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OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2020-22

July 31, 2020

CALGARY POLICE SERVICE

Case File Number 003226

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Summary: An individual made an access request to the Calgary Police Service (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for records containing information about him. This request also included records relating to a named constable to "see if he has been suspended."

In its response, the Public Body reminded the Applicant that he had made a similar request previously, and that the Public Body had responded to that request.

With respect to some aspects of the request, the Public Body did not have records other than what it previously provided. Regarding the named constable, the Public Body continued to refuse to confirm or deny the existence of disciplinary records under section 12(2). The Public Body located some records that had not been provided in response to the previous request. The Public Body provided responsive records but withheld some information from those records under sections 17(1), 20(1), 21(1) and 24(1).

The Applicant requested an inquiry into the Public Body's response.

The Adjudicator determined that the Public Body properly refused to confirm or deny the existence of a record as authorized by section 12(2) of the Act. The Adjudicator found that work-issued cell phone numbers of Public Body employees is not personal information to which section 17(1) can apply, but upheld the Public Body's application of that exception to the remaining information withheld under that provision.

The Adjudicator found that some of the information withheld under section 20(1) could reasonably be expected to harm the effectiveness of investigative techniques and procedures if disclosed, or the security of a Public Body property or system.

The Adjudicator found that section 24(1)(b) applied in only one instance; the remaining information withheld under that provision did not reveal a consultation or deliberation between Public Body employees.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 12, 17, 20, 24, 71, 72.

Authorities Cited: AB: Decision F2014-D-01, Orders 96-006, 96-012, 99-010, 99-013, F2002-024, F2004-026, F2007-005, F2007-013, F2007-021, F2008-016, F2009-009, F2010-036, F2013-13, F2015-30, F2016-10, F2017-28, F2019-09, **ON**: PO-2911

Cases Cited: *Canada (Information Commissioner) v. Canada (Prime Minister)*, 1992 CanLII 2414 (FC), [1992] F.C.J. No. 1054, *Covenant Health v. Alberta (Information and Privacy Commissioner)*, 2014 ABQB 562, *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10 (CanLII) *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31, *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (CanLII)

I. BACKGROUND

[para 1] An individual made a request dated March 29, 2016, to the Calgary Police Service (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for:

> […] more emails on the PSS about me and I am requesting if there was a memo about me sent to other police agencies. I was told there was a memo about me from Halifax police what the Calgary police sent [to] them.
> I am requesting info in [a named constable's] record [to] see if he has been suspended and other officers who [were] dealing with me
> I want all emails from PSS and members who are slandering me saying I am crazy plus other names about me.
> I am requesting all reports about me cps how they lie

[para 2] The Public Body responded on April 28, 2016. In its response to the portion of the Applicant's request relating to emails from PSS about him, the Public Body reminded the Applicant that he had made a similar request previously, and that the Public Body had provided all records responsive to that request. The Public Body informed the Applicant that no new records had been located in response this subsequent request. The Applicant did not raise a concern about this part of the Public Body's response or its search more generally.

[para 3] The Public Body located records responsive to other aspects of the Applicant's request. The Public Body provided 114 pages of records, with some information withheld under sections 17(1), 20(1), 21(1)(b) and 24(1). The Applicant raised concerns about the Public Body's application of these exceptions.

[para 4] The Public Body also cited section 12(2) to refuse to confirm or deny the existence of disciplinary records relating to the named constable. This response is also at issue in this inquiry.

II. RECORDS AT ISSUE

[para 5] The records at issue consist of the withheld portion of the records provided to the Applicant on April 28, 2016.

III. ISSUES

[para 6] The issues as set out in the Notice of Inquiry, dated August 29, 2019, are as follows:

> Issue 1: Did the Public Body properly refuse to confirm or deny the existence of a record as authorized by section 12(2) of the Act (contents of response)?
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> > *This issue will be considered because in his access request of March 29 the Applicant asked for information respecting Cst. Bell for a second time, and the Public Body explained in its response that it had relied on section 12(2) in its earlier response to the Applicant's request for this same information; for the purposes of the present inquiry this is taken to be a renewed reliance on section 12(2) in the Public Body's response of April 28, to the March 29 request for this information.*
> >
> > *Section 59(3)(b) of the Act prohibits disclosure of whether there are records at issue when the Public Body claims an exception to disclosure under section 12(2).*
>
> Issue 2: Does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the information in the records?
>
> Issue 3: Did the Public Body properly apply section 20(1) of the Act (disclosure harmful to law enforcement) to the information in the records?
>
> Issue 4: Did the Public Body properly apply section 21(1)(b) of the Act (disclosure harmful to intergovernmental relations) to the information in the records?
>
> Issue 5: Did the Public Body properly apply section 24(1)(b) of the Act (advice from officials) to the information in the records?

IV. DISCUSSION OF ISSUES

1. Did the Public Body properly refuse to confirm or deny the existence of a record as authorized by section 12(2) of the Act (contents of response)?

[para 7] The Applicant's access request included a request for disciplinary records of a named constable. The Public Body cited section 12(2)(b) of the Act in refusing to confirm or deny the existence of any responsive records. This section states:

> *12(2) Despite subsection (1)(c)(i), the head of a public body may, in a response, refuse to confirm or deny the existence of*
>
> …
>
> *(b) a record containing personal information about a third party if disclosing the existence of the information would be an unreasonable invasion of the third party's personal privacy.*

[para 8] The Public Body has the burden of proving that it properly relied on section 12(2) (Order F2009-029 at para. 11).

[para 9] In Order F2011-010, the adjudicator set out the test for properly applying section 12(2)(b) of the Act as follows (at paras. 9-10):

> In order for a public body to properly apply section 12(2)(b) of the Act, it must do each of the following: (a) search for the requested records, determine whether responsive records exist and provide any such records to this Office for review; (b) determine that responsive records, if they existed, would contain the personal information of a third party and that disclosure of the existence of the information would be an unreasonable invasion of the third party's personal privacy; and (c) show that it properly exercised its discretion in refusing to confirm or deny the existence of a record by considering the objects and purpose of the Act and providing evidence of what was considered (Order 98-009 at paras. 8 to 10; Order 2000-016 at paras. 35 and 38).
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> Part (b) of the foregoing test was recently re-worded as requiring the public body to show that confirming the existence of responsive records, if they existed, would reveal the personal information of a third party, and to show that revealing this personal information (that the records exist, if they exist) would be an unreasonable invasion of the third party's personal privacy (Order F2010-010 at para. 14).

