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OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2021-26

June 29, 2021

CITY OF CALGARY

Case File Number 009032

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Summary: The Applicant was involved with a third party (the Third Party) in a dog attack. The Applicant complained about the dog attack to the City of Calgary (the Public Body). Subsequently, the Applicant made an access to information request to the Public Body under the *Freedom of Information and Protection of Privacy Act* (the Act). Without specifying any of his interests in the requested information, the Applicant requested all records containing information related to him from several parts and employees of the Public Body.

The Public Body initially provided 25 pages of responsive records, and a further 134 pages after clarifying the access request. It withheld information under sections 17(1) and 24(1)(a) and (b) of the Act, and on the basis that information was non-responsive. The Applicant alleged that the Public Body failed to properly respond to the access request as required by section 10(1) of the Act, and improperly withheld information under sections 17(1), 24(1), and on the basis that it was non-responsive.

The Adjudicator found that the Public Body met its duties under section 10(1) of the Act, and properly withheld information as non-responsive. The Adjudicator found that the Public Body properly withheld information under section 17(1), with the exception of employee contact information.

The Adjudicator found that the Public Body applied sections 24(1)(a) and (b) only to information captured within their terms.

The Adjudicator found that the Public Body did not establish that it properly exercised its discretion to withhold information under section 24(1). The Public Body did not identify all relevant interests or explain how it weighed its considerations. The Adjudicator also found that, in the absence of a statement from the Applicant about his interests, the Public Body erred when it assumed that the Applicant's interests were limited to those that the context of the access request suggested that he had.

The Adjudicator ordered the Public Body to determine whether the employee contact information has a personal dimension to it, and to reconsider whether disclosing it is an unreasonable invasion of third party personal privacy under section 17(1) of the Act.

The Adjudicator ordered the Public Body to reconsider its exercise of discretion under section 24(1).

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 1(n)(i), 1(n)(iii), 1(n)(iv), 1(n)(vi); 10(1); 17(1), 17(4), 17(4)(a),17(4)(g)(i), 17(4)(g)(ii); 17(5), 17(5)(a), 17(5)(e), 17(5)(f), 17(5)(i); 24(1), 24(1)(a), 24(1)(b); 72.

Authorities Cited: AB: Orders 96-006, 97-006, 2000-019, 2000-030, F2004-008, F2004-16, F2004-024, F2007-029, F2013-13, F2013-40, F2013-51, F2017-57, F2018-36, F2019-17, F2020-03

Cases Cited: *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2015 ABQB 246; *Edmonton (City) v Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110; *Edmonton Police Service v Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10; *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23

I. BACKGROUND

[para 1] The Applicant states that on November 10, 2017, he and his dog were attacked by another individual's (the Third Party) dog in a parking lot. The Applicant took a photo of the Third Party's car that day. Subsequently, the Applicant filed a complaint about a "serious dog attack" with the City of Calgary (the Public Body).

[para 2] The Applicant was unsatisfied with the Public Body's response to his complaint and on numerous occasions in November and December 2017, he contacted the Public Body to follow up on it. He found the Public Body was "hostile and

belligerent" toward him during these interactions. On December 6, 2017, the Public Body informed the Applicant that it had investigated his complaint and issued a violation ticket to the Third Party.

[para 3] On January 30, 2018, the Applicant made an access to information request to the Public Body under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act). In his access request, he described the records that he was requesting as follows:

> Any and all records held or used by anyone at Animal Services or any bylaw office. Any and all records held or used by [name of Public Body's Director of Community Standards] or anyone associated with him, also any and all records that may reside with [General Manager of the Public Body's Community Services Department] or anyone in his office or work with him. Names of persons in animal services or bylaw include [Name of Officer], [Name of Public Body's Bylaw Inspector], [Name of the Head of Animal Services]…Also any records from [Name of Calgary Police Sergeant] (I do not have the spelling - tried all and they could not supply correct spelling) Also any format of any records I am requesting, audio, visual, digital notes – any format.
>
> There also may be employees I am not aware of having records - so I am requesting any and all records from any Bylaw employees that contain information related to me even if not by name ie referring to me. [sic]

[para 4] On January 31, 2018, the Public Body's Access and Privacy Analyst clarified the scope of the access request with the Applicant, over the telephone. According to the Access and Privacy Analyst, "the Applicant stated that everyone specifically named in the Request and anyone under the supervision of [Public Body's Director of Community Standards] and [General Manager of the Public Body's Community Services Department] (two of the individuals named in the Request) should search for responsive records."

[para 5] On February 2, 2018, the Public Body's FOIP Administrator contacted the Applicant and further clarified his request. According to the Access and Privacy Analyst, the FOIP Administrator advises that the Applicant clarified that he was only seeking records held by CCS South Region staff, within Animal Services. The Applicant also provided several service request numbers that he believed were relevant to the search for records.

[para 6] The Applicant did not comment on, or deny, the Public Body's description of the telephone calls.

[para 7] After extending the deadline to reply to the access request, on March 1, 2018, the Public Body provided the Applicant its initial response to his access request. The Public Body provided 25 pages of responsive records, withholding some information under sections 17(1) and 24(1) of the Act, and on the basis that information is not

responsive to the access request. The Public Body also provided one video record without redaction.

[para 8] Page five of the initial response is a "Location Alert" e-mail (the Location Alert), dated October 16, 2017. The Location Alert states that the Applicant had threatened "to kill a dog owner and poison the dog." The Applicant strenuously denies doing so. The Applicant only learned of the Location Alert when the Public Body provided it in response to the access request.

[para 9] On March 16, 2018, the Applicant requested that the Public Body conduct a further search for records in response to his access request, and followed up with an e-mail clarifying the scope of the further search, on March 21, 2018. On April 30, 2018, the Public Body provided a further 134 pages of records to the Applicant (the second release). The Public Body withheld some information, under sections 17(1) and 24(1) of the Act.

[para 10] The Applicant filed a request for review of his access request with this Office on May 1, 2018. Investigation and mediation were authorized to attempt to resolve the issues between the Applicant and the Public Body. The issues remained unresolved, and the matter proceeded to inquiry.

