmental or public health or safety issue?; or
> > (iii) contributing to public understanding of, or debate on, an important policy, law, program or service?;
>
> (d) do the records disclose how the Ministry is allocating financial or other resources?
>
> 2. If the head of a Ministry, as a result of the analysis outlined in paragraph 1, decides the records relate to a matter of public interest, the head must still decide whether the applicant should be excused from paying all or part of the estimated fee. In making this decision, the head should focus on who the applicant is and on the purpose for which the applicant made the request. The following factors should be considered in doing this:
>
> (a) is the applicant's primary purpose for making the request to use or disseminate the information in a way that can reasonably be expected to benefit the public or is the primary purpose to serve a private interest?
>
> (b) is the applicant able to disseminate the information to the public?
>
> It should be emphasized here that the references in para. 1, above, to the environment and public health or safety do not exhaust the scope of what may be a matter of public interest.

[para 46] The tests set out in Alberta Order 2006-032 and British Columbia Order 01-24 are very similar. However, Part 1 of British Columbia's test also assists a decision maker to answer the question as to whether the public interest is affected or benefitted by the subject matter of records when the public is not aware of the issue.

[para 47] In my view, the factors described in Part 1 of British Columbia's test assist a decision maker to answer the questions posed by Part 1 of Alberta's test.

[para 48] The Applicant argues:

> 1. I had two properties in High River.
>
> 2. There was a flood and subsequently a SOLE (State of Local Emergency) declared.

3. Ultimately, there was a hostile takeover from the Province (?Town of High River incompetent vs. provincial strong arm tactics / agenda - or both?) The provincial government was extremely intent on removing everyone from the Town of High River long after the original flood waters receded (note the Type 2 warrant request to High River ASAP) and collectively the municipal, provincial and federal government have gone to great lengths to hide, redact, or withhold the succeeding events. Did this power struggle and undermining one another's efforts adversely affect residents and their properties? (See excerpts from 2015-G-0034 below)

4. A berm was built and water was pumped into this area that surrounded two communities. This raised the water level an additional two feet. Rather than basements simply being flooded, critical flooring systems were submerged for several weeks.

5. Statements made by [an engineer] reveal that our particular community was sacrificed in order to de-water other areas more quickly. Affidavits from 1301-12247 also support this claim.

6. Those affected by these pre-emptive actions suffered exacerbated […] damages and are entitled to additional compensation by law.

7. Residents of High River are tacitly aware of the Charter violations, illegal searches, deliberate property damage, and mismanagement, ensuing political circus, a deplorable Disaster Recovery Program and a staggering void of honesty, accountability, and openness from the government.

8. The local, provincial, and federal governments are deliberately hampering due process and appropriate compensation by withholding pertinent information. I have five other inquiries (another with the Town of High River, three with the Alberta Government, and yet another with the federal government)

9. I believe a Duty of Care (by Government) exists as well as a Right to Know for those who suffered these exacerbated / catastrophic damages by the actions of the government.

10. There is a public trust / public safety element to this. In a telephone poll conducted after the flood in High River - ~ 50% of High River residents stated they would refuse to evacuate if given an order. I would argue that withholding information will certainly not allow this sentiment to be remedied.

11. Financial - folks have already suffered catastrophic damages from the flood itself and these have been worsened by the mitigating actions of the government. There should NO fees charged for the information that we seek.

12. Fairness - haven't we been through enough already? Is it fair / appropriate that the quest for this information has now gone to an inquiry with the Information and Privacy Commissioner?

13. Public Interest - could this have gleaned any more public scrutiny? As a matter of fact, Ms. Danielle Smith asked for a judicial led Public Inquiry into this mess.