[para 10] The question to be answered is therefore whether it would be an unreasonable invasion of the named constable's privacy to confirm whether disciplinary records exist.

[para 11] The Public Body pointed to Order F2016-24, in which a similar access request was considered. In that Order, the adjudicator determined that the Public Body could rely on section 12(2)(b). In that case, an applicant made a request for records of

prior complaints, decisions, hearings or disciplinary action made against two named officers. The adjudicator accepted the argument that confirming the existence of such records would reveal that a complaint had been made or disciplinary action taken against the officers, because otherwise records would not exist (at para. 10). The fact that an officer had been named in a complaint or had disciplinary action taken against them would be their personal information.

[para 12] Following past Orders of this Office, the adjudicator considered whether the disclosure of that personal information would be an unreasonable invasion of the officers' privacy, using section 17 as a guide. She concluded that in the circumstances before her, the answer was 'yes'. Therefore, the Public Body was permitted to rely on section 12(2)(b) to refuse to confirm or deny the existence of such records.

[para 13] Many past Orders of this Office state that the disclosure of the names, contact information and other information about public body employees, that relates only to the employees acting in their professional capacities is not an unreasonable invasion of personal privacy under section 17(1) (see Orders 2001-013 at paras. 89-90, F2003-002 at para. 62, F2008-028 at para. 53) unless that information has a personal dimension in the circumstances. In other words, in the absence of a personal dimension, information cannot be withheld under section 17(1).

[para 14] Past Orders have also said that information relating to possibly disciplinary actions does have a personal dimension. I agree that if the Public Body confirmed the existence of disciplinary actions taken against the named constable (had any such actions been taken), doing so would reveal personal information to which section 17(1) may apply.

[para 15] I agree with the adjudicator in Order F2016-24, that the factors outlined in section 17(2)-(5) are appropriate to use in determining whether confirming or denying the existence of responsive records is an unreasonable invasion of the named constable's privacy.

[para 16] The Public Body states that section 17(4)(d) and (g)(i) apply to the constable's personal information (if such exists) that would be disclosed if the Public Body confirmed or denied the existence of responsive records. These provisions state:

> *17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.*
>
> …
>
> *(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
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> …
>
> *(d) the personal information relates to employment or educational history,*

…

(g) the personal information consists of the third party's name when

(i) it appears with other personal information about the third party,

…

[para 17] I agree that confirming or denying the existence of disciplinary records could reveal information about the named constable's employment history, as well as his name with other information. For the reasons below, I do not need to consider whether other factors also weigh against disclosure.

[para 18] In his request for inquiry, the Applicant states that he should have a right to see what the Public Body is saying about him to other police departments. He believes the Public Body has provided erroneous and/or slanderous information about him to other police departments. The Applicant's submission to the inquiry is short. He indicates a belief that members of the Public Body are trained to lie and lay false charges. He refers to section 2 of the *Charter of Rights and Freedoms* (freedom of religion, expression, assembly and association). He also indicates that he has brought civil action against another police service for lying and laying false charges.

[para 19] The Applicant has not said anything about the named constable, or why he is asking for disciplinary records relating to that constable. I do not know if the Applicant believes that disclosure of such records (or the existence of such records) is desirable to subject the Public Body's activities to public scrutiny (section 17(5)(a)). Generally, that provision applies where there are allegations of a systemic nature against a public body, rather than allegations against one public body employee (see Orders F2019-06, F2015-30).

[para 20] I also do not know if the Applicant has initiated any proceedings against the Public Body or the named constable, such that the existence of disciplinary records could relate to a fair determination of his rights (section 17(5)(c)).

[para 21] Nothing in the Applicant's sparse submissions, or the records before me that relate to the *other* aspects of the Applicant's access request, indicate that any factor under section 17(5) weigh in favour of disclosing the existence of records responsive to the Applicant's request for disciplinary records relating to the named constable.

[para 22] I find that the Public Body appropriately relied on section 12(2)(b) to refuse to confirm or deny the existence of such records.

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

[para 23] The Public Body applied section 17(1) to information of third party individuals in the records at issue. It also applied section 17(1) to cell phone numbers of Public Body employees.

[para 24] Section 17 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 25] Section 17 is a mandatory exception: if the information falls within the scope of the exception, it must be withheld.

[para 26] Under section 17, if a record contains personal information of a third party, section 71(2) states that it is then up to the applicant to prove that the disclosure would not be an unreasonable invasion of a third party's personal privacy.

[para 27] Section 1(n) defines personal information under the Act:

> *1 In this Act,*
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> …
>
> *(n) "personal information" means recorded information about an identifiable individual, including*
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> *(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 28] As discussed earlier at paragraph 13 of this Order, previous orders from this Office have found that section 17 does not apply to personal information that reveals only that the individual was acting in a formal, representative, professional, official, public or employment capacity, unless that information also has a personal dimension.

[para 29] Where this provision was applied to business contact information (such as work phone numbers of public body employees or business employees), it is not information to which section 17(1) can apply unless there is a personal dimension. In this case, the Public Body applied section 17(1) to cell phone numbers of Public Body employees appearing in email signature lines. As the cell phone numbers appear in signature lines, it seems likely that those numbers are work cell phone numbers that the employees have by virtue of their employment with the Public Body. By letter dated May 26, 2020, I directed the Public Body to past Orders that have found that the disclosure of the names, contact information and job titles of individuals acting in their professional capacities is not information to which section 17(1) applies unless that information has a personal dimension in the circumstances (Orders 2001-013 at para. 89, F2003-002 at para. 62, F2008-028 at paras. 53-54, F2017-28 at para. 27).

[para 30] I also specifically identified Order F2019-09, which discusses the application of section 17(1) to cell phone numbers assigned to public body employees for their work (see especially paragraphs 20-28).