II. RECORDS AT ISSUE

[para 11] The records at issue are those pages on which the Public Body withheld information in response to the access request. They are identified in discussion below.

[para 12] The Public Body numbered the pages in the initial release from 1 to 25, and in the second release from 1 to 134. As a result, page numbers 1 to 25 appear twice in the records at issue. To distinguish between the two pages 1 to 25, I refer to the records provided in each release separately.

III. ISSUES

[para 13] The issues set out in the Notice of Inquiry are as follows:

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

ISSUE B: Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information to which the Public Body applied this provision?

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

[para 14] In the course of this Inquiry, the Applicant raised the concern that information might have been incorrectly withheld as non-responsive. In light of this concern, I added the following issue:

ISSUE D: Did the Public Body correctly withhold information as non-responsive?

IV. DISCUSSION OF ISSUES

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

[para 15] Section 10(1) states as follows:

> *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 16] The two parts of the duty to assist in section 10(1) were set out in Order F2004-008 at para 32:

- Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 10(1) of FOIP?

- Did the Public Body conduct an adequate search for responsive records, and thereby meet its duty to the Applicant, as required by section 10(1) of FOIP?

[para 17] The burden of proof falls on the Public Body to demonstrate that it met its duty under section 10(1). (See Order 97-006). A public body must provide the Commissioner with sufficient evidence to show that it made a reasonable effort to identify and locate records responsive to the request. (See Order 2000-030). Former Commissioner Work, Q.C. described the general points that a public body's evidence should cover in Order F2007-029 at para. 66:

> In general, evidence as to the adequacy of a search should cover the following points:
>
> - The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request
>
> - The scope of the search conducted – for example: physical sites, program areas, specific databases, off-site storage areas, etc.

- The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.

- Who did the search

- Why the Public Body believes no more responsive records exist than what has been found or produced

[para 18] The Applicant believes that the Public Body failed to locate or provide all responsive records since the records that he received contain very few records from the Head of Animal Services. Through a separate access request made to the Calgary Police Service (CPS), the Applicant received records that he finds indicate that the Public Body and the CPS were communicating with each other about an investigation (the CPS investigation) with which he is concerned. The Applicant believes that the Public Body likely has, and should have provided, records of its communications with CPS regarding the CPS investigation.

[para 19] The details of the Public Body's response to the access request are set out in an affidavit sworn by its Access and Privacy Analyst, which addresses all of the above points. The pertinent portion of the affidavit is reproduced below:

> General Search Procedures
>
> Upon receiving a request to access records under the Act, the practice of the Access and Privacy Section of the Public Body is to have an Analyst review an applicant's access request and identify which business units within the Public Body may have records that would be responsive to the request. The Analyst then sends a business unit record request form ("BURR") to business units which are identified by the Analyst as potentially having records responsive to an access request. The BURR sets out an applicant's access request but does not identify the applicant. I was the Analyst assigned to the Applicant's Request and I followed this procedure.
>
> Each business unit has FOIP Program Administrator ("FOIP PA") who is responsible for conducting the search for records within their business unit. Business units may also have an FOIP PA Alternate who can assist the FOIP PA in responding to requests. FOIP PAs (and Alternates) are familiar with searching for responsive records when the Public Body receives requests from Applicants. These individuals either conduct the search directly, or task individuals who have more detailed knowledge of the relevant systems that might hold records to conduct the search.
>
> I had a number of conversations with the Applicant in order to clarify the access request. As a result of clarifications with the Applicant, amended BURRs were sent to the following business units in order to search for responsive records: CCS and CSC.

Each business unit was tasked to search for the specific information identified in the amended BURR.

Calgary Community Standards Search

I reviewed the BURR form received from CCS, and am advised by [Name of] the CCS FOIP PA Alternate and do verily believe that the search for records was conducted in CCS by the FOIP PA, FOIP PA Alternate and 22 South Region CCS staff.

The CCS FOIP PA sent an email on February 14, 2018 requesting a search for all records about the Applicant to 22 CCS staff, including those staff members specifically referenced by the Applicant and South Region bylaw staff within Animal Services. The CCS FOIP PA also sent a reminder email on February 20, 2018 to the staff members who had not responded to the initial request. The CCS FOIP PA then sent the Records to me on February 21, 2018.

The Applicant provided variations of the Applicant's name to search, for example [various spellings of Applicant's name]. I verbally provided the Applicant's name and variations of the name to CCS in order to enable to enable [sic] employees to conduct a search for records.

CCS carefully considered those repositories where responsive records might be located and the areas searched by CCS were:

- Paper files;
- Outlook email accounts of the of individuals specifically named in the Request and employees of South Region bylaw office;
- 311 Customer Service Requests Database ("the CSR"); and
- Chameleon (the animal service records database), which is an electronic record repository which contains information relating to event logs and bylaw officer notes.

Keywords used were the Applicant's first name and last name including variations. The search of the CSR and animal service records database was conducted by the CCS FOIP PA and the FOIP PA Alternate who are experienced with conducting searches of these databases.

Based on additional conversations with, and information provided by the Applicant, as described in my Affidavit, I sent an amended BURR to CCS (including several service request numbers provided to me by the Applicant) requesting an additional search for additional Responsive Records referencing the Applicant's name within CCS on March 26, 2018 (the "Supplemental Search"). This BURR also specified that the search should include, but not be limited to, the records of several CCS staff members by name who has been identified by the Applicant. Finally, this BURR requested a search of all complaints and service requests that include the Applicant's name including specific complaint/service file numbers that had been identified by the Applicant.

For the Supplemental Search, I was advised by the CCS FOIP PA and the FOIP PA Alternate and do verily believe that the CCS staff considered those repositories where responsive records might be located and searched Outlook email accounts, the CSR, the animal service records database, and paper files using the Applicant's name and specific reference numbers provided by the Applicant. The CCS FOIP PA noted that several of the complaint/service request file numbers provided by the Applicant were inaccurate and did not correspond to any existing files. CCS staff identified additional Records and provided these to me for processing. The keywords used to conduct the Supplemental Search was the Applicant's first name and last name as well as file numbers provided by the Applicant. The search of the CSR was conducted by the CCS FOIP PA and the FOIP PA Alternate who are experienced with conducting searches of these databases.