14. This informational withholding is occurring with several other provincial and federal agencies.

15. The Emergency Management Act reads in part ... 19(1) On the making of the declaration and for the duration of the state of emergency, the Minister may do all acts and take all necessary proceedings including the following: (a) put into operation an emergency plan or program; (b) authorize or require a local authority to put into effect an emergency plan or program for the municipality; **(c) acquire or utilize any real or personal property considered necessary to prevent, combat or alleviate the effects of an emergency or disaster; (3) If the Minister acquires or utilizes real or personal property under subsection (1) or if any real**

> **or personal property is damaged or destroyed due to an action of the Minister in preventing, combating or alleviating the effects of an emergency or disaster, the Minister shall cause compensation to be paid for it.** [emphasis added in original]
>
> 16. Offence 17 Any person who (a) contravenes this Act or the regulations, or (b) interferes with or obstructs any person in the carrying out of a power or duty under this Act or the regulations, RSA 2000 Section 17.1 Chapter E-6.8 EMERGENCY MANAGEMENT ACT 11 is guilty of an offence and liable to imprisonment for a term of not more than one year or to a fine of not more than $10,000 or to both imprisonment and fine. RSA 2000 cE-6.8 s17; 2010 c5 s6
>
> (While I am not a lawyer - I am going to suggest that the Town of High River may well be in contravention of Item 17 above.
>
> Withholding this pertinent information is unacceptable, frustrates due process, and further victimizes those who have already suffered greatly by these actions.
>
> In summation, the requested information should be wholly disclosed. As the Town of High River either directly or indirectly caused this damage - there should NO fees charged as their actions have already caused considerable financial hardship with respect to the berm that was built and the additional water that was pumped in. And finally, because of the mandatory evacuation that was in place, we were left at a tremendous disadvantage with to respect to both seeing what actually transpired and mitigating those same destructive actions.

[para 49] The Public Body argues:

> [The Applicant's] e-mails strongly suggest that he was looking to obtain the requested information for the purposes of pursuing litigation. In addition, his handwritten notes on his request for review on the e-mail dated May 27, 2015, that read "Could I have been any clearer in my request", demonstrates that the request for this information was based on obtaining financial compensation and, therefore, was not in the public interest. As the foregoing demonstrates, it is the public body's opinion that this does not meet the criteria for Section 93(4)(b) as being in the public interest. Moreover, there was no discussion regarding concerns about the environment or public health and safety.

[para 50] The Applicant has made assertions in his submissions regarding the flooding that took place in High River in 2013 and has presented his views regarding the actions of various levels of government. However, he has not explained how the records he has requested from the Public Body – records relating to berms, water levels and arbitrations – will shed light on the issues he has raised, or on the functioning of the various levels of government to which he refers in his submissions.

[para 51] As noted above, the Applicant has requested all records in the custody or control of the Town of High River regarding flooding in relation to the berms that were constructed and the "pumping in" of water, and also requested arbitration results, settlement and compensation paid to other similarly affected residences.

[para 52] It is unclear from the Applicant's submissions how the Applicant anticipates the records he has requested will contribute to the public understanding of, or to debate on, or resolution of, a matter or issue that is of concern to the public or a sector of the public. While some of the records may useful to him, or to others, in litigation in relation

to the flooding of their properties, such use serves private interests, but not necessarily the public interest.

[para 53] There is also nothing before me to suggest that the records will inform the public understanding of, or debate on, an important policy, law, program or service. Assuming that the Applicant's position is correct – that the berms that were erected to address flooding in High River resulted in the devastation of the neighbourhood in which the Applicant owns two houses – it is not clearly the case that the construction of the berms reflects a policy, law, program or service of the Town of High River or the Government of Alberta, such that disclosure of the records will contribute to the public understanding of a policy, law, program or service. Rather, again assuming that the assertions in the affidavits are proven, it appears possible that the damage asserted to be the result of the construction of the berms, could have resulted from error, negligence or a decision made hastily in an emergency situation, rather than from a policy of the Public Body or the Government of Alberta.

[para 54] I am unable to say that the content of the requested records would raise an environmental concern or a public health or safety concern. While the flooding itself was a disaster that threatened the safety and property of the residents of High River, the records that were requested do not appear to shed light on a current public health or safety concern. Moreover, the requested records would not necessarily shed light on a past health or safety concern, or decisions made by government, given that the Applicant has not requested records relating to government decision making, or records containing information relating to public health or safety. While some responsive records will contain information relating to e. coli levels and property damage that became a risk to public safety, the Applicant has not restricted his request to this kind of information. The information regarding public safety concerns such as water levels and e. coli is relevant to his access request only because it relates to damage to private property. The information the Applicant has requested is likely to shed light on the issue of liability for damage to property and any settlements regarding such damage. However, it is not clear that it will shed light on issues regarding public health and safety or the environment as they relate to the public, or to policies of the Public Body or the Government of Alberta in response to such issues.