[para 31] That Order concludes (at paras. 26 and 28):

> Employer-issued cell phone numbers (or landline numbers, for that matter) could reveal personal information about an employee if that number was associated with other personal information of the employee. For example, phone logs that reveal personal calls made by the employee to a medical specialist may constitute personal information. However, it is not the number that is personal information; the personal information is the fact that the individual contacted that medical specialist. In some circumstances, the employer-issued phone number might not be severable from the personal information, in which case it could reveal personal information as well.
>
> …
>
> I prefer the analysis from Order F2018-36 and the Ontario orders: the fact that an employee may use an employer-issued cell phone to make a personal call, or that the employee may carry the cell phone with them, does not alter the character of the work-issued cell phone *number* such that it has a personal dimension. Employees may also use landlines to make personal calls, or employer-issued email addresses to send personal emails; the occasional personal use of a work-issued phone or email address does not make the phone number (or email address) the personal information of the employee.

[para 32] The Public Body argues that the cell phone numbers issued by the Public Body have a personal dimension. The Public Body states that cell phones and numbers are issued to employees for work purposes, but that it also authorizes its employees to use the phones for personal use. The Public Body also states that employees are permitted to keep their work cell phone numbers when they retire (at which point they would have no connection to the Public Body).

[para 33] Regarding Order F2019-09, the Public Body states (at page 2):

> In Order F2019-09, the Adjudicator determined that cell phones carried by the Public Body's employees did not have a personal dimension associated to them such that section

> 17(1) could apply. This is different that the CPS issued cell phones which have a clear personal dimension in that they are authorized for personal use and the members can retain the number upon leaving the police service. It is therefore submitted that section 17(1) is applicable to protect the privacy of the individual cell phone holders.

[para 34] As stated in the excerpt of Order F2019-09 cited above, the fact that an employee is authorized to use a work-issued cell phone for personal use "does not alter the character of the work-issued cell phone *number* such that it has a personal dimension." The only distinction between the facts in Order F2019-09 and in this case, is that Public Body employees may retain the cell phone number in retirement. In my view, what happens with the Public Body-issued cell phone number *after* an employee retires does not change the character of that number while it is being used by a current employee. In other words, how a Public Body employee uses a cell phone number after the employee retires and after the number is no longer associated with the Public Body does not affect the business contact character of the number when it appears in responsive records as work contact information for a *current* employee. Whether a retiring employee chooses to continue to use that number for solely personal purposes is the choice of that [retired] employee and cannot alter the character of the number before that time. Further, whether a current employee *may* keep a Public Body-issued cell phone number after retirement is speculative while that employee continues to work for the Public Body.

[para 35] The manner in which a Public Body employee uses a work-issued phone may reveal personal information about that employee. But, as noted in Order F2019-09 (cited above), it is not the *phone number* that is personal information, unless the number is not severable from the other personal information. In this case, it is only the number at issue; there is no indication of personal use or other personal information that is associated with the withheld cell numbers that could provide a personal dimension.

[para 36] I find that the cell phone numbers of Public Body employees withheld under section 17(1) are not personal information to which section 17(1) can apply. I will consider whether this information can be withheld under section 20(1)(m) in the relevant section of this Order.

[para 37] The remaining information withheld under section 17(1) consists of name, age, birthdate and incident details relating to third party individuals. All of this information is the personal information of those individuals.

Application of section 17(2)-(5) to third party personal information

[para 38] Neither party has argued that any factors in sections 17(2) or (3) apply to the relevant information and none appear to me to apply.

[para 39] Section 17(4) lists circumstances in which disclosure of personal information is presumed to be an unreasonable invasion of privacy. The Public Body has argued that sections 17(4)(b) and (g)(i) to the third party personal information in the records. These sections state:

17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

…

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

…

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation,

…

(g) the personal information consists of the third party's name when

(i) it appears with other personal information about the third party, or

…

[para 40] Section 17(4)(b) applies to personal information that is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or continue an investigation.

[para 41] Law enforcement is defined in section 1(h) of the Act, to include:

1 In this Act,

…

(h) "law enforcement" means

(i) policing, including criminal intelligence operations,

(ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or

(iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceeding are referred;

[para 42] The records at issue are all comprised of policing records. Therefore, section 17(4)(b) applies to all of the third party personal information in those records. Section 17(4)(g) also applies, as the names of the third parties appears with at least some other information and/or the context alone reveals information about them.

[para 43] The Applicant's sparse submissions to this inquiry do not address the third party personal information in the records, or what factors might apply that would weigh

in favour of disclosure. There are no factors weighing in favour of disclosure apparent to me from the submissions or the records before me. Therefore, as at least two factors weigh against disclosure and no factors weigh in favour. With the exception of the Public Body-issued cell phone numbers discussed above, I find that the Public Body properly applied section 17(1) to the third party personal information in the records at issue.

3. Did the Public Body properly apply section 20(1) of the Act (disclosure harmful to law enforcement) to the information in the records?

[para 44] The Public Body applied section 20(1)(c) to discrete items of information in the records at issue. The Public Body also applied section 20(1)(m) to information in the records at issue. In many instances, it applied that provision to the same information withheld under section 20(1)(c) but in some instances only section 20(1)(m) was applied.

[para 45] The Applicant provided a picture of the Public Body's response to his access request, with the request for review. These pictures are difficult to decipher; however, it seems that the Public Body applied section 20(1)(m) to information from the outset. In other words, this is not a new decision of the Public Body. Therefore, that issue should have been included in the Notice of Inquiry and I will consider the Public Body's application of that exception here. The Applicant's submissions to this inquiry did not address any particular exception applied by the Public Body; given this, and that the Applicant was informed of the application of this exception by the Public Body in its initial response to his access request, I did not specifically ask the Applicant to speak to the Public Body's application of section 20(1)(m).

[para 46] These provisions states:

> *20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to*
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> …
>
> *(c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,*
>
> …
>
> *(m) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system,*
>
> …

[para 47] Past Orders of this Office have described the purpose and scope of section 20(1)(c) as giving a public body the discretion to withhold information relating to investigative techniques and procedures in situations where general knowledge of the investigative technique or procedure would reduce effectiveness. The harms test in the provision precludes its application to basic information about well-known investigative techniques (see Orders 99-010, at para. 78, F2007-005, at para. 9, and F2009-009 at para. 91).