Customer Service and Communications ("CSC") search

Based on additional conversations with, and information provided by the Applicant, as described in my Affidavit, I sent a BURR to CSC (including several service request numbers provided to me by the Applicant) requesting a search for Responsive Records referencing the Applicant's name within CSC on March 26, 2018.

I am advised by the former CSC FOIP PA and do verily believe that CSC carefully considered those repositories where responsive records might be located and searched the CSR which was identified as the most likely repository for responsive records. This search was performed by the individual in CSC who conducts all CSR searches for requests to access information under the Act and is familiar with searches of the CSR. This individual identified responsive records and provided these to the CSC FOIP PA who in turn provided these records to me for processing. The keywords used were the Applicant's first and last name and variations as provided by the Applicant and service request file numbers provided by the Applicant.

I believe that the Public Body has searched in areas (electronic systems and paper files) where Records responsive to the Request would typically be held and where it reasonably believed Records responsive to the Request would be held. No other records responsive to the Request were located. Based on the searches, I do not believe that further Records responsive to the Request **exist** in these repositories.

[emphasis in the original]

[para 20] While it is understandable that the Applicant would believe that further responsive records exist and should have been provided, based on the above, I find that the Public Body met its duties under section 10(1) of the Act.

[para 21] The Public Body clarified the Applicant's request on two occasions, and conducted further searches in respect of the clarifications. It searched for records in the business units it identified as likely to have responsive records with regard to the scope of the access request as set by its terms. I do not see that the search was defective in any way.

ISSUE B: Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information to which the Public Body applied this provision?

[para 22] The Public Body withheld information under section 17(1) from the following pages in the initial release:

Pages: 7, 9, 13, 14, 15, and 19-25.

[para 23] The Public Body withheld information under section 17(1) from the following pages in the second release:

Pages: 1-3, 49, 51, 58, 75-79, 81, 87, 88, 90-96, 100-102, 104-106, 114, and 123.

Applicable Law

[para 24] "Personal Information" is defined in section 1(n) of the Act:

> *(n) "personal information" means recorded information about an identifiable individual, including*
>
> > *(i) the individual's name, home or business address or home or business telephone number,*
> >
> > *(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*
> >
> > *(iii) the individual's age, sex, marital status or family status,*
> >
> > *(iv) an identifying number, symbol or other particular assigned to the individual,*
> >
> > *(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
> >
> > *(vi) information about the individual's health and health care history, including information about a physical or mental disability,*
> >
> > *(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*
> >
> > *(viii) anyone else's opinions about the individual, and*
> >
> > *(ix) the individual's personal views or opinions, except if they are about someone else;*

[para 25] Section 17(1) of the Act requires a public body to withhold third party personal information in response to an access request where disclosing it would be an unreasonable invasion of a third party's personal privacy. Section 17(1) states,

> *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 26] The application of section 17(1) is informed by sections 17(4) and (5) which provide for presumptions that disclosure is an unreasonable invasion of third party personal privacy, and circumstances to consider in determining whether disclosure is an unreasonable invasion of third party personal privacy, respectively. Sections 17(4) and 17(5) state,

> *(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
>
> *(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,*
>
> *(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,*
>
> *(c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,*
>
> *(d) the personal information relates to employment or educational history,*
>
> *(e) the personal information was collected on a tax return or gathered for the purpose of collecting a tax,*
>
> *(e.1) the personal information consists of an individual's bank account information or credit card information,*
>
> *(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,*
>
> *(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,*
>
> *or*

(h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.

(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 27] The list of circumstances in section 17(5) is not exhaustive. Any other relevant circumstances must also be considered when determining whether or not disclosure is an unreasonable invasion of third party personal privacy.

Application of the Law

Is the withheld information personal information under the Act?

[para 28] With the exception of information withheld from pp. 7 and 13 in the initial release, and pp. 3, 51, and 114 in the second release, all of the information withheld under section 17(1) is about the Third Party involved in the dog attack incident with the Applicant. I consider whether information about the Third Party is personal information under the Act, below.

[para 29] Withheld information about the Third Party consists primarily of the name, address, postal code, telephone number, operator's (driver's) license number, and age of the Third Party. This information is personal information as defined in sections 1(n)(i), (iii), and (iv) of the Act.

[para 30] Information withheld under section 17(1) from pp. 81 and 123 consists of the health care history of the Third Party, which is personal information under section 1(n)(vi) of the Act.

[para 31] Information withheld under section 17(1) from pp. 96, 102, and 108 of the second release also contains a physical description of the Third Party. While not specifically mentioned in section 1(n), this information is detailed enough to identify the third party, and reveals what the third party generally looks like; it is information about an identifiable individual, and therefore personal information under the Act as well.

[para 32] Throughout the records, under section 17(1), the Public Body withheld the license plate number and a description of the car driven by the Third Party at the time of the dog attack incident.

[para 33] Whether or not a license plate number is personal information under the Act was discussed in *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2015 ABQB 246 (*Edmonton City*); varied on other grounds in *Edmonton (City) v Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110. After concluding that information about property could be personal information depending on context, Justice Renke stated at paras. 62 to 66,

> The further problem, though, is this: What context? A very brief response can be extracted from the Order - when "there are circumstances that give a personal dimension to an individual's [property]-related activities:" para 36, quoting from Order F2010-011; see also para 48.
>
> ***Leon's Furniture*** provided some examples. In that case, Justice Slatter found that the adjudicator's conclusion that a driver's licence number is "personal information" was reasonable. The numbers -- in their particular sequence - are abstract objects or abstract objects embodied in a physical card. They are "uniquely related to an individual:" at para 49. These numbers would fit as "personal information" under s. 1(n)(iv) of FOIPPA. The context has two elements. First, the context is a State-based system of assigning unique sequences of numbers to individuals for the purposes of licencing vehicle operators. The particular sequence of numbers on a person's driver's licence has its guarantee of unique linkage, its linkage to an identifiable individual, and its significance set by this context. Second, the information-holder has access to this context and the linkages it provides. Thus,
>
> > The adjudicator's conclusion that the driver's licence number is "personal information" is reasonable, because it (like a social insurance number or a passport number) is uniquely related to an individual. With access to the proper database, the

> unique driver's licence number can be used to identify a particular person: Gordon v. Canada (Minister of Health), 324 F.T.R. 94, 79 Admin. L.R. (4th) 258 at paras. 32-4...: at para 49.

