ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2022-44

September 27, 2022

ALBERTA PENSIONS SERVICES CORPORATION

Case File Number 001409

Office URL: www.oipc.ab.ca

Summary: An Applicant made a request to Alberta Pensions Services Corporation (the Public Body) for information sent and received on her file from January 1, 2013 to April 29, 2015. The Public Body provided responsive records, with information withheld under sections 17, 24, and 27.

The Applicant requested an inquiry into the Public Body's response, as well as its disclosure of her personal information.

The Adjudicator found that the Public Body properly applied section 17 to information in the records, but not section 24.

The Adjudicator found that the Public Body properly applied sections 27(1)(a) and (c) in most cases, but ordered the Public Body to disclose some further information to the Applicant.

The Adjudicator found that the Public Body had authority to disclose the Applicant's personal information.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 17, 24, 27, 71, 72

Authorities Cited: AB: Decision F2014-D-01, Orders 96-006, 96-012, 99-013, F2004-026, F2007-013, F2007-014, F2007-021, F2008-028, F2010-007, F2010-036, F2012-08,

F2012-15, F2013-13, F2014-16, F2014-38, F2014-R-01, F2015-22, F2016-57, F2017-57, F2017-58, F2018-59, F2020-22

Cases Cited: *Blood Tribe v. Canada (Attorney General)*, 2010 ABCA 112 (CanLII), *Canada v. Solosky*, [1980] 1 S.C.R. 821, *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] An individual sent a letter on April 28, 2015 to the FOIP Coordinator for Alberta Pensions Services Corporation (the Public Body), stating:

> In our last correspondence, I was told that my disability file was sent to the Chair for my Arbitration in April 2014. I had asked you for some clarification as to why my information was sent out with my Social Insurance Number and Pension number on it. You had told me that the lawyers had sent the information to the Chair and they were away and you were going to get back to me. Since there are obviously, conflicting information being given to me about who received my information, I am requesting a new FOIP request to have information from my file regarding who my information was sent to and what Information was sent out and when it was sent out. […] I am requesting any information that was sent or received on my file. I am requesting anything that has my name on it and is about me to present date. I am also requesting who the information was sent to.

[para 2] On May 7, 2015, the Applicant informed the Public Body via email that she was requesting any information sent and received on her file from January 1, 2013 to April 29, 2015. She stated that she wanted information about who her information was sent to. Additionally, she requested a copy of an order from the Chair of an arbitration board. She added that she wanted all records regardless of who or where they came from.

[para 3] The Public Body searched for responsive records. It identified responsive records, but severed information as non-responsive. It also applied sections 17, 24, and 27 to sever information from the records.

[para 4] The Applicant requested an inquiry regarding the Public Body's disclosure of her personal information and its severing decisions in relation to the information she had requested.

[para 5] In response to a change in the judicial review process for reviewing Orders where certain legal privileges are at issue, the adjudicator previously assigned to this file had split the inquiry into two parts. The first part was to address the Public Body's application of section 27(1)(a) (legal privilege), and the second part was to address the Public Body's application of sections 17(1) and 24(1), as well as the Public Body's disclosure of personal information (section 40). For various reasons, this split is no longer necessary and I will address all of the above issues in this Order.

[para 6] The Applicant has a pension administered by the Public Body. In their submissions, neither party has provided much detail of the circumstances that led to this inquiry.

[para 7] With its initial submission, the Public Body provided a copy of a letter dated May 24, 2013 from the Public Body to the Applicant regarding her retirement application. This letter sets out the chronology of events. I understand from this letter that the Applicant applied for her disability pension in December 2012. The Applicant and/or her physicians provided medical information to the Public Body in support of her application. It does not appear that the application or provision of the disability pension are at issue in this inquiry.

[para 8] The Applicant filed a grievance against her employer, which appears to relate to the termination of her employment. The grievance does not appear to directly relate to her pension. The grievance went to an arbitration board. The chair of the arbitration board issued a Notice to Produce to the Public Body, requiring the Public Body to provide information relating to the Applicant's disability pension application and supporting medical information for this proceeding. The Applicant is concerned that the Public Body disclosed information to the employer that it should not have. The Applicant's access request relates to the arbitration board proceeding, and the Notice issued to the Public Body to produce records for that proceeding.

II. RECORDS AT ISSUE

[para 9] The records at issue consist of the withheld portions of the responsive records.