[para 48] In Order F2007-005, the adjudicator considered what is meant by "investigative techniques and procedures". She said (at paras. 11-13):

> The *Concise Oxford Dictionary* (9th Edition) provides the following definition of "investigate": "a) inquire into; examine, study carefully b) make a systematic inquiry or search". "Investigative" is defined as "seeking or serving to investigate".
>
> *Black's Law Dictionary* (8th Edition) defines "investigate" as "to inquire into (a matter) systematically; to make (a suspect) the subject of a criminal inquiry"
>
> "Investigative techniques and procedures", under 20(1)(c), then, would refer to techniques and procedures used to conduct an investigation or inquiry for the purpose of law enforcement. In my view, apprehension and pursuit of a suspect may be consequences of an investigation, but do not form part of the investigation or inquiry process itself.

[para 49] Section 20(1)(m) permits the Public Body to withhold information if the disclosure of that information could reasonably be expected to harm the security of any property or system.

[para 50] Both section 20(1)(c) and (m) require the Public Body to satisfy the same 'harms test': that disclosure could reasonably be expected to result in the harm described in the provision.

[para 51] The Supreme Court of Canada has clearly enunciated the test to be used in access-to-information legislation wherever the phrase "could reasonably be expected to" is found (such as in section 20(1)(c)). The Supreme Court of Canada stated in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31, stated (at para. 54):

> This Court in *Merck Frosst* adopted the "reasonable expectation of probable harm" formulation and it should be used wherever the "could reasonably be expected to" language is used in access to information statutes. As the Court in *Merck Frosst* emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach that middle ground: paras. 197 and 199. This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and "inherent probabilities or improbabilities or the seriousness of the allegations or consequences": *Merck Frosst*, at para. 94, citing *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41, at para. 40.

[para 52] The Supreme Court of Canada has made it clear that there is one evidentiary standard to be used wherever the phrase "could reasonably be expected to" appears in access-to-information legislation. There must be a reasonable expectation of probable harm, and the Public Body must provide sufficient evidence to show that the likelihood of any of the above scenarios is "considerably above" a mere possibility.

[para 53] In *Canada (Information Commissioner) v. Canada (Prime Minister)*, 1992 CanLII 2414 (FC), [1992] F.C.J. No. 1054, Rothstein J., as he then was, made the

following observations in relation to the evidence a party must introduce in order to establish that harm will result from disclosure of information. He said (emphasis added):

> While no general rules as to the sufficiency of evidence in a section 14 case can be laid down, what the Court is looking for is support for the honestly held but perhaps subjective opinions of the Government witnesses based on general references to the record. Descriptions of possible harm, even in substantial detail, are insufficient in themselves. At the least, there must be a clear and direct linkage between the disclosure of specific information and the harm alleged. The Court must be given an explanation of how or why the harm alleged would result from disclosure of specific information. If it is self-evident as to how and why harm would result from disclosure, little explanation need be given. Where inferences must be drawn, or it is not clear, more explanation would be required. The more specific and substantiated the evidence, the stronger the case for confidentiality. The more general the evidence, the more difficult it would be for a court to be satisfied as to the linkage between disclosure of particular documents and the harm alleged.

[para 54] The "harm test" must be applied on a record-by-record basis (Orders F2002-024, at para. 36, F2009-009, at para. 91).

[para 55] Sections 20(1)(c) and (m) were applied together in most instances; section 20(1)(m) was applied alone to discrete items of information on pages 20 and 33; it was also applied alone to contact information of Public Body employees from the Real Time Operations Centre (RTOC) in their email signature lines, including direct phone numbers, the main office number, and fax numbers. In two instances a cell phone number was also withheld but the Public Body cited section 17(1) for those numbers, and not section 20(1)(m).

Application of section 20(1)(m) to contact information

[para 56] I asked the Public Body for additional information regarding the application of section 20(1)(m) to contact information of Public Body employees. The Public Body responded (June 16, 2020 response, at page 2):

> … there are some circumstances where business contact information needs to be protected to ensure the security of the system and by that we mean that the telephone system is not abused and used to harass employees of the public body. The use of 20(1)(m) for this purpose was endorsed by the adjudicator in the recently issued Order F2020-13. At para. 303 the Adjudicator said:
>
> > In this case, the CPS argues that the harms test set out for section 20(1) of the Act (see, e.g. in Order F2010-008) is met by the disclosure of police cell phone numbers because members of the public who are involved in criminal activities, such as dangerous offenders and gang members, could use the information to contact retired or off-duty officers to threaten of harass them. Such factors were not put forward or considered in Order F2010-008. I accept that this could be a possible result of public access to these numbers and that the provision applies. I uphold the redaction of the cell phone numbers on this page, including the exercise of discretion.

> The Adjudicator did [note] that there was a personal element to the cell phone numbers as well such that section 17(1) may apply and I have dealt with that issue above. When it comes to desk lines where section 17(1) does not apply the only tool the public body has to protect its employees from telephone harassment and misuse of the phone system is section 20(1)(m).
>
> As is evident from the records at issue in this case, the Applicant suffers from a significant mental illness that negatively affects the way he engages with the police. Section 20(1)(m) was applied to prevent misuse of the phone numbers by the Applicant. The Applicant is openly anti-police and, again as the records at issue disclose, he is considered a risk to law enforcement officers.

[para 57] The Public Body then referred to particular information in the records at issue that contain assessments of the Applicant and his aggressive behaviour toward police.

[para 58] The Public Body did not apply section 20(1)(m) to the cell phone numbers in the records at issue, either alone or in conjunction with section 17(1). Rather, the Public Body applied section 20(1)(m) only to landlines assigned to certain employees, specifically landline numbers assigned to Real Time Operations Centre (RTOC) employees, as well as a main office line and fax line associated with the RTOC. Email addresses relating to RTCO employees were disclosed. Landlines assigned to other Public Body employees were not withheld at all (although their cell phone numbers were withheld under section 17(1)). (In one instance on age 102, the landline for a non-RTOC employee was withheld under section 20(1)(m) but this appears to be an error as that same number has been disclosed several times on other pages).