In contrast, the sequence of numbers or letters or both found on a vehicle licence plate

> is a different thing. It is linked to a vehicle, not a person. The fact that the vehicle is owned by somebody does not make the licence plate number information about that individual. It is "about" the vehicle. The same reasoning would apply to vehicle information (serial or VIN) numbers of vehicles. Likewise a street address identifies a property, not a person, even though someone may well live in the property. The licence plate number may well be connected to a database that contains other personal information, but that is not determinative. **The appellant had no access to that database, and did not insist that the customer provide access to it**: para 49 [emphasis added].

There is also a State-based system for assigning unique sequences of numbers and letters to vehicles, and that information is linked to owners. Critically, Leon's Furniture, the particular information-holder, did not have access to that system. (I note that Justice Slatter's observation respecting street addresses would not apply or would not apply without qualification under FOIPPA, since under s. 1(n)(i), "personal information" includes "the individual's name, home or business address or home or business telephone number;" see also Order P2012-01, quoted at para 44 of the Order.)

The Adjudicator elaborated on the role of context in determining whether information about property can also be information about an individual. She quoted from Order P2007-004 (at para 41): "information as to the nature or state of property owned or occupied by someone is their personal information if it reflects something of a personal nature about them such as their taste, personal style, personal intentions, or compliance with legal requirements." She also quoted from Order F2012-14 (at para 42): "The distinction between what is and is not personal information is demonstrated in Ontario Order PO-2900 ... the fact that an individual -- who can be identifiable by virtue of information about property -- drilled a well is his or her personal information, but information about the well itself is not his or her personal information."

The Adjudicator interpreted Leon's Furniture correctly. No error lies there. The next issue is whether the Adjudicator applied the definition of "personal information" reasonably in the circumstances before her.

[para 34] I find that when considered in the context of information already provided to the Applicant, the license plate number and description the car are personal information.

[para 35] The license plate number and description of the car do not appear on their own. They appear in the context of a complaint, made by the Applicant, that the Third Party does not properly control their dog in public spaces. The date, time, and place of the dog attack are recorded in the records, and are already provided to the Applicant. When combined with the date, time, and place of the dog attack, the license plate and

description of the car serve to identify and, therefore, implicate the driver of the car as the person accused of being responsible for the dog attack. In this way, the license plate and description of the car are about an identifiable individual and, thus, are the Third Party's personal information.

[para 36] For the above reasons, all of the information withheld under section 17(1) about the Third Party is personal information. I now consider other information withheld under section 17(1) of the Act.

[para 37] Information withheld under section 17(1) on p. 7 of the initial release is a notation regarding a personal appointment for an employee of the Public Body. The notation appears along with information that reveals the identity of the employee, including his name, which has already been disclosed to the Applicant. The information is about an identifiable individual, and is personal information under the Act.

[para 38] Information withheld under section 17(1) on p. 13 of the initial release is a notation about the relationship status of a third party individual. The name of the individual is included. This information is about an identifiable individual and is personal information under the Act.

[para 39] Information withheld under section 17(1) on pp. 3, 51, and 114 of the second release consists of employee telephone numbers that the Public Body believes were provided in confidence. The Public Body was unable to confirm whether they are personal telephone numbers or business telephone numbers. Whether a personal or business number, these numbers are personal information as defined in section 1(n)(i) of the Act.

[para 40] In sum, all of the information withheld under section 17(1) is personal information.

Presumptions under section 17(4)

[para 41] The Public Body found that the presumption against disclosure in section 17(4)(a) applies to personal information withheld from pp. 81 and 123 of the second release. I agree that it applies to that information. The withheld information relates to the type of medical information captured under section 17(4)(a).

[para 42] At paragraph 50 of its initial submission, the Public Body states that the presumption against disclosure in section 17(4)(g)(i) and (ii), applies to personal information, "contained in Records described at paragraphs 39-41." Those paragraphs address information withheld under section 17(1) on all pages in the initial release except for pp. 7 and 13, and all pages in the second release except for p. 106. With the exception of employee contact information on pp. 3, 51, and 114 of the second release, I agree that a presumption against disclosure under section 17(4)(g)(i) applies to this information. The name

of a third party is present along with other personal information about a third party on these pages.

[para 43] Regarding third party personal information on p. 106 of the second release, I find that the presumption under section 17(4)(g)(i) applies to it as well. The Third Party's name and address have been withheld under section 17(1) from this page.

[para 44] I also find that the presumption under section 17(4)(g)(i) applies to information withheld from pp. 7 and 13 of the initial release. The withheld information appears in conjunction with a third party's name, which is disclosed to the Applicant.

[para 45] Regarding the employee contact information on pp. 3, 51, and 114 of the second release, I cannot conclude that any presumptions under section 17(4) apply. Determining if any presumption could apply rests upon whether the telephone numbers are personal numbers or business numbers, and, if business numbers, whether there is a personal dimension to them. Previous orders have found that disclosing business numbers is not an unreasonable invasion of third party privacy unless there is a personal dimension to them. This point was recently discussed in Order F2020-03 at para. 37:

> Names of third parties are personal information under the FOIP Act. However, the disclosure of the names, contact information and job titles of individuals acting in their professional capacities is not an unreasonable invasion of personal privacy under section 17(1) (see Orders 2001-013 at para. 88, 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 46] In the present case, the Public Body is not sure, and I do not know, if the telephone numbers are personal numbers, or business numbers and does not provide any evidence of a personal dimension to the telephone numbers.

Relevant Circumstances under section 17(5)

[para 47] The Public Body considered the circumstances listed in section 17(5) when responding to the access request. It found, and I agree, that disclosure was not desirable for the purpose of subjecting its activities to public scrutiny under section 17(5)(a). The Public Body found that the circumstances in sections 17(5)(e) and (f) weighed in favour of withholding some personal information. I agree that they do. The Public Body did not find that any considerations weighed in favour of disclosure.