III. ISSUES

[para 10] The combined issues for this inquiry as set out in the Notice of Inquiry – Part 1, and the Notice of Inquiry – Part 2, both dated April 16, 2018, are:

1. Does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the information the Public Body severed from the records?

2. Did the Public Body properly apply section 24 (advice from officials) to the information in the records?

3. Did the Public Body properly apply section 27 (privileged information) to the information in the records?

4. Did the Public Body disclose the Applicant's personal information in accordance with, or contravention of, section 40(1) of the FOIP Act?

5. If the Public Body had authority under section 40(1) of the FOIP Act to disclose the Applicant's personal information, did the Public Body disclose the personal

information only to the extent necessary for meeting its purposes, as required by section 40(4)?

IV. DISCUSSION OF ISSUES

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

[para 11] 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 12] Section 17 is a mandatory exception: if the information falls within the scope of the exception, it must be withheld.

[para 13] 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 14] Section 1(n) defines personal information under the Act:

> *1 In this Act,*
>
> *...*
>
> *(n) "personal information" means recorded information about an identifiable individual, including*
>
> *(i) the individual's name, home or business address or home or business telephone number,*
>
> *(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*
>
> *(iii) the individual's age, sex, marital status or family status,*
>
> *(iv) an identifying number, symbol or other particular assigned to the individual,*
>
> *(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
>
> *(vi) information about the individual's health and health care history, including information about a physical or mental disability,*
>
> *(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*
>
> *(viii) anyone else's opinions about the individual, and*

(ix) the individual's personal views or opinions, except if they are about someone else;

[para 15] The Public Body withheld information under section 17(1) in two records (pages 2 and 4). It describes these records as "call logs containing personal information of multiple individuals" (initial submission – Part 2, at page 3). The Public Body provided the Applicant with her own personal information from these records, withholding the personal information of other individuals.

[para 16] The records include third party personal identifier numbers, names, and information about their files with the Public Body. This is personal information of the third parties.

Application of sections 17(2) – 17(5)

[para 17] Sections 17(2) and (3) refer to circumstances in which disclosure of personal information is not an unreasonable invasion of privacy. None of the parties have argued that any provisions of sections 17(2) or (3) are relevant and, from the face of the records, none appear to apply.

[para 18] Section 17(4) lists circumstances in which disclosure is presumed to be an unreasonable invasion of privacy. The Public Body has argued section 17(4)(g) applies to all of the information withheld under section 17(1). This provision states:

17(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

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

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

(ii) the disclosure of the name itself would reveal personal information about the third party

[para 19] This provision applies to all of the third party personal information withheld under section 17(1).

[para 20] Section 17(5) is a non-exhaustive list of factors to consider in determining whether disclosing personal information would be an unreasonable invasion of privacy.

[para 21] The Applicant has not provided specific arguments regarding the Public Body's application of section 17, or regarding any third party personal information that may be in the records.

[para 22] Section 17(5)(a) weighs in favour of disclosure where the disclosure is desirable to subject the Public Body's activities to public scrutiny. In order for the desirability of public scrutiny to be a relevant factor, there must be evidence that the

activities of the public body have been called into question, which necessitates the disclosure of personal information in order to subject the activities of the public body to public scrutiny. (See Order 97-002, at para. 94; Order F2004-015, at para. 88; Order F2014-16, at para. 34.)

[para 23] The Applicant has argued that the Public Body erred in disclosing her personal information in the course of an arbitration (discussed later in this Order). I do not know if the Applicant believes that the disclosure of any third party personal information in the records is desirable to subject the Public Body's activities to public scrutiny, as she has not indicated any interest in personal information of other parties.

[para 24] Similarly, the Applicant has not presented any argument to indicate that the third party personal information in the records is relevant to a fair determination of her rights (section 17(5)(c)).

[para 25] There are no other factors in section 17(5) that appear to apply.

[para 26] The Applicant bears the burden of showing that the personal information should be disclosed; because at least one presumption against disclosure applies (section 17(4)(g)) and no factors appear to weigh in favour of disclosure, I find that the Public Body is required to continue to withhold that information.

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

[para 27] The Public Body applied section 24(1)(a) and (b) to information in the records at issue on pages 467, 538-539 and 610-611. These sections 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 28] 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; Order 99-013 at para. 48, F2007-021, at para. 66).

[para 29] 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 30] 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 31] In addition to the requirements in those tests, 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 32] 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, proposals, recommendations etc. such that they cannot be separated (Order F2007-013 at para. 108, Decision F2014-D-01 at para. 48).

[para 33] As well, neither section 24(1)(a) nor (b) apply to a decision itself (Order 96-012, at para. 31).

[para 34] The first step in determining whether section 24(1)(a) and/or (b) were properly applied is to consider whether a record would reveal advice, proposals, recommendations, analyses, or policy options (which I will refer to as "advice etc.", section 24(1)(a)); and consultations or deliberations between specified individuals (section 24(1)(b)).