[para 55] I find that the first factor is not met.

2. Is the applicant motivated by commercial or other private interests or purposes, or by a concern on behalf of the public, or a sector of the public?

[para 56] In his submissions, the Applicant makes reference to the fact that he seeks compensation for the damage to his two properties and that the information he is requested is essential for obtaining compensation. As the Public Body notes, his access request seeks records containing information about previous arbitration results, settlement and compensation paid to other similarly affected residences. The Applicant also notes in his submissions attached to his request for inquiry:

> I, like many others similarly affected, am motivated by the mistreatment, hiding of essential information, lack of accountability, transparency, and honesty. We are all legally entitled to receive compensation for these exacerbated damages caused by pre-emptive actions. The ESRD and AEMA/ Municipal Government have COMPLETELY withheld this information as well.

[para 57] I find that the Applicant is primarily motivated by a private interest, rather than a public one. In saying this, I do not mean that his claim is not just or meritorious; I accept that it may be. However, if records are requested for the purpose of advancing litigation or obtaining compensation for oneself, then the interest of the requestor is private, rather than public.

3. If the records are about the process or functioning of government, will they contribute to open, transparent and accountable government?

[para 58] In this case, the records do not appear to be about the process or functioning of government. Rather, they are about water levels, which may also relate to the possibility that the installation of berms resulted in damage to property in certain areas of High River, and the results of arbitrations and settlements. I am unable to say that the records would contribute to open, transparent and accountable government.

[para 59] While the way in which a government responds to a disaster, particularly if the response was inadequate or ill-considered, resulting in unequal treatment of those affected, is of public concern, in my view, the records that the Applicant has requested may only shed light incidentally on such an issue, as he has not requested records regarding decisions to construct the berms. Instead, he has requested records primarily about water levels, damage following the construction of berms, ensuing damage to property, and litigation regarding this damage.

Conclusion

[para 60] From my review of the submissions of the parties, I am unable to find that the records the Applicant has requested relate to a matter of public interest within the terms of section 93(4) of the FOIP Act.

Issue C: Did the Public Body meet its duty to the Applicant as provided by section 10(1) of the Act (duty to assist applicants)?

[para 61] Section 10(1) of the FOIP Act imposes a duty on public bodies to assist an applicant. It states:

> *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 62] In Order F2012-19 the Adjudicator noted:

> The duty to assist includes responding openly, accurately and completely, as well as conducting an adequate search. The Public Body bears the burden of proof with respect to its obligations under section 10(1), as it is in the best position to describe the steps taken to assist the Applicant

> (see Order 97-006, at para. 7). In this case, the Public Body clarified the scope of the Applicant's request both via letter and during a telephone call.
>
> There are two components of an adequate search:
>
> a) Every reasonable effort must be made to search for the actual record requested; and
> b) The applicant must be informed in a timely fashion about what has been done

[para 63] Searching for records is also a service for which fees may be charged under the Regulation. Section 6(3) of the FOIP Act establishes that the right of access is subject to the payment of fees. Under sections 11(3) and 11(4) of the Regulation, processing of an access request ceases until the initial fee and any fees an applicant is required to pay are paid. In combination, these provisions mean that while a public body has a duty to assist an applicant by conducting an adequate search for responsive records, this duty is not engaged until the applicant pays the fees the public body requires the applicant to pay or the fee has been waived.

[para 64] The Public Body has not responded to the Applicant because the Applicant has not yet paid the fees. As discussed above, an applicant's right of access is subject to the payment of fees. As the Applicant has not yet paid the fees, the issue of whether the Public Body has met its duty to assist the Applicant by responding openly, accurately, and completely is premature.

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

[para 65] As noted in the Background, above, the Applicant requested the respective assessed values, addresses, sale prices, and dates sold of all homes in High River between January 2011 and the date of his access request.