[para 59] Three phone numbers withheld under section 20(1)(m) were handwritten or typed into an email (as opposed to appearing in an email signature line) and it is not clear to whom those numbers relate.

[para 60] The Public Body's submissions on this point do not address why it applied section 20(1)(m) to business contact information relating to the RTOC and employees working in this area, but disclosed the contact information of other Public Body employees. It also did not explain why this provision was not applied to cell phone numbers.

[para 61] Past Orders address the application of section 18(1)(a) (disclosure that could reasonably be expected to threaten anyone's health or safety) to contact information of public bodies. In Order F2017-60, I accepted that the names and contact information of Civil Forfeiture Office (CFO) employees in Justice and Solicitor General could be withheld under section 18(1). The CFO restrains and forfeits property found to be obtained by crime or used to commit a crime.

[para 62] The evidence I considered persuasive in that case, as discussed in the order, included the fact that steps were taken to ensure that these employees do not deal directly

with individuals whose property is seized; even contact with services providers is done with a general email address and not an address that identifies the individual employee.

[para 63] A similar argument was rejected in Order F2019-09. In that Order I said (at paras. 50-51):

> In this case, the Public Body has told me that it has had to implement a communications protocol with respect to five individuals who subjected Public Body employees to abusive or harassing phone calls. These individuals are instructed to communicate with the Public Body through a single point of contact. The Public Body provided me with a copy of a letter written to one of these individuals, which details the restrictions placed on the individual in communicating with Public Body employees.
>
> As noted in Orders F2004-029 and F2017-60, it is not unusual for public body employees to deal with difficult, aggressive, harassing, abusive, or even violent individuals. The Public Body has a communications protocol to address these individuals, such that Public Body employees are not required to handle those calls, outside the single point of contact. Absent additional evidence of a specific threat or harm, the fact that some individuals are abusive on the phone is not sufficient to meet the standard required by section 18(1).

[para 64] While this analysis dealt with section 18(1)(a), it is relevant to the discussion here. The Public Body has also alleged that harm would result from disclosure of contact information, in the form of harassing phone calls.

[para 65] Section 20(1)(m) applies where disclosure of information could reasonably be expected to harm the *security of a system or property*. The Public Body has not explained how receiving harassing phone calls from the Applicant or any other individual could *harm the security* of its phone systems. The Public Body has not mentioned the security of its phone systems, or how disclosing the contact information could reasonably be expected to harm the security of that system. As stated by the Supreme Court of Canada (cited above), there must be a reasonable expectation of probable harm, and the evidence must be 'well beyond or considerably above' a mere possibility.

[para 66] In this case, the Public Body has said only that the Applicant has a propensity to harass police. I have no reason to doubt the veracity of this statement. However, I have not been provided with any evidence as to how such harassment could harm the security of a Public Body system, and the likelihood of such harm occurring.

[para 67] It is possible that where a phone number for on-duty Public Body employees (whether a landline or cell number) is being abused such that it is effectively unusable by the employee while they are performing work duties. For example, if an on-duty officer's cell phone number is being abused by being called continually, the officer may not be able to use the phone to conduct their work duties. It is not clear to me that such a situation could be said to harm the *security* of a Public Body system. In any event, the Public Body has not presented such an arguments or an explanation as to how it could fit within the terms of section 20(1)(m).

[para 68] Further, the Public Body has not explained why the harm would occur only with respect to the particular contact information of RTOC employee disclosed, as opposed to the business contact information of other Public Body employees that was disclosed to the Applicant or withheld under section 17(1).

[para 69] If the Public Body's arguments relate to a system other than the phone system generally, and/or a system that applies to the RTOC area in particular, it has not said so.

[para 70] I find that the Public Body failed to meet its burden to show that section 20(1)(m) applies to the contact information in the records. As no other provisions were applied to this information, I will order the Public Body to disclose it to the Applicant.

Application of section 20(1)(m) to remaining information

[para 71] In Order F2016-10, I considered whether the disclosure of video from the Calgary Remand Centre could be withheld under section 20(1)(m). Citing Order PO-2911 from the Ontario Information and Privacy Commissioner on a similar issue, I accepted the application of section 20(1)(m) to video that showed areas of the Remand Centre that were not otherwise observable by inmates or the public (at para. 21):

> … I accept the Public Body's arguments that disclosing the video recording could reasonably be expected to harm the security of the CRC. As in the circumstances in Ontario Order PO-2911, the video recording reveals a maximum security unit in the CRC; the adjudicator in that Order found that "the video could suggest potential security vulnerabilities by revealing the manner in which the day space is recorded by the video camera, thereby jeopardizing the security of the Correction Centre" (cited above). Further, in this case, the video could suggest potential security vulnerabilities by revealing the guard movements during an incident with an inmate; movements that were not otherwise observable by inmates.

[para 72] The records in this case do not relate to a correctional facility; however, the above analysis applies to one item of information withheld under section 20(1)(m). That information reveals routine or systemic police presence at locations; disclosing that information could reveal vulnerabilities at those or other locations.

[para 73] With respect to the information withheld under both section 20(1)(c) and (m), the Public Body has provided its detailed arguments *in camera*, as those arguments would reveal information in the records at issue and/or other information to which section 20(1) might apply (i.e. it reveals policing techniques). As I cannot reveal the information I accepted *in camera*, the reasons in this Order will be sparse.

[para 74] I accept that in this particular case the purpose of the policing technique or procedure would be undermined if the information were revealed to the Applicant. I accept that the harm could reasonably be expected to occur, for the reasons put forward by the Public Body *in camera*.

[para 75] On page 104, the Public Body applied section 20(1) to the first part of a sentence, and section 24(1)(b) to the second part of that sentence. For the reasons provided in the relevant section of this Order, section 24(1) does not apply to the second part of the sentence.