[para 35] A request for factual information does not fall within the scope of section 24(1) if it does not otherwise reveal the substance of advice, recommendations etc. (see Orders F2016-57, at para, 30; F2020-22, at para. 101).

Application of sections 24(1) to the records

[para 36] The Public Body withheld portions of an email on page 467, relating to how the Public Body responded to an earlier FOIP request from the Applicant. One paragraph

was withheld under section 24(1)(b) alone, and two paragraphs were withheld under sections 24(1)(a) and (b).

[para 37] The Public Body's submission does not address its application of section 24(1) to this page.

[para 38] In the email on page 467, an employee is providing options to the decision maker for processing an access request. The information withheld on this page can be characterized as a request for instruction as to which action to take. While such information may fall within the scope of section 24(1), the fact that an option is given and instructions are sought is not, by itself, sufficient for that section to apply. In this case, there is no analysis of the situation, or advice given. Nor is there any indication of factors being weighed or discussed. Rather, the information consists of factual statements and the existence of two avenues, from which the decision-maker could (and did) choose. The choice being discussed is more akin to the choice between tea and coffee, rather than a policy choice to which section 24(1) would more properly apply. I find that section 24(1) does not apply to the information withheld on page 467 and will order the Public Body to disclose this information to the Applicant.

[para 39] The record comprising pages 537-540 appears to be identical to the record comprising pages 609-612; both are described in the Public Body's index of records as a briefing note. However, these records have been severed quite differently. Section 24(1) has been applied to pages 538 and 539 in their entirety, with four discrete paragraphs on these pages separately identified as being withheld under section 24(1) (alone or in conjunction with section 27(1)). Pages 610-611 are identical to pages 538-539, but section 24(1) (alone or in conjunction with section 27(1)) has been applied only to the four discrete paragraphs, in the same manner as the discrete paragraphs are withheld on pages 538-539.

[para 40] I have reviewed these records to determine whether there is any difference between the two copies of the briefing note, but cannot identify any discrepancies that would account for the different application of exceptions. The Public Body has made brief submissions regarding its application of section 24(1) to pages 538-539 and 610-611, but has not noted the discrepancy in its severing of these apparently identical pages.

[para 41] Indeed, the Public Body's initial submission seems to indicate that it intended to apply section 24(1) only to discrete paragraphs (rather than entire pages); it states (initial submission to Part 2, at para. 19):

> Records 538-539 and 610-611 were part of a briefing created for the FOIP Head recommending actions related to a FOIP request. Only the sections of the briefing note that actually made the recommendations had sections 24(l)(a) and 24(1)(b)(i) applied. The recommendations were made so that the head of the public body could provide direction to the FOIP Coordinator regarding the disclosure of records as was required by her position.

[para 42] Given that these two copies of the records are identical and nothing in the Public Body's submission indicates why they were severed differently, I find that section 24(1) cannot apply to pages 538-539 in their entirety. This is because withholding information in one record that has already been disclosed elsewhere can no longer *reveal* the type of information to which section 24(1) applies. Section 27(1) has also been applied to all of pages 537-540 in their entirety. As I will discuss in the relevant section of this Order, section 27(1) also cannot apply to these pages in their entirety for the reason that some information in the pages has already been disclosed to the Applicant. The information that has already been disclosed on pages 610-611 must also be disclosed on pages 538-539.

[para 43] I turn to the four discrete paragraphs withheld on pages 538-539 and 610-611 under section 24(1). For the reasons discussed in the section of this Order dealing with section 27(1)(a), that provision was properly applied to the two discrete paragraphs withheld under that provision on pages 538-539 and 610-611 (the first and last of the four withheld paragraphs). I do not need to consider the Public Body's application of section 24(1) to that information. I need only consider the Public Body's application of section 24(1) to the two discrete paragraphs withheld under that provision alone, which appear on page 538 and 610.

[para 44] I agree with the Public Body's submission that these paragraphs reveal recommendations made to the decision-maker. I noted above that both copies of the briefing note are signed by those making the recommendations and by the decision-maker approving the recommendations.