[para 66] The Public Body provided a spread sheet to the Applicant which it referred to as "the electronic detailed assessment report". This report contains the assessment roll number, the date of sale and sale price of properties, the names of owners and their address information, and some other information not requested by the Applicant. The Public Body severed the names (including some business names) of the owners [this was not information the Applicant had asked for], the addresses, and the extraneous information, and provided the sale dates and prices, associated with the assessment roll numbers, to the Applicant.

[para 67] The Public Body explained that the assessed value of the properties for 2015 is available online on its website. It invited the Applicant to visit its office to view the assessed values for 2011 – 2014.

[para 68] The Public Body argues:

> The disclosure of addresses would not unfairly expose the third parties to financial harm. This

assessment is based on the public body's understanding that [the Applicant] requires this information for the purposes of supporting his claim with the province.

Given the foregoing, it is the writer's opinion that, while the addresses associated with the sale of the listed properties are personal information, the disclosure of same does not meet the criteria of Section 17(1) with respect to being an unreasonable invasion of a third party's personal privacy.

Despite the foregoing, Section 5(2) of the *Freedom* of *Information and Protection* of *Privacy* Act states the following:

> *If a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless:*
>
> > *a) Another Act, or*
> > *b) A regulation under this Act*
> >
> > *expressly provides that the other Act or regulation, or* a *provision of it, prevails despite* this *Act.*

[The Applicant's] request for addresses, sale price, date sold, and tax assessed value is all contained within the same electronic database, namely being the electronic detailed assessment report.

Therefore, it is the opinion of the public body that, such information was provided in accordance with Section 300 of the *Municipal Government Act,* which reads as follows:

> *1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.*
>
> *1.1) For the purposes of subsection (1), a summary of an assessment must include the following information that the assessor has in the assessor's possession or under the assessor's control:*
>
> *a) A description of the parcel of land and any improvements, to identify the parcel of land and any improvements, to identify the type and use of the property;*
> *b) The size of the parcel of land;*
> *c) The age and size or measurement of any improvements;*
> *d) The key factors, components and variables of the valuation model applied in preparing the assessment of the property;*
> *e) Any other information prescribed or otherwise described in the regulations.*
>
> *2) The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.*

It is, however, noted that the public body erred in not disclosing its authority to release the detailed assessment report in a manner required by the municipality. Moreover, it is noted that, while property information, including addresses, are available on the Town's website at: https://software.bellamysoftware.com/HighRiverCSS/PI/5earch.jsp?ctime=14268a0140082 and by clicking on "Property Search", this database does not disclose the type of improvements, the size of the parcel of land, the age and size or measurement of any improvements, as well as key factors, components and variables of the valuation model applied.

All of the foregoing being said, the street addresses are publicly available and, therefore, the public body erred in not advising [the Applicant] that, pursuant to Section 29(1)(a) of the

> *Freedom of Information and Protection of Privacy Act,* the public body is not required to disclose information that is readily available.
>
> Section 29(1)(a) of the *Freedom of Information and Protection of Privacy Act* states:
>
>> *[29(1) The head of a public body may refuse to disclose to an applicant information*
>>
>> *(a) that is readily available to the public …]*
>
> The public body went above and beyond in its duty to assist [the Applicant], which is evidenced by the fact that it provided [the Applicant] with the sale information for properties at no additional charge when this information was readily available through another public means. As you are aware, Section 29(1)(a.1) reads as follows:
>
>> *The head of a public body* may *refuse to disclose to an applicant information that is available for purchase by the public.*
>
> As mentioned above, the sale information that the public body provided to [the Applicant] could have been obtained by purchasing the same through Alberta Land Titles but, as a courtesy, the public body opted to provide him with this information.
>
> Section 301 of the *Municipal Government Act* states as follows:
>
>> *A municipality may provide information in its possession about assessments if it is satisfied that necessary confidentiality will not be breached.*
>
> While [the Applicant] has not demonstrated any reason recently why he would breach the confidentiality of the addresses if they were provided, the previous Head of the Public Body may have felt otherwise and, therefore, the writer cannot confidently state that the public body is satisfied that the necessary confidentiality will not be breached with respect to this provision or Section 300 of the *Municipal Government Act.*
>
> Section 301.1 of the *Municipal Government Act* states as follows:
>
>> *Sections 299 to 301 prevail despite the Freedom of Information and Protection of Privacy Act.*
>
> In addition to the foregoing, the Office of the Information and Privacy Commissioner's Orders 2001-005, 2001-36, and F2005-029 support that the Commissioner has no jurisdiction regarding the disclosure of detailed assessment reports.