[para 48] Regarding section 17(5)(e), the Public Body considered that the Applicant had made threats against the Third Party, "as described in the Records." I understand that the Public Body is referring to the warning in the Location Alert e-mail. Revealing the Third Party's personal information, which consists of information about how to identify and contact the Third Party, could enable harmful contact between the Applicant and the third party. That is not to say that I find that the Applicant would carry out the threat

reported in the Location Alert, which the Applicant denies making. Rather, harm in this case consists of the prospect of unwanted contact, which other orders previously have held can constitute harm. See for example, Order F2004-016 at para. 24.

[para 49] I have considered that section 17(5)(e) is not a relevant circumstance if there is only a mere possibility of harm as noted in Order F2013-40 at para. 33. While the Applicant denies making the threat in the Location Alert, the Public Body is certain that he did. When it applied section 17(5)(e), the Public Body was not considering a mere possibility of harm, it had a basis on which to reasonably conclude that harm was likely.

[para 50] Regarding the application of section 17(5)(f), the Public Body's Access and Privacy Analyst states,

> I further considered that some of the personal information to which Section 17(1) was applied was provided under an implicit expectation of confidentiality by the third party given the nature of the conversations, statements, and investigation conducted by the Public Body. I determined that maintaining the confidentiality of these records is important to promote an environment where third parties are willing to be forthcoming about incidents without a fear that this information will be disclosed. I concluded that Section 17(1)(f) weighs against disclosure.

[para 51] Section 17(5)(f) applies to circumstances where an expectation of confidentiality is implicit, if the context in which the information is provided establishes that there was an implicit expectation. Considerations relevant to determining whether context supports a finding include were discussed in Order F2013-15 at paras. 128 and 129,

> Previous orders have considered the application of four factors to assess whether a party has an objectively reasonable expectation that information it supplies will be held in confidence, such that the information can be said to have been supplied in confidence. These factors ask whether information was
>
> 1. communicated to the public body on the basis that it was confidential and that it was to be kept confidential;
>
> 2. treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the public body;
>
> 3. not otherwise disclosed or available from sources to which the public has access;
>
> 4. prepared for a purpose which would not entail disclosure.

> In *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2012 ABQB 595, Ross J. confirmed that consideration of the foregoing factors is a reasonable way to assess whether information has been supplied in confidence within the framework of the FOIP Act.

[para 52] Given the particular personal information withheld, I find that there was an expectation of confidentiality for all of it, with the exception of the license plate number and description of the Third Party's car.

[para 53] Information consisting of the Third Party's name and contact information was provided by the Third Party in the course of the Public Body's investigation into the dog attack. There is no reason why a person would expect their name and contact information to be disclosed to the public or to the Applicant. Doing so would not further the investigation, and, as indicated on the violation ticket issued to the Third Party, the offence he was charged with does not require a court appearance. This information was provided on the basis that it would be kept confidential. Further, the Public Body has treated the information as confidential, and there is no evidence before me that indicates that the information was otherwise disclosed or publically available. The Public Body appears to have prepared this information for the purposes of conducting its investigation, but not for disclosure to anyone. The criteria above, are met.

[para 54] In contrast, the license plate and description of the Third Party's car were provided to the Public Body by the Applicant, who took a picture of the car at the time of the dog attack. There is no reason to believe that the Applicant provided someone else's personal information with an expectation of confidentiality. The first criterion above is not met with respect to this information.

[para 55] The Public Body did not address section 17(5)(i) in its submission, but it is a relevant circumstance since the Applicant provided the license plate number and the description of the Third Party's car.

[para 56] The fact that an applicant provided third party personal information to a public body may weigh in favour of withholding information if there has been a change in circumstances between the applicant and a third party since the time that the Applicant supplied it (Order 2000-019 at paras. 104 and 105).

[para 57] In Order 2000-019 the former Commissioner found that when circumstances change such that adverse interests arise between an applicant and a third party, then section 17(5)(i) weighs in favour of withholding information.

[para 58] In the present case, the Applicant and the Third Party were already in a state of adverse interests when the Applicant supplied the information. The Applicant supplied the information as part of his allegations that the Third Party was responsible for the dog attack. There is no change in circumstances in that regard.

[para 59] However, in the time between when the Applicant supplied the information and the Public Body responded to the access request, the Applicant developed a new adverse interest vis-à-vis the Third Party. Upon learning of the Location Alert, the Applicant suspected, at the time, that the Third Party was the person responsible for the allegations in it, which the Applicant states are false. The Applicant also speculated that the Third Party's daughter may have also played a role in furthering false statements made to the Public Body's bylaws officers, which found their way to the CPS.

[para 60] While the dog attack is one issue, accusations of making false statements to a bylaw officer are another. In light of that new adverse interest vis-à-vis the Third Party, I find that section 17(5)(i) weighs in favour of withholding information regarding the license plate number and description of the car.

[para 61] I find that none of the other circumstances listed in section 17(5) apply.

[para 62] I find that there are no further relevant considerations under section 17(5).

Weighing the circumstances in section 17(5) against the presumptions against discourse under section 17(4)

[para 63] Since none of the relevant circumstances under section 17(5) weigh in favour of disclosure, the presumptions against disclosure under section 17(4) remain operable. Disclosing third party personal information subject to those presumptions is an unreasonable invasion of third party privacy. The Public Body was required to withhold this information. This includes the license plate number and the description of the Third Party's car.

[para 64] In light of the uncertain status of the telephone numbers (as business or personal, or containing a personal dimension) withheld on pp. 3, 51, and 114 of the second release, I am unable to conclude whether or not the Public Body was required to withhold this information. Since section 17(1) is a mandatory exception, below I order the Public Body to reconsider whether it is required to withhold this information.

[para 65] With the exception of employee contact information withheld on pp. 3, 51, and 114 of the second release I find that the public body properly withheld information under section 17(1).

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

[para 66] The Public Body withheld information under section 24(1)(a) on pp. 3 and 5 of the initial release.

[para 67] The Public Body withheld information under section 24(1)(a) on pp. 5, 53, and 131 of the second release.