[para 45] Past Orders have found that because section 24(1) does not apply to a decision that has been made, it also cannot apply to recommendations that were clearly approved. For example, Order F2012-15 states (at paras. 156-157):

> Many of the records are memos from a management employee to a senior management employee setting out a request from the Affected Party for a change to a contract. The memos often include other information such as whether a similar request was approved in the past or general costs for similar items or services, and close with a recommendation for approval of the request. Based on my review of the records, I accept that many of these memos recommend a course of action and were created by an employee whose responsibility it is to make the recommendations for an employee who has the authority to take the action. I made the same finding regarding the few pages of briefing notes created for other senior-level employees of the Public Body. I find that section 24(1)(a) applies to the information severed in the recommendations in those records. (I will list the corresponding pages at the end of this section of the order)
>
> Many of these memos have been signed by the individual tasked with making the decision. The recommendation then, becomes the decision and section 24(1)(a) no longer applies, although it will continue to apply to any information properly characterized as analysis (I will list the corresponding pages at the end of this section of the order). Similarly, one page (page 3281) consists of an email that the employee sent to himself containing notes for an upcoming meeting with the Affected Party. The notes in the email

indicate the message the employee intends to communicate to the Affected Party regarding a decision that has already been made.

[para 46] This analysis applies also to the recommendations withheld on pages 538 and 610. In those records, the discrete paragraphs withheld on these pages reveal recommendations that were accepted. As these recommendations were accepted, section 24(1) can no longer apply. There is no other advice or analysis in these paragraphs in addition to the recommendations-turned-decision to which section 24(1) can apply.

[para 47] Given the above, I will order the Public Body to disclose the second and third of the four discrete paragraphs withheld under section 24(1) on pages 538-539 and 610-611.

Did the Public Body properly apply section 27(1) (privileged information) to information in the records?

[para 48] The Public Body applied sections 27(1)(a) and 27(1)(c)(iii) to information in approximately 70 pages of records; sections 27(1)(a), (1)(c)(iii) and section 24(1) to two pages of records; sections 27(1)(a) and 24(1) to two pages of records; and section 27(1)(a) alone to five pages of records. In many cases, these pages are comprised of email communications, and are often not withheld in their entirety.

[para 49] The Public Body provided me with copies of these records. With respect to the application of section 27(1)(a), the Public Body cited solicitor-client privilege.

[para 50] Section 27(1) states:

> *27(1) The head of a public body may refuse to disclose to an applicant*
>
> *(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege,*
>
> *(b) information prepared by or for*
>
> *(i) the Minister of Justice and Solicitor General,*
>
> *(ii) an agent or lawyer of the Minister of Justice and Solicitor General, or*
>
> *(iii) an agent or lawyer of a public body,*
>
> *in relation to a matter involving the provision of legal services,*
>
> *(c) information in correspondence between*
>
> *(i) the Minister of Justice and Solicitor General,*

> *(ii) an agent or lawyer of the Minister of Justice and Solicitor General, or*
>
> *(iii) an agent or lawyer of a public body,*
>
> *and any other person in relation to a matter involving the provision of advice or other services by the Minister of Justice and Solicitor General or by the agent or lawyer.*

[para 51] Section 71(1) of the Act states:

> *71(1) If the inquiry relates to a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part of the record.*

[para 52] Therefore, the burden of proof lies with the Public Body to prove that section 27(1)(a) of the Act applies to the records at issue.

Section 27(1)(a) – Solicitor-client privilege

[para 53] The test to establish whether communications are subject to solicitor-client privilege is set out by the Supreme Court of Canada in *Canada v. Solosky*, [1980] 1 S.C.R. 821. The Court said:

> … privilege can only be claimed document by document, with each document being required to meet the criteria for the privilege--(i) a communication between solicitor and client; (ii) which entails the seeking or giving of legal advice; and (iii) which is intended to be confidential by the parties.

[para 54] The requirements of this privilege are met if information is a communication between a solicitor and a client, which was made for the purpose of seeking or giving of legal advice and intended to be kept confidential by the parties.

[para 55] Solicitor-client privilege can also extend past the immediate communication between a solicitor and client. In *Blood Tribe v. Canada (Attorney General)*, 2010 ABCA 112 (CanLII), the Alberta Court of Appeal stated (at para 26):

> The appellant also argues that even if some of the documents contain legal advice and so are privileged, there is no evidence that all of the documents do so. For example, the appellant argues that minutes of meetings, emails and miscellaneous correspondence between Justice Canada lawyers and the Department of Indian and Northern Affairs may not contain any actual advice, or requests for advice, at all. The solicitor-client privilege is not, however, that narrow. As the court stated in *Balabel v. Air India*, [1988] Ch 317, [1988] 2 All E.R. 246 at p. 254 (C.A.):
>
> > Privilege obviously attaches to a document conveying legal advice from solicitor to client and to a specific request from the client for such advice. But it does not follow that all other communications between them lack privilege. In most

> solicitor and client relationships, especially where a transaction involves protracted dealings, advice may be required or appropriate on matters great or small at various stages. There will be a continuum of communication and meetings between the solicitor and client. The negotiations for a lease such as occurred in the present case are only one example. Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach. A letter from the client containing information may end with such words as "please advise me what I should do." But, even if it does not, there will usually be implied in the relationship an overall expectation that the solicitor will at each stage, whether asked specifically or not, tender appropriate advice. Moreover, legal advice is not confined to telling the client the law; it must include advice as to what should prudently and sensibly be done in the relevant legal context.
>
> The miscellaneous documents in question meet the test of documents which do not actually contain legal advice but which are made in confidence as part of the necessary exchange of information between the solicitor and client for the ultimate objective of the provision of legal advice.