[para 69] Based on the foregoing, I understand the Public Body to be arguing that I do not have jurisdiction to apply the provisions of the FOIP Act to this access request. Rather, sections 300 or 301 of the MGA apply, and govern what information must be provided to the Applicant under those provisions. (With regard to these provisions, I understand the Public Body to be of the view that it cannot be satisfied that the necessary confidentiality of the address information it withheld will be maintained; however, I do not need to decide if I agree, since I do not have jurisdiction to apply the provisions of the MGA.)

[para 70] In Order F2005-029, former Commissioner Work considered section 301.1 of the *Municipal Government Act* and said:

> In Order F2005-007, I said the following relative to whether inconsistency or conflict need be shown:
>
>> The second rule in section 5 of the FOIP Act is that another Act or a regulation under the FOIP Act may expressly provide that the other Act or regulation, or a provision of it, prevails despite the FOIP Act. The second rule is independent of the first rule and does not require an analysis of whether provisions are inconsistent or in conflict. Under the second rule, the FOIP Act does not apply. The other Act or regulation, or a provision of it, applies, according to its own terms.
>> As expressly provided by section 15(1)(g) of the FOIP Act Regulation, section 12(3) and now section 15(1) of the *Maintenance Enforcement Act* prevail over the FOIP Act. Consequently, sections 12(3) and 15(1) apply, according to their own terms.
>>
>> Sections 12(3) and 15(1) of the *Maintenance Enforcement Act* do not contain the words "inconsistent" or "in conflict with". The Legislature could have included those words in sections 12(3) and 15(1), as it did in the paramountcy provision in section 75 of the *Public Health Act*, for example, but it did not. Therefore, I must conclude that the legislature did not intend that sections 12(3) and 15(1) be analyzed for inconsistencies or conflicts with the FOIP Act. The rationale for my conclusion is that the legislature has already recognized that the FOIP Act and the *Maintenance Enforcement Act* are inconsistent or in conflict, and has provided the mechanism for resolving the inconsistency or conflict by allowing sections 12(3) and 15(1) to prevail over the FOIP Act. [See paragraphs 55 to 57.]
>
> [para 48] On this reasoning, it is not necessary for me to compare the two sets of provisions for inconsistency or conflict. In any event, as I have already demonstrated, there is clearly a conflict or inconsistency, in the sense described at paragraph 19 above (the "compliance/breach" situation), between the two enactments at issue. Thus the words of section 301.1 apply whether or not the comparison is to be done, and sections 299 to 301 of the MGA govern the request for information in this case.
>
> *Conclusion*
>
> [para 49] Section 301.1 of the MGA provides that sections 299 to 301 of the MGA, which pertain to requests for the information at issue, prevail over the FOIP Act. Because section 5 applies, there is no conflicting override arising under the FOIP Act. Sections 299 to 301 prevail, and I do not have jurisdiction to apply the provisions of the FOIP Act to the request for access to information in this case. I do not have jurisdiction to apply the MGA.

In the foregoing case, the Commissioner noted that there is conflict between sections 299 – 301 of the of the *Municipal Government Act* and the access and privacy provisions of the FOIP Act as they address the same kinds of information, but following one process or the other set out in these Acts could result in conflicting decisions. As these provisions conflict with the FOIP Act, then section 301.1 may be viewed as settling the issue of which Act is to apply. Alternatively, the Commissioner considered that it may be the case that section 301.1 does not require actual conflict, but applies in any event. Regardless, his conclusion was that he determined that the Commissioner lacks jurisdiction to review decisions of local public bodies when they are made under section 299, 300, or 301 of the *Municipal Government Act*.

[para 71] As already quoted above, the Public Body said the following:

> [The Applicant's] request for addresses, sale price, date sold, and tax assessed value is all contained within the same electronic database, namely being the electronic detailed assessment report.