[para 68] The Public withheld p. 125 of the second release in its entirety, and some information from p. 131 of the second release, under section 24(1)(b);

[para 69] Sections 24(1)(a) and (b) state,

> *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 70] The scope of information captured under sections 24(1)(a) and (b) was summarized in Order F2019-17 at paras. 161-166,

> In previous orders, the former Commissioner has stated that the advice, proposals, recommendations, analyses or policy options under section 24(1)(a) 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)
>
> In Order F2013-13, the adjudicator stated that the third arm of the above test should be restated as "created for the benefit of someone who can take or implement the action" (at paragraph 123).
>
> In Order F2012-06, the adjudicator stated, citing former Commissioner Clark's interpretation of "consultations and deliberations", that
>
> > It is not enough that records record discussions or communications between employees of a public body; rather, a consultation takes place only when the individuals listed in section 24(1)(b) are asked for their views regarding a

> potential course of action, and a deliberation occurs when those individuals discuss a decision that they are responsible for, and are in the process of, making. (At para. 115)

In Order F2012-10, the adjudicator clarified the scope of section 24(1)(b):

> A consultation within the terms of section 24(1)(b) takes place when one of the persons enumerated in that provision solicits information of the kind subject to section 24(1)(a) regarding that decision or action. A deliberation for the purposes of section 24(1)(b) takes place when a decision maker (or decision makers) weighs the reasons for or against a particular decision or action. Section 24(1)(b) protects the decision maker's request for advice or views to assist him or her in making the decision, and any information that would otherwise reveal the considerations involved in making the decision. Moreover, like section 24(1)(a), section 24(1)(b) does not apply so as to protect the final decision, but rather, the process by which a decision maker makes a decision. (At para. 37)

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).

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 2007-013 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 71] I agree with the Adjudicator in Order F2019-17.

[para 72] Information withheld under section 24(1)(a) on pp. 3 and 5 of the initial release, and pp. 5, 53, and 131 of the second release, fall within the parameters of "advice" described above. The information consists of advice from one Public Body employee to another, about how to handle particular matters.

[para 73] Information withheld under section 24(1)(b) on p. 131 of the second release falls within the parameters of a "consultation" described above. The information is a request for advice and input from one Public Body employee to another, regarding a certain matter.

[para 74] Most of the information withheld under 24(1)(b) on p. 125 falls within the parameters of a "deliberation" described above. The withheld information is a draft e-

mail significantly different from the version sent to the Applicant. It reflects a course of action considered, but not taken, by its author and the reasons why the course of action was considered.

[para 75] The header of the draft e-mail on p. 125 (also withheld), is not information captured under section 24(1). It reveals the identity of the author and recipients of the e-mail and the date and time it was sent, but not the substance of any decision-making process. It should not have been withheld under section 24(1).

Exercise of Discretion

[para 76] Merely determining that a discretionary exception to disclosure (such as section 24(1)) applies to certain information does not in itself establish that a public body may withhold information under it. A public body must also properly exercise its discretion to withhold information. As put by the Adjudicator in Order F2017-57 at para. 193,

> …However, when applying discretion to sever information under these provisions it is not sufficient to find that they apply; the Public Body must determine that there are reasons that support severing the information relevant to the purpose of the provision, that outweigh interest in disclosing records.[1]

[para 77] Exercising discretion was considered in *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (*Ontario Public Safety and Security*). Numerous orders of this office have confirmed that the reasoning therein is applicable to the exercise of discretion under the Act. At paragraph 71 of *Ontario Public Safety and Security*, the following factors were identified as relevant to the question of whether or not a public body has properly exercised its 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 78] Justice Renke elaborated on what *Ontario Public Safety and Security* requires in *Edmonton Police Service v Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10 (*EPS*) 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

[1] The Adjudicator in Order F2017-57 was considering sections 27(1)(b) and (c) of the Act. Since discretion to withhold information under section 24(1) works in the same manner as it does for section 27(1)(b) and (c), I find the quoted statement equally applicable here.

> 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 79] With regard to consideration of harmful effects of disclosure, Justice Renke stated at para. 420 in *EPS*,

> …In my view, that is the implication of the ***Ontario Public Safety and Security*** passages quoted above. A public body is entitled to show that disclosure could have other adverse effects (whatever those might be) – but the public body must indicate what those adverse effects are and that the negative consequences of disclosure outweigh the interests in the disclosure, the "interest in open government."

[para 80] When exercising discretion, public bodies should also consider the particular purpose of the exception to disclosure being considered. In Order 96-006 at p. 10, the Former Commissioner described the purpose of section 24(1) as follows,

> When I look at section 23 [now section 24] as a whole, I am convinced that the purpose of the section is to allow persons having the responsibility to make decisions to freely discuss the issues before them in order to arrive at well-reasoned decisions. The intent is, I believe to allow such persons to address an issue without fear of being wrong, "looking bad" or appearing foolish if their frank deliberations were to be made public.

[para 81] Bearing the preceding in mind, I now consider whether the Public Body properly exercised discretion in this case.

[para 82] The Public Body describes how it exercised discretion in an affidavit sworn by its Access and Privacy Analyst:

> General
>
> 65. In applying the exceptions to disclosure set out in the Act, I considered:
>
> a. the general purpose of balancing the public's rights of access with the need for the public body to protect specific interests;
>
> b. whether there is a compelling public interest in having the information in the public domain and concluded there wasn't one;

c. that the Public Body had provided a considerable number of records to the Applicant;

d. my general practice is to review all records and carefully apply the exceptions to disclosure set out in the Act; and

e. previous decisions from the OIPC and Court decisions.

Section 24(1)(a) and (b)

66. In exercising my discretion to apply Sections 24(1)(a) and (b) of the Act, I considered the public's interest in promoting full and candid advice, deliberations and recommendations from the Public Body's employees. I also considered that these communications and documents were intended to remain among City employees. I further determined that the release of this information would not significantly advance the Applicant's interest.

67. For the email exchanges between the Public Body's employees, I considered that if released, these emails would reveal discussions surrounding the decision-making process regarding issues associated with the Applicant. I considered that disclosing the Public Body's confidential communications discourage these communications and harm the Public Body's ability to effectively provide internal advice.