[para 56] In Order F2015-22, the adjudicator summarized the above, concluding that "communications between a solicitor and a client that are part of the necessary exchange of information between them so that legal advice may be provided, but which do not actually contain legal advice, may fall within the scope of solicitor-client privilege" (at para. 76). I believe this is a well-established extension of the privilege.

[para 57] The Public Body argues (initial submission at paras. 16-17):

> Legal Privilege was applied by APS when there was seeking of advice from our Legal Counsel and Counsel's response, communications between P.25 Counsel and other party's Counsel on behalf of APS related matters, and to which a level of confidentiality was expected.
>
> Per Legal Services, any record that formed part of their file is considered to have legal privilege attached to it and therefore s. 27(1)(a) was applied. They informed the PAO "when information within a record is contained within or under a label of solicitor-client privilege, the lawyer who put the label on the record may request for the whole record to be privileged and therefore, withheld under section 27." An example of this is a record originating from within a legal file.

[para 58] The Applicant argues that solicitor-client privilege cannot apply to any information in the records because there was no need to obtain legal advice with respect to the Notice to Produce; she argues that "the public body was only supposed to answer to what was in the four corners of the production order subpoena, nothing else" (initial submission, at page 3).

Sections 27(1)(b) and (c)

[para 59] In its initial submission, the Public Body states (at paras. 19-20):

> For records that were prepared by or for Legal Services, s. 27(1)(b)(iii) was applied in conjunction with s. 27(l)(a).
>
> For records that were direct communication between Legal Services and APS business areas, s. 27(l)(c)(iii) was applied in conjunction with s. 27(1)(a)

[para 60] The Public Body's index of records does not indicate that section 27(1)(b) was applied to any information in the records at issue. However, the records themselves note that this provision was applied to pages 537-540. For the reasons discussed below, I find that this provision does not apply for the reason that the same information has been disclosed to the Applicant elsewhere in the records. Therefore, I do not need to conduct an analysis of section 27(1)(b) with respect to information withheld in the records.

[para 61] I will discuss the Public Body's application of sections 27(1)(a) and (c).

[para 62] Orders F2014-R-01 and F2014-38 both specify that sections 27(1)(b) and (c) require the information withheld under those provisions to reveal *substantive information about* the relevant legal services. In other words, section 27(1)(c) protects substantive information in correspondence between the persons listed in that provision, about a matter involving the provision of advice or other legal services. Order F2014-R-01 states (at para. 69):

> Information "prepared by or for an agent or lawyer of a public body" within the terms of section 27(1)(b) is *substantive* information, and the section does not apply to information that merely refers to or describes legal services without revealing their *substance* (Order F2013-51 at para. 85). Similarly, the purpose of section 27(1)(c) is to protect the *substance* of advice and services by an agent or lawyer of a public body, and the section does not extend to such information as dates or the names of the senders and recipients of correspondence (Order F2009-018 at paras. 45 to 47). (Order F2014-R-01, at para. 69)

[para 63] In Order F2008-028, the adjudicator found that in order for section 27(1)(b) to apply, information must be "prepared" and that names, business contact information and non-substantive information does not fall within the scope of that provision. He said (at para. 157):

> However, to fall under section 27(1)(b), there must be "information prepared" as those words are commonly understood (Order 99-027 at para. 110). I therefore do not extend the application of section 27(1)(b) to the dates, letterhead, and names and business contact information of the sender and recipient of the information on pages 305-311. These are not items of information that were "prepared". In keeping with principles articulated in respect of sections 22 and 24 of the Act, section 27(1)(b) does not extend to non-substantive information, such as dates and identifying information about senders and recipients, unless this reveals the substantive content elsewhere.

[para 64] A similar analysis operates with respect to section 27(1)(c) which applies to information *in* correspondence between the persons listed in that provision.