It seems to be saying that because the spreadsheet it provided – which it termed "the electronic detailed assessment report" – contains the address information of the properties, I am to accept that this information is included within the categories of information described in section 300 (applicable to requestors who are assessed persons) or 301 (applicable to any requestor), and, therefore, that access to the information at issue is governed by those provisions.

[para 72] If the address information the Public Body has withheld falls within these provisions, I agree that they would govern access to this information in this case by reference to section 301.1 of the MGA. However, I do not see that I can reach this conclusion based solely on the fact the address information is included in this particular database. The Public Body may have some additional information which makes this seem obvious to it, but it is not obvious to me.

[para 73] Neither does a review of the related provisions themselves permit me to reach a conclusion about this question. Section 303 of the MGA requires the Public Body to ensure that a description of the property sufficient to identify its location, and the mailing address and the name of an assessed person, are included on the assessment roll. "Sufficient to identify its location" might require an address to be provided. Even if it does, however, sections 300 and 301 of the MGA do not make reference to the assessment roll, nor do they refer to the street address of the assessed property. Section 300 (1.1) refers to specific information, that the assessor has in his or her possession or control, that must be included in the assessment summary, but again, it is not clear that address information would necessarily be included within any of the listed categories. It is possible, but not clear, that "a description of the parcel of land" would include the address; however, I have not been referred to any regulation that might require the address to be included.

[para 74] As the Public Body has provided no clear evidence or argument as to whether street address information of the kind in issue is included in the assessment summaries described in section 300, or is information "about assessments" in the possession of the Public Body within the terms of section 301, I am unable to decide whether sections 300 or 301 govern access to the information at issue in this case.

[para 75] However, it does appear *possible* that the address information is information falling within these provisions, and that accordingly, section 301.1 of the MGA applies. Therefore I will direct the Public Body to gather sufficient evidence as to whether section 301.1 applies, and to make that determination.

[para 76] In the event that the Public Body determines that section 301.1 of the MGA does not apply to the address information, then it must determine whether the FOIP Act requires it to withhold this information or permits its disclosure.

[para 77] Section 17 applies only to "personal information". Section 1(n) of the FOIP Act defines "personal information" as "recorded information about an identifiable individual". From my review of the information the Public Body has severed, I note that some of the addresses belong to commercial and government entities. The addresses of commercial and government entities are not information to which section 17 may be applied. However, some of the information in the records may be about identifiable individuals, as some of the assessed persons appear to be individuals. (Even without the names, which the Applicant did not ask for in this case, the residents of an address are still identifiable by those who know the identity of persons living at the address. I will therefore discuss the application of section 17 to the address information.

[para 78] 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.*
>
> *(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,*
>
> *[…]*
>
> *(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 79] 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) establishes that disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.

[para 80] 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 81] Section 17(1) requires a public body to withhold information only 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 82] 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 83] The Public Body put forward the position that disclosure of the address information is authorized by the MGA because it provides for the disclosure of detailed assessment reports and therefore falls within the terms of section 17(2)(c).

[para 84] As noted above, it is not clear to me that sections 300 and 301 of the MGA address disclosure of address information (although I accept that they may). In any event, if sections 300 and 301 apply, then section 17(2) would have no application. However, I note that section 307 of the MGA establishes a person's right to inspect the assessment roll. It states:

> *307 Any person may inspect the assessment roll during regular business hours on payment of the fee set by the council.*

As the address information and the name of assessed persons are contained in the roll it appears that section 307 authorizes the public body to disclose the roll in particular circumstances: during the Public Body's regular business hours and once a person pays the fee set by council.

[para 85] In my view, section 307 does not authorize disclosure of information from the assessment roll in response to an access request. An individual who makes an access request pays fees under the FOIP Act, rather than fees set by the council for inspecting the assessment roll. Moreover, a requestor seeks to *obtain records*, rather than to *inspect information* in the assessment rolls. Both notions involve gathering information. However, obtaining records in an access request means that an applicant may take away copies of the records, while inspecting them involves learning what the records say, but does not necessarily involve taking away copies. Moreover, the Applicant has not asked to see the assessment roll, but has asked for a spreadsheet of information in the Public Body's database that would not necessarily appear on the assessment roll.