68. For the advice provided by Public Body employees as part of the location alert and how to handle future files, I considered the public's interest in its public servants being able to provide advice to each other, and if released, these communications would reveal the candid advice provided as to how to respond to location alerts and how to handle files.

69. For the draft email written by an employee of the Public Body I considered the public's interest in its public servants being able to consider, prepare, and refine documents and that releasing this draft would discourage its employees from creating drafts and harm the Public Body's ability to provide considered and refined documents.

70. Overall I determined that the benefit to the public and the Applicant of disclosing this information did not outweigh the harm to the Public Body's or public's interest if this information is released as releasing this information would negatively impact the free exchange of views and the decision making process between employees of the Public Body.

71. I determined that disclosing the information would result in harm to the Public Body and public interest and would not be in accordance with the principles of the Act.

[para 83] I note that points "d" and "e" in paragraph 65 of the Access and Privacy Analyst's affidavit do not appear to be considerations applied in exercising discretion; but, rather, appear to be statements describing the general approach or level of care taken to applying section 24(1) to the records at issue.

[para 84] I can see that the Public Body properly considered the purpose of the Act as indicated by statement "a" in paragraph 65 from the Access and Privacy Analyst's Affidavit above. I can also see that the Public Body considered the purpose of section 24(1) itself in paragraph of the Access and Privacy Analyst's Affidavit 66. It is also clear that the Public Body considered the possible chilling effect on the free flow of advice and deliberations among its employees if the withheld information were disclosed. Additionally, it was proper for the Public Body to consider whether there was a compelling interest in having the information in the public domain; upon reviewing the information withheld, I agree there is not one in this case. The information is about routine operations within the Public Body, or germane only to the Applicant.

[para 85] However, as described below, I find that the Public Body's explanation of how it exercised its discretion leaves several key matters sufficiently ambiguous that I cannot conclude that it has met its burden to establish, on the balance of probabilities, that it properly exercised discretion.

[para 86] The Public Body does not identify all of the interests it considered.

[para 87] In statement "a" in paragraph 65 of the Access and Privacy Analyst's Affidavit, the Public Body states that it considered the need to protect "specific interests." However, these interests are not specified. It is not clear if they are public interests, the Public Body's interests, or possibly improper interests to serve by withholding information under section 24(1). Similarly, paragraph 70 of the Access and Privacy Analyst's Affidavit refers to the "Public Body's or public's interest", but does not state what the Public Body's interests are. The separate reference to the Public Body's interests apart from the public's interest suggests some other interest aside from the public interest is at work.

[para 88] I also note that the Public Body refers to the "Applicant's Interest" in paragraph 66 of the Access and Privacy Analyst's Affidavit, but does not describe what it understands that interest to be.

[para 89] Further, as described below, without a clear understanding of the Applicant's interests, the Public Body may have discounted the benefit to the Applicant's interests in receiving responsive information withheld under section 24(1).

[para 90] Considering an applicant's interests is a relevant consideration in the exercise of discretion. The Adjudicator in Order F2018-36 at para. 232 clarified that an applicant's interests are "private interests" to be considered (whereas public body employees' "private interests" are not).

> …While the Court referred to consideration of "private interests" in *Ontario (Public Security)*, the Court is referring to the private interests of requestors, citizens, and affected

> third parties. Employees that create (or are referred to) in public records in their role as representatives of a public body, do not have private interests in such records. Any expectation of such employees is irrelevant in deciding whether it is in the public interest to disclose records or not.

[para 91] A review of the records at issue and consideration of the context in which the access request arose, yields some insight into what the Public Body understood the Applicant's interests to be, even though it did not explicitly state its understanding.

[para 92] The content of the records describes that the Public Body and the Applicant have communicated and interacted with each other regarding the dog attack many times. Much of the information that was provided to the Applicant relates to the dog attack. It seems that the Public Body understood that the Applicant had an interest in understanding how it handled the dog attack complaint. Similarly, given the discussion and subsequent release of further records after the Applicant learned of the Location Alert, the Public Body also appears to have understood that the Applicant had an interest in knowing the source of the allegations in the Location Alert.

[para 93] It is entirely reasonable that the Public Body's understanding of the Applicant's interest in information would be informed by the context in which the access request arose. Public Bodies have the responsibility to consider an applicant's interests, and to weigh how much disclosing information in service to those interests favours disclosure over exercising discretion to withhold. However, the Applicant did not inform the Public Body of his interests in the requested information, and the terms of his access request were broad and capture a much larger swath of information than just that in which the context suggests the Applicant had an interest. There is no reason to believe that the request was limited to information that would advance only the interests suggested by the context.

[para 94] To summarize the access request, the Applicant was seeking *records related to him, even if he was not referred to by name*, not just those concerning the dog attack, Location Alert, or any other set of issues. The description of the telephone calls between the Applicant and the Public Body to clarify the request does not indicate that the Applicant explained his reasons in those calls either.

[para 95] Accordingly, while the Public Body was in position to conclude that disclosing information related to the interests the context suggested that the Applicant had would advance those particular interests, it was not in position to conclude that information not related to those particular interests would not significantly advance any of the Applicant's interests in some other way. Since the Applicant did not inform the Public Body of the full scope of his interests, it could not know what they were. Indeed, applicants often seek information with a particular goal in mind, but, under the Act, there is no requirement for an applicant to inform a public body of their interests in receiving information.

[para 96] In this case, in the Applicant's Request for Inquiry document, he indicates that one of his other interests in the information requested was to try to determine why the Public Body was "hostile and belligerent" toward him regarding his complaint. I see no evidence that the Public Body was aware of this interest, contextually or otherwise, when it responded to the access request.

[para 97] This is not to say that the Public Body is at fault for failing to consider interests it was unaware of. The Public Body's error in exercising discretion is that it appears to have failed to assign any value to disclosing information not related to what it believed the Applicant's interests were, and in doing so presumed a narrower focus of interest than the broad terms of the access request suggest. The somewhat ambiguous wording of the Access and Privacy Analyst's Affidavit also leaves open the possibility that the conclusion that the withheld information did not significantly advance the Applicant's interest was a circumstance that weighed in favour of withholding information. If so, the Public Body erred here as well. Not having a reason to disclose information is not the same as having a reason to withhold it.