[para 65] The analysis in Order F2008-028 was adopted in Order F2017-58, where the adjudicator said (at paras. 168-170):

> Section 27(1)(c) contemplates information in correspondence between a public body's lawyer or agent, and any other person; however, the correspondence must be in relation to a matter which involves the provision of advice or services by the lawyer. At a minimum, a public body seeking to rely on this provision must establish that the lawyer (or agent) involved in the correspondence in question is providing advice or services that relate to the matter that is the subject of information in the correspondence. As a result, a public body must provide convincing evidence regarding the matter, the subject of the correspondence, and the role of the lawyer or agent, in order to meet its burden.
>
> In Order F2015-22, I interpreted the word "matter" in section 27(1)(c) in the following way:
>
> > In my view, the fact that a "matter" within the terms of section 27(1)(c) is one "involving the provision of advice or other services" by a lawyer, indicates that the legislature is referring to a "legal matter", as this is the type of matter for which a lawyer might provide advice or services. The *Canadian Oxford Dictionary*[3] offers the following definition of "matter," where that term is used in a legal context: "*Law*: a thing which is to be tried or proved".
>
> In my view, where section 27(1)(c) refers to a "matter" it is referring to a legal matter, in relation to which a lawyer may provide advice or services.

[para 66] This analysis of section 27(1)(c) was upheld in *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10 (*EPS*).

Analysis – section 27(1)(a)

[para 67] In this case, the Public Body applied sections 27(1)(a) and (c) to the same information with the exception of information on pages 363, 526-529, and 610-611, which was withheld under section 27(1)(a) but not section 27(1)(c). (The information on pages 610-611 was also withheld under section 24(1), which was discussed above). I will address these pages first.

[para 68] Pages 526-529 comprise attachments to an email from one Public Body lawyer to another, discussing a legal matter about which advice had been sought from another Public Body employee. The email is on page 525. I agree that solicitor-client privilege applies to this information, including the email on page 525.

[para 69] As discussed above, the record comprising pages 537-540 is identical to the record comprising pages 609-612; both are copies of a briefing. The Public Body withheld two paragraphs on pages 610-611 under section 27(1)(a) (as well as section 24(1)); the same information was withheld on pages 538-539 under both sections 27(1)(a) and section 27(1)(b) according to the records and/or section 27(1)(c) according to the Public Body's submissions. The Public Body has not addressed this discrepancy. Either way, I agree that these two discrete paragraphs reveal advice provided by internal counsel

on a legal matter, such that section 27(1)(a) applies to those paragraphs on pages 538-539 and 610-611. These are the first and last of the four discrete paragraphs withheld on those pages.

[para 70] The portion of page 363 withheld section 27(1)(a) is an email from the Public Body's internal counsel responding to a request for legal advice from another employee. I agree that section 27(1)(a) applies to this information.

Analysis – section 27(1)(a) and (c)

[para 71] Much of the remaining information withheld under sections 27(1)(a) and (c) consists of emails between internal counsel and other Public Body employees. Some records reveal legal advice that was sought from the Public Body's internal counsel and/or advice given by internal counsel. Some records discuss this advice. Other records relate to the legal matters, but do not reveal legal advice. Still other records include communications involving external parties, such as counsel for the Applicant's former employer.

[para 72] The Applicant argues that privilege cannot apply to information regarding the Notice to Produce issued by the arbitration board because the Public Body was only required to disclose what was in the Notice. I disagree that privilege cannot apply to any information relating to the Notice to Produce; it is reasonable for the Public Body to seek legal advice as to how to comply with such a Notice.

[para 73] Past Orders of this Office have discussed how sections 27(1)(a) and (c) apply to different kinds of information. In *EPS* (cited above), the Court discussed the differences between sections 27(1)(a), (b) and (c), as set out by the adjudicator in Orders F2013-13, F2017-57 and F2017-58 (all of which were the subject of the judicial review in *EPS*). It said:

> [394] EPS contended that the Adjudicator misinterpreted ss. 27(1)(b) and (c). EPS advanced a sort of "matryoshka" or "nesting dolls" interpretation. Information could be covered by solicitor-client privilege under s. 27(1)(a) but also fall under paras (b) or (c) or all three: EPS Brief at paras 169, 179, 181, 189, 203; IPC Brief at para 106.
>
> [395] In my opinion, EPS's interpretation is incorrect. It would mean that a legal opinion (the "information") was "in relation to a matter involving the provision of" a legal opinion (the legal services were to provide a legal opinion).

[para 74] Nevertheless, in my view, either section 27(1)(a) *or* section 27(1)(c) applies to most of the information in the records. Because the Public Body's exercise of discretion is to be reviewed differently depending on which subsection of section 27(1) applies (discussed later in this Order), I will delineate which subsection applies to which information.