[para 86] I conclude that section 307 of the MGA does not contain statutory authority to disclose records containing addresses to a requestor for the purposes of section 17(2)(c) of the FOIP Act. In addition, it does not appear to be the case that any other provisions of section 17(2) authorize disclosure.

[para 87] The address of an assessed person, where the person is an individual, is personal information falling within the terms of section 17(4)(g), *supra*. This is so because in many cases, it is possible to identify an individual from the individual's address. The address information is therefore subject to a presumption that it would be an

unreasonable invasion of the privacy of assessed persons to disclose their addresses and assessment information to the Applicant.

[para 88] The Public Body notes that the Applicant requires the information he has requested to further a claim to the province. It also notes that the address information is publicly available. Based on the information the Public Body provided, I conclude that the Applicant could obtain the property addresses by visiting the Public Body's website, and using the property search tool for each property. The Public Body notes that it provided information to the Applicant that could also have been obtained by going to the Land Titles Office. These factors weigh strongly in favor of disclosing the personal information in the records if the records are subject to the FOIP Act.

[para 89] If the Public Body considers these factors to weigh in favor of disclosing the address information in the records then it is open to it to decide that it will release the address information to the applicant. If the Public Body is not entirely certain that these factors outweigh privacy interests of individuals, it will be necessary for the Public Body to comply with the notice requirements set out in sections 30 and 31 of the FOIP Act, which it has not yet done.

[para 90] As I am unable to say, on the evidence before me, whether the FOIP Act applies, or does not apply, to the address information, or, if it does, whether it requires the Public Body to sever the address information from the records or to disclose it, I will direct the Public Body to make new decisions on these issues. If the Applicant is dissatisfied with the new decision, he may request review of it.

[para 91] The Public Body also makes reference to section 29 of the FOIP Act in its submissions. As the Public Body did not apply section 29 to withhold information from the records, and did not inform the Applicant of any intent to do so, except in argument, it is not strictly necessary that I do so. However, in my view, section 29 would not apply in this case. As noted above, the Applicant requested the respective assessed values, addresses, sale prices, and dates sold of all homes in High River between January 2011 and the date of his access request. The Applicant is not seeking address information in and of itself. He is seeking the address information in the context of assessed value and sale prices during a particular period. Address information absent the context of assessed value and sale prices would not be responsive to his access request.

V. ORDER

Request for Review 001083

[para 92] I make this Order under section 72 of the Act.

[para 93] I order the Public Body to prepare a new fee estimate.

[para 94] I order the Public Body to recalculate the fees for "searching for, locating or retrieving" records and "preparing and handling' records by selecting an amount of

time that will reflect the actual time that the Public Body is likely to incur in conducting these activities, exclusive of reviewing the records. (As discussed in the body of this order, "reviewing" refers to reading a record in order to make changes to it.) I order the Public Body not to charge fees for reviewing the records or any fees intended to recoup its labour costs for producing copies of records.

[para 95] I order the Public Body to recalculate the time it will spend severing information by selecting a sample record the Public Body considers reflective of the average amount of severing required of a specific category of record, and to measure the time it takes to remove the information the Public Body intends to remove. The Public Body may then add up the time taken for each instance of severing on that page and multiply that figure by the number of records to estimate the total costs for severing.

[para 96] I order the Public Body to recalculate the fees for photocopying by using the rate of $.097 per page, which is its actual cost per page for photocopying.

[para 97] I order the Public Body to provide a new estimate to the Applicant of the total fees based on the foregoing. The Applicant is not precluded from requesting review of the new estimate.

[para 98] I further order the Public Body to notify me, in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Request for Review 001980

[para 99] I order the Public Body to reconsider whether the information falls within the terms of sections 300 and 301 of the MGA, taking into account the questions about this issue raised above.

[para 100] If the Public Body decides that the address information does not fall within these provisions, and the FOIP Act does apply, then it must review the addresses to determine whether this information is personal information; that is, information about an identifiable individual, rather than a business or government entity. With regard to the information of individuals, it must then determine whether it would be an unreasonable invasion of personal privacy to disclose the address information to the Applicant. In making this determination, it may be necessary for the Public Body to follow the process set out in sections 30 and 31 of the FOIP Act.

[para 101] I further order the Public Body to notify me, in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

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Teresa Cunningham
Adjudicator