[para 76] That said, the first and second parts of the sentence both deal with the same subject matter, and reveal the same policing techniques or procedures that are not known to the public. For the reasons above, I accept the Public Body's application of section 20(1) to the information on page 104. For the reasons provided below, I also accept the Public Body's reasons for exercising its discretion to withhold this information.

[para 77] It would be nonsensical to permit the Public Body to withhold the first part of the sentence under section 20(1) and order it to disclose the second part of the sentence. Disclosing the second part of the sentence would undermine the purpose of withholding the first part. Given this, and because the Public Body's arguments regarding the application of section 20(1) clearly apply to the second part of the sentence, I conclude that the Public Body may withhold the information to which it applied section 24(1) on page 104 under section 20(1).

[para 78] Although rare, this situation is not without precedent. In Order F2008-016, the adjudicator found that the exceptions cited by a public body for withholding certain information did not apply, but that another discretionary exception applied. In that case, the adjudicator cited former Commissioner Order F2004-026, where he said (at para. 52):

> I have noted the Applicant's point that the Public Body cannot have been properly exercising its discretion under a particular provision when it did not even have that provision in mind. I agree that at the time of the initial response, there was a defect in the way the Public Body exercised its discretion, in that it did not have precisely the right provisions in mind for some of the documents. However, as I noted earlier, the principle behind the provisions…was the same for both the provisions initially referenced, and the later ones. This detracts significantly from the idea that the failure to name the right provisions at a particular point in time should preclude the ability to withhold documents in the final result.

[para 79] The adjudicator applied this reasoning to the facts before her, finding (at para. 149):

> In Order F2004-026, the Commissioner was faced with a situation where the public body raised an exclusion late in the process and not at the time of the initial response to the Applicant. I understand that allowing the EPS to withhold information under section 27(1)(b) and 27(1)(c) of the Act takes this analysis a step further, but I feel it is appropriate to do so in these limited circumstances, for the same principles as those on which the Commissioner relied on in Order F2004-026.

[para 80] This rationale applies in this case as well, as the Public Body's reasons for applying section 20(1) to one part of the sentence apply equally to the second part withheld under section 24(1).

Exercise of discretion

[para 81] Section 20(1) is a discretionary exception. In *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (CanLII), the Supreme Court of Canada commented on the authority of Ontario's Information and Privacy Commissioner to review a head's exercise of discretion.

[para 82] The Supreme Court of Canada confirmed the authority of the Information and Privacy Commissioner of Ontario to quash a decision not to disclose information pursuant to a discretionary exception and to return the matter for reconsideration by the head of a public body. The Court also considered the following factors to relevant to the review of discretion:

- the decision was made in bad faith
- the decision was made for an improper purpose
- the decision took into account irrelevant considerations
- the decision failed to take into account relevant considerations

[para 83] In Order F2010-036 the adjudicator considered the application of the above decision of the Court to Alberta's FOIP Act, as well as considered how a public body's exercise of discretion had been treated in past orders of this Office. She concluded (at para. 104):

> In my view, these approaches to review of the exercise of discretion are similar to that approved by the Supreme Court of Canada in relation to information not subject to solicitor-client privilege in *Ontario (Public Safety and Security)*.

[para 84] In *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10 (CanLII) (*EPS*), the Court provided detailed instructions for public bodies exercising discretion to withhold information under the Act. This decision was issued after the Public Body provided its submissions to this inquiry. However, it might be helpful for the Public Body to review the discussion.

[para 85] The Court said (at para. 416)

> What *Ontario Public Safety and Security* requires is the weighing of considerations "for and against disclosure, including the public interest in disclosure:" at para 46. The relevant interests supported by non-disclosure and disclosure must be identified, and the effects of the particular proposed disclosure must be assessed. Disclosure or non-disclosure may support, enhance, or promote some interests but not support, enhance, or promote other interests. Not only the "quantitative" effects of disclosure or non-disclosure need be assessed (how much good or ill would be caused) but the relative importance of interests should be assessed (significant promotion of a lesser interest may

> be outweighed by moderate promotion of a more important interest). There may be no issue of "harm" in the sense of damage caused by disclosure or non-disclosure, although disclosure or non-disclosure may have greater or lesser benefits. A reason for not disclosing, for example, would be that the benefit for an important interest would exceed any benefit for other interests. That is, discretion may turn on a balancing of benefits, as opposed to a harm assessment.

[para 86] It further explained the weighing of factors at paragraph 419:

> …If disclosure would enhance or improve the public body's interests, there would be no reason not to disclose. If non-disclosure would benefit the public body's interests beyond any benefits of disclosure, the public body should not disclose. If disclosure would neither enhance nor degrade the public body's interests, given the "encouragement" of disclosure, disclosure should occur. Information should not be disclosed only if it would run counter to, or degrade, or impair, that is, if it would "harm" identified interests of the public body.

[para 87] Lastly, the Court described burden of showing that discretion was properly exercised (at para. 421):

> I accept that a public body is "in the best position" to identify its interests at stake, and to identify how disclosure would "potentially affect the operations of the public body" or third parties that work with the public body: EPS Brief at para 199. But that does not mean that its decision is necessarily reasonable, only that it has access to the best evidence (there's a difference between having all the evidence and making an appropriate decision on the evidence). The Adjudicator was right that the burden of showing the appropriate exercise of discretion lies on the public body. It is obligated to show that it has properly refrained from disclosure. Its reasons are subject to review by the IPC. The public body's exercise of discretion must be established; the exercise of discretion is not presumptively valid. The public body must establish proper non-disclosure. The IPC does not have the burden of showing improper non-disclosure.

[para 88] In its June 16, 2020 response, the Public Body states that the harm to police officers that could result from disclosing the information withheld under section 20(1) overrode factors that weigh in favour of disclosure, such as the purpose of the FOIP Act and the value of providing the Applicant with personal information about him. The Public Body further states (at pages5-6):

> Again, in exercising its discretion to protect the information in question as a matter of officer safety, the CPS recognizes the decision has a detrimental effect on transparency and therefore the CPS has taken care to excise only that information which would undermine or harm the communication system in question or which would harm the effectiveness of an investigative technique or procedure currently used.