<u>Section 27(1)(a)</u>

[para 75] The information withheld under section 27(1) on the following pages reveals advice sought from or given by internal counsel:

- Page 168
- Page 171
- Pages 177-181
- Pages 266-267
- Pages 272-274
- Page 357 (second email)
- Page 358 (second email)
- Page 360 (second email)
- Page 362
- Page 363 (as discussed above)
- Page 364
- Page 366
- Pages 369-370
- Pages 372-373
- Pages 375-376
- Pages 379-380
- Pages 384-385
- Page 388 (last email only, continuing onto page 389)
- Pages 414-416
- Pages 418-419
- Page 421
- Page 505
- Pages 515-517
- Pages 525-29 (as discussed above)
- Pages 546-547
- Pages 551-552
- Pages 554 (second email)
- Page 555
- Pages 571-578
- Pages 602-608
- Pages 610-611 (as discussed above)

[para 76] The above is subject to my finding that some information on the above-listed pages cannot be withheld as it has already been disclosed to the Applicant elsewhere, discussed below.

Section 27(1)(c)

[para 77] The information on the following pages is comprised of information in correspondence between internal counsel and other Public Body employees, relating to the same matter as the legal advice:

- Page 170 (top two emails)
- Page 357 (first email)
- Page 358 (first email)
- Page 359
- Page 360 (first email)
- Pages 387-388 (except last email on 388 to which section 27(1)(a) applies, as above)
- Page 513
- Page 536
- Pages 537-540 (as discussed above)
- Page 541
- Page 554 (first email)

[para 78] The above is subject to my finding that some information on the above-listed pages cannot be withheld as it has already been disclosed to the Applicant elsewhere, discussed below.

[para 79] The Public Body has withheld the above pages in their entirety. As discussed, section 27(1)(c) applies only to substantive information. I will order the Public Body to review these pages listed above and ensure it is withholding only substantive information to which that provision applies. The remainder must be provided to the Applicant.

Neither section 27(1)(a) nor (c) apply

[para 80] As discussed earlier in this Order, pages 537-540 and 609-612 appear to be identical, but have been severed quite differently. The Public Body has not made specific submissions regarding its application of section 27(1) to these pages.

[para 81] While pages 537 and 609 are identical, the latter was disclosed to the Applicant in its entirety, while the former was withheld in its entirety under sections 27(1)(a) and (b) (according to the notations on the records) or sections 27(1)(a) and (c) (according to the Public Body's submissions). Similarly, page 540 was withheld in its entirety under sections 27(1)(a), (b) an/or (c), while the identical information on page 612 was disclosed to the Applicant.

[para 82] Further, while only discrete paragraphs are withheld in pages 610-611, pages 538-539 containing identical information were withheld in their entirety under sections 27(1)(a) and (b), with discrete paragraphs also highlighted as being withheld under sections 24(1)(a) and (b) and/or section 27(1)(a). The application of sections 24(1) and 27(1) to discrete paragraphs on pages 538-539 parallel how those provisions were applied in pages 610-611.

[para 83] Given that pages 537-540 and 609-612 are identical, and nothing in the Public Body's submission indicates why they were severed differently, I find that the information disclosed on pages 609-612 must also be disclosed on pages 537-540. As discussed with respect to the application of section 24(1), disclosing this information on

pages 537-540 cannot reveal anything more than what was already provided to the Applicant on pages 609-612; therefore, it is nonsensical to withhold it. I have also found that section 24(1) does not apply to information on these pages; therefore, I will order the Public Body to disclose this information to the Applicant, subject to my finding regarding the application of section 27(1)(a) to pages 610-611 and 538-539, at paragraph 69.

[para 84] Similarly, the information on the bottom of page 171 and all of page 172 and the bottom of page 178, withheld under sections 27(1)(a) and (c), has already been disclosed to the Applicant on page 167. This information is comprised of an email. From my review of the records, disclosing this email as it appears on different pages does not appear to reveal information contained elsewhere on the page. For the same reasons discussed above, it is nonsensical to withhold the same information that has been disclosed on different pages. Therefore, the Public Body must disclose this information wherever it appears in the records.

Exercise of discretion – Section 27(1)(a)

[para 85] Past Orders of this Office have found that once solicitor-client privilege has been established, withholding the information is usually justified for that reason alone (see Orders F2007-014, F2010-007, F2010-036, and F2012-08 citing *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23.

[para 86] This approach was discussed with approval in *EPS*, cited above.

[para 87] Where I have found that the Public Body properly claimed solicitor-client privilege, its exercise of discretion to withhold that information can be presumed to be appropriate.