[para 98] The Access and Privacy Analyst's affidavit does not state how the Public Body weighed other considerations, leaving the manner in which it exercised discretion further ambiguous.

[para 99] The statement in paragraph 66 of the Access and Privacy Analyst's Affidavit that "…these communications and documents are intended to remain among City employees," creates ambiguity about how the Public Body exercised discretion. An intention to keep information confidential is a necessary factor in the exercise of discretion, but not an interest to be weighed in the exercise of discretion. As noted by the Adjudicator in Order F2013-13 at para. 181,

> …However, the third factor to which the Public Body refers, that regarding confidentiality, is not so much an interest that is to be weighed in exercising discretion, but a factor that must be present in order to support withholding information under section 24(1). If the information to which a provision of section 24 is being applied is not intended to be confidential, or has not been kept confidential, then the public interest recognized by section 24(1) would not necessarily be served by withholding the information.

[para 100] The wording of Access and Privacy Analyst's Affidavit does not clarify whether the Public Body understood that its intention to keep information confidential was a "prerequisite" factor in the exercise of discretion, or an interest to which it gave weight. If the latter is the case, then the Public Body took into account an irrelevant consideration. The purpose of section 24(1) is to protect the public interest in free and frank decision-making process, and other relevant and important interests, but not to further a routine practice of confidentiality, untethered to any interests. Exercising discretion to further confidentiality merely for the purpose of maintaining confidentiality, could also be seen to be an improper purpose to exercise discretion.

[para 101] Similar ambiguity results from statement "c" in paragraph 65 of the Access and Privacy Analyst's Affidavit that, "… the Public Body had provided a considerable number of records to the Applicant."

[para 102] The Adjudicator in Order F2020-03 found, upon reviewing the amount and type of information disclosed, that disclosing a lot of information indicated that the a public body considered transparency and accountability when exercising discretion. Order F2020-03 at para. 86.

[para 103] I am unable to draw the same conclusion from a review of the records at issue in this case. It is unclear from statement "c" in paragraph 65 of the Access and Privacy Analyst's affidavit whether the Public Body is intending to convey that it considered transparency and accountability and thus disclosed much information, or if it considered that the sheer volume of information disclosed gave it leeway to withhold information under section 24(1). If the latter, then the Public Body erred in exercising its discretion. The exercise of discretion is not dependent on volumes of information disclosed or withheld. It is done by the weighing of interests each time discretion is exercised.

[para 104] I also note that the Public Body does not describe how it assessed the relative importance of the interests that it took into account.

[para 105] Lastly, the phrasing of the statement in paragraph 71 of the Access and Privacy Analyst warrants comment; to recap, it states,

> I determined that disclosing the information would result in harm to the Public Body and public interest and would not be in accordance with the principles of the Act.

[para 106] I understand the Access and Privacy Analyst to be saying that the Public Body found that the balance of interests favoured exercising discretion. I note, though, that the Act does not forbid disclosing information even where the balance of interests favours withholding information.

Conclusion on the Exercise of Discretion under Section 24(1)

[para 107] For the above reasons, I find that the Public Body did not properly exercise its discretion to withhold information under section 24(1).

ISSUE D: Did the Public Body correctly withhold information as non-responsive?

[para 108] The Public Body withheld information as non-responsive on pp. 1, 3, 5, 6, 8, 10, and 12 of the initial release.

[para 109] The Public Body did not withhold information as non-responsive in the second release.

[para 110] The Access and Privacy Analyst describes information withheld as non-responsive as follows:

> The severed information consisted of covering emails that were forwarding Records in response to the Request. These emails were created after the Request was received by the Public Body, and were neither related nor relevant to the Request.

[para 111] After reviewing information withheld as non-responsive, I agree that the information is non-responsive for the reasons given by the Access and Privacy Analyst.

V. ORDER

[para 112] I make this Order under section 72 of the Act.

[para 113] I confirm that the Public Body met its duties under section 10(1) of the Act.

[para 114] With the exception of employee contact information on pp. 3, 51, and 114 of the second release, I confirm that the Public Body properly withheld information under section 17(1) as required by the Act.

[para 115] Regarding employee contact information on pp. 3, 51, and 114 of the second release, I order the Public Body to determine whether it is personal or business contact information, if it has a personal dimension, and to reconsider whether disclosing this information is an unreasonable invasion of third party personal privacy. The Public Body shall disclose the contact information to the Applicant if it determines that doing so is not an unreasonable invasion of third party personal privacy.

[para 116] Since it is not captured under section 24(1) of the Act, I order the Public Body to disclose to the Applicant the header of e-mail on p. 125 of the second release.

[para 117] I order the Public Body to reconsider its exercise of discretion under section 24(1) of the Act, and provide to the Applicant any further information that it finds it should. When reconsidering, without limiting what factors the Public Body may consider, the Public Body shall consider the following Applicant's interests:

- Learning how the Public Body handled the dog attack complaint,
- The source of the allegations in the Location Alert; and,
- Learning how or why he was treated as he was when he followed up with the Public Body about the dog attack complaint;

[para 118] When reconsidering exercising discretion, the Public Body shall consider that the Applicant has not provided a statement of his full interests in the requested information, and shall refrain from assuming that information not related to any identified interests will not advance the Applicant's interest.

[para 119] I order the Public Body to inform the Applicant of the resulting decisions regarding reconsideration of sections 17(1) and 24(1). If the Public Body decides to continue to withhold the same information or some of it, I reserve jurisdiction to review its decision to continue withholding information, in the event the Applicant objects to the continued withholding. If the Applicant objects to the manner in which the Public Body has re-exercised its discretion, he must notify me and the Public Body within 60 days of receiving notice of the Public Body's decisions following reconsideration of withholding information.

[para 120] I confirm that the Public Body properly withheld information as non-responsive.

[para 121] I order the Public Body to confirm to me, and the Applicant, in writing that it has complied with this order within 50 days of receiving it.

_____

John Gabriele
Adjudicator
/as