[para 89] I accept that the Public Body considered the appropriate factors in exercising its discretion to withhold information under section 20(1).

4. Did the Public Body properly apply section 21(1)(b) of the Act (disclosure harmful to intergovernmental relations) to the information in the records?

[para 90] The information withheld under section 21(1)(b) was also withheld under section 20(1). I have found that this information was properly withheld under section 20(1) and so do not need to decide whether section 21(1)(b) also applies.

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

[para 91] The Public Body applied section 24(1)(b) information on pages 39, 63, 64, 65, 102 and 104. This section 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,*
>
> *(b) consultations or deliberations involving*
>
> *(i) officers or employees of a public body*
>
> *(ii) a member of the Executive Council, or*
>
> *(iii) the staff of a member of the Executive Council,*
>
> …

[para 92] A "consultation" occurs when the views of one or more officers or employees are sought as to the appropriateness of particular proposals or suggested actions; a "deliberation" is a discussion or consideration, by persons described in section 24(1)(b), of the reasons for and/or against an action (Orders 96-006 at p. 10 or para. 48; Order 99-013 at para. 48, F2007-021, at para. 66).

[para 93] The test for sections 24(1)(a) and (b), as stated in past Orders, is that the advice, recommendations etc. (section 24(1)(a)) and/or the consultations and deliberations (section 24(1)(b)) should:

1. be sought or expected, or be part of the responsibility of a person by virtue of that person's position,
2. be directed toward taking an action,
3. be made to someone who can take or implement the action. (See Order 96-006, at p.9)

[para 94] In Order F2013-13, the adjudicator stated that the third arm of the above test was overly restrictive with respect to section 24(1)(a). She restated that part of the test as "created for the benefit of someone who can take or implement the action" (at paragraph 123).

[para 95] In *Covenant Health v. Alberta (Information and Privacy Commissioner)*, 2014 ABQB 562, the Court noted (at footnote 87) that it would be overly restrictive to interpret the third part of the above test to mean that one of the persons

participating in the consultation or deliberation under section 24(1)(b) must have authority to take or implement an action. This finding is consistent with the adjudicator's comments in Order F2013-13: the person with authority to take an action or implement a decision needn't necessarily have received the advice or been part of every consultation or deliberation for either section 24(1)(a) or (b) to apply. The advice or consultations must be aimed at some action or decision but needn't necessarily hit the mark.

[para 96] Further, sections 24(1)(a) and (b) apply only to the records (or parts thereof) that reveal substantive information about which advice was sought or consultations or deliberations were being held. Information such as the names of individuals involved in the advice or consultations, or dates, and information that reveals only the fact that advice is being sought or consultations held on a particular topic (and not the *substance* of the advice or consultations) cannot generally be withheld under section 24(1) (see Order F2004-026, at para. 71).

[para 97] Bare recitation of facts or summaries of information also cannot be withheld under sections 24(1)(a) or (b) unless the facts are interwoven with the advice, proposal, recommendations etc. such that they cannot be separated (Order F2007-013 at para. 108, Decision F2014-D-01 at para. 48). As well, neither section 24(1)(a) nor (b) apply to a decision itself (Order 96-012, at paras. 31 and 37).

[para 98] Given these limits on the application of section 24(1), even where it applies to information on a page, it is often the case that portions of a page will be disclosed with discrete items of information withheld (i.e. more often than not, entire pages cannot be withheld under this provision). Public bodies must therefore conduct a line-by-line review of each page in order to apply section 24(1) appropriately.

[para 99] The first step in determining whether section 24(1)(b) was properly applied is to consider whether a record would reveal consultations or deliberations between specified individuals.

[para 100] The information withheld under section 24(1)(b) on pages 39, 63, 64, and 65 is described in the Public Body's submission as "information or advice [that] was solicited from or provided by a CPS officer (an employee of the public body) and another police force" (submission at para. 50).

[para 101] From the records, I would characterize this information as a request from another police service to the Public Body for a particular record, and the Public Body's response to that request. A request for a record is not the same as a request for advice or a consultation. There is no apparent consultation or deliberation as to how the Public Body should respond; nor is there an apparent consultation or deliberation between the Public Body and the other police service.

[para 102] I presented these concerns to the Public Body by letter dated May 26, 2020. It responded that the information on pages 39, 63, 64 and 65 are deliberations of Public

Body employees "faced with a request from the Halifax police to provide certain information" (response dated June 16, 2020, at page 4). It further states:

> The redactions protect the substance of the deliberations as to how to respond to that request and whether the information will be provided or not. The redacted information consists of the factors that went into that deliberation and therefore would reveal the nature of the deliberation. As indicated in Order F2004-026 deliberations include the information that a decision maker relied on so to the extent that some of the information appears factual, that is the information that the CPS decision maker regarding the disclosure of certain information relied upon.

[para 103] I agree with the Public Body that section 24(1)(b) would apply to factual information that reveals the substance of deliberations; however, the information does not indicate any deliberations occurred. I have reviewed the records again with the Public Body's response in mind, but cannot identify the deliberation the Public Body has referred to. A request for a record came to the Public Body from another police force. An employee of the Public Body responded to that request.

[para 104] The Public Body's submission cited above indicates that the Public Body deliberated as to how to respond. The employee's response recorded at page 39 does contain a reason for their response to the other police service. In some cases, reasons for a decision can reveal deliberations that took place when coming to that decision, if such occurred. As noted, I cannot locate deliberations or consultations in the records.

[para 105] Even if a consultation or deliberation is not contained in the records, section 24(1)(b) could apply to information that would *reveal* the substance of a consultation or deliberation. In this case, the records do not reveal or indicate that a consultation or deliberation occurred and/or that the reason provided at page 39 resulted from a consultation or deliberation. Absent evidence in the records, it is incumbent upon the Public Body to provide support for its claim that a consultation or deliberation occurred, and how the substance of that consultation or deliberation would be revealed by the police service request and the Public Body employee's answer. In this case, the Public Body has not provided any such explanation. The reason provided at page 39 could easily be characterized as a rule or policy that is being followed, that does not require consultation or deliberation to apply.

[para 106] The information in the records indicate a conversation between the Public Body and the other police service, consisting of a question and answer. For a conversation to amount to a consultation or deliberation, there must be some indication that a decision is to be made and advice is being sought in relation to that decision. "What should I/we do" and/or "here is what you/we should do" is generally at least implied in the exchange of information.

[para 107] Not every conversation with a question and answer falls within the scope of a consultation or deliberation for the purposes of section 24(1)(b). For example, one person might ask another "should I adopt this dog?" The resulting exchange might consist of the pros and cons of adopting the dog. Such an exchange may constitute a

consultation or deliberation. However, the question "can I adopt this dog?" with the answer "no. That is not a dog" cannot be characterized as a consultation or deliberation even though it consists of a question and an answer (and reasons).

[para 108] I considered whether the consultation or deliberation is taking place between the other police service and the Public Body (rather than between Public Body employees). In my view, the question and answer (and reason for the answer) are more akin to the second example above, than the first.

[para 109] Some of the withheld information can be characterized as the rationale behind other police service's request for the document. This rationale was recorded but there is no indication that it was considered or deliberated between Public Body employees when deciding how to respond. There is no other indication that a consultation or deliberation occurred between the other police service and the Public Body regarding the request and response. In other words, the other police service doesn't appear to be asking the Public Body's advice about the requested record such that there may have been a consultation or deliberation between the other police service and the Public Body.

[para 110] I find that section 24(1)(b) does not apply to the information withheld under that provision on pages 39, 63, 64 or 65.

[para 111] The information withheld on page 102 is a recommendation or suggestion from one Public Body employee, with a request for input from others. It seems clear from the records that the employee posing the suggestion and those to whom it was sent, have an appropriate role with respect to discussing and making a decision with respect to the suggestion posed. I find section 24(1)(b) applies to this information.

[para 112] The information on page 104 is a statement from a Public Body employee relaying a decision, and the reason for the decision. There is no request for input and the decision seems to have been made. Section 24(1)(a) cannot apply to such information. In its June 16, 2020 response, the Public Body concedes that this information relays a decision. It provided additional information in its *in camera* portion of that response, which I cannot reveal here. However, I have found that section 20(1) applies to this information, for the reasons provided in the relevant section of this Order.

Exercise of discretion

[para 113] In its June 16, 2020 response, the Public Body states (at page 4):

> With respect to the detrimental effect of disclosing information relating to the seeking of advice or consultations or deliberations involving CPS members, it is essential that CPS employees feel free to ask questions and discuss process or various potential courses of action without fear of their questions or consultations being made public. The threat of public disclosure has a distinctly chilling effect on those who might be in a position to seek a consultation or advice.

> CPS members are required to make decisions that can have far reaching impact on the lives of individuals. As such, the seeking of advice and consultation on decisions is an important part of making sure the best decisions get made. When people do not feel free to consult or seek advice or are concerned that their consultations and questions may be the subject of an access to information request, advice is not sought, mistakes happen and the ability of members to learn from others is negatively impacted. For these reasons the CPS has exercised its discretion to protect these types of consultations it is submitted this is a reasonable exercise of the discretion associated with the application of s. 24(1).

[para 114] This explanation suggests that the Public Body applies section 24(1) in a 'blanket' manner, rather than on a case-by-case basis. Specifically, this is indicated by the Public Body's reference to exercising its discretion to withhold "these types of consultations." Section 24(1)(b) can apply to a broad range of consultations and deliberations; some consultations or deliberations might be quite innocuous. Not all information to which this exception can apply will have a 'chilling effect' if disclosed. I understand the Public Body's above explanation to mean that it exercises its discretion to withhold information under section 24(1)(b) in all cases, to avoid any chilling effect. That is not a proper exercise of discretion.

[para 115] Noting the purposes of the Act in general and the purpose of the exception in particular, is not a sufficient explanation. Aside from noting the values of openness and transparency that weigh in favour of disclosure, the Public Body did not indicate whether it considered whether other factors weigh in favour of disclosure, such as the Applicant's interest in the information. The Public Body also did not explain how the particular information withheld under section 24(1)(b) fulfills the purpose of that exception (i.e. why it is not innocuous information). The Public Body's explanation of its exercise of discretion to apply section 20(1) (discussed in the relevant section of this Order) is not relevant to section 24(1) and does not help fill the gaps with respect to the exercise of discretion to apply section 24(1).

[para 116] I have upheld the Public Body's application of section 24(1)(b) in only one instance. Even so, the Supreme Court of Canada in *Ontario (Public Safety and Security)* and more recently the Court in *EPS* have discussed at length the importance of public bodies taking all relevant factors into consideration when exercising discretion to withhold particular information.

[para 117] I will order the Public Body to reconsider its exercise of discretion to withhold information under section 24(1). If the Public Body continues to exercise its discretion to withhold information, I will order it to provide the Applicant with its reasons.

V. ORDER

[para 118] I make this Order under section 72 of the Act.

[para 119] I find that the Public Body the Public Body properly refused to confirm or deny the existence of a record as authorized by section 12(2) of the Act.

[para 120] I find that the information described at paragraph 36 of this Order is not personal information to which section 17(1) can apply. As no other exception has been applied, I order the Public Body to disclose that information to the Applicant.

[para 121] Except the information described at paragraph 36, I confirm the Public Body's decision to withhold third party personal information under section 17(1).

[para 122] I find that section 20(1)(m) does not apply to the business contact information withheld under that provision, as discussed at paragraph 70 of this Order. As no other exception has been applied, I order the Public Body to disclose this information to the Applicant.

[para 123] I find that section 20(1) applies to the remaining information withheld under that provision, as well as the information on page 104, described at paragraphs 75-77 of this Order.

[para 124] I find that section 24(1)(b) does not apply to the information withheld under that provision on pages 39, 63, 64 and 65. As no other exception has been applied, I order the Public Body to disclose that information to the Applicant.

[para 125] I find that the Public Body properly applied section 24(1)(b) to the information on page 102.

[para 126] I order the Public Body to exercise its discretion to withhold information under sections 24(1), per paragraph 117 of this Order.

[para 127] 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.

_____

Amanda Swanek
Adjudicator