Exercise of discretion – section 27(1)(c)

[para 88] Section 27(1)(c) is a discretionary exception. In *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 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 89] 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 90] 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 91] In *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 92] 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 93] 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 94] Lastly, the Court described who has the 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 95] The Public Body did not explain how it exercised its discretion to withhold information under section 27(1)(c). Therefore, I will order the Public Body to reconsider its decision to withhold information form the Applicant under that provision, using the guidance provided above.

Did the Public Body disclose the Applicant's personal information in accordance with, or contravention of, section 40(1) of the FOIP Act?

If the Public Body had authority under section 40(1) of the FOIP Act to disclose the Applicant's personal information, did the Public Body disclose the personal information only to the extent necessary for meeting its purposes, as required by section 40(4)?

[para 96] The parties agree that the Public Body disclosed information about the Applicant's pension to counsel for the Applicant's former employer, in response to a Notice to Produce from an arbitration board (Board). The Notice was issued by the chair of the Board, and requires a specific Public Body employee (JW) to produce the Applicant's "disability benefit application for and supporting medical documentation."

[para 97] Neither party has provided much detail about the proceeding before the Board, other than the details above. In order to understand the underlying facts, I had to review the records at issue, including the copy of records previously provided by the Public Body for the review that was undertaken prior to the inquiry; this copy contained additional records that were no longer as issue for the inquiry (presumably because they had been provided to the Applicant, which I gather from the fact that there is no indication on the records or index of records that any exception was applied to withhold them).

[para 98] I infer from the records that the Applicant filed a grievance against her former employer, and that the grievance related to the termination of her employment. The Applicant was represented by a union representative. I reviewed collective agreements between that union and the former employer, and note that in those agreements, the type of grievance brought by the Applicant can end in arbitration before an arbitration board.

[para 99] I conclude, on a balance of probabilities, that the Board was convened under the collective agreement between the Applicant's union and former employee. I conclude that the Board issued a Notice to Produce (titled as a Production Order) to the Public Body, requiring it to produce information related to the Applicant's disability pension –

specifically, her application and supporting medical information about her disability. It is not entirely clear why the Applicant's pension information was relevant to that proceeding; however, I needn't answer that question to make my finding.

[para 100] Section 40 of the Act sets out circumstances in which a public body can disclose personal information. Section 40(4) requires a public body to limit the disclosure of personal information to what is necessary to meet the purpose for disclosure. The relevant sections state:

> *40(1) A public body may disclose personal information only*
>
> *...*
>
> *(e) for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada,*
>
> *...*
>
> *(g) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction in Alberta to compel the production of information or with a rule of court binding in Alberta that relates to the production of information,*
>
> *...*
>
> *(4) a public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.*

[para 101] In her submissions, the Applicant raises concerns about drafts of the Notice to Produce, which she says were sent to the Public Body by her former employer's counsel. She indicates that she believes the Public Body provided the employer's counsel with information about the Applicant prior to the final Notice to Produce being issued.

[para 102] The Applicant included with her submission, emails between her former employer's counsel, her union representative, the Public Body, and other parties, which discuss a draft Notice and the contents of that Notice (i.e. the scope of the documents included in the Notice to Produce). The Applicant seems to argue that the existence of a draft Notice, or possibly the discussion of a draft Notice, undermines the Public Body's ability to disclose information in response to the (final) Notice. The Applicant appears to believe that the draft Notice may have been accompanied by other documents containing her personal information. The Applicant has not provided any support for her concern that information was exchanged between the employer's counsel and the Public Body, prior to the final Notice. Nothing in the records before me indicate this was the case.

[para 103] The Public Body states that it did not disclose any information to the employer's counsel, except in response to the final Notice to Produce. It states that it disclosed only what it was required to, pursuant to the Notice.

[para 104] The Applicant also argues that counsel for her former employer was not authorized to provide a draft Notice to the Public Body, and that counsel "was in violation of my rights when she contacted the public body on April 17, 2014 and sent draft notices and revised draft notices to attend and produce (rebuttal submission, at page 1). Neither the former employer nor their counsel are parties to this inquiry and their actions are not at issue in this inquiry.

[para 105] The Applicant also requests a copy of any draft Notice to Produce sent to the Public Body. That is addressed in the sections of this Order dealing with the Applicant's access request.

[para 106] The Applicant also argues that she did not provide consent to the disclosure of her personal information to counsel for her former employer.

[para 107] As cited above, section 40 of the Act sets out circumstances in which a public body can disclose personal information. Consent is one such circumstance; however, it is not the only circumstance. If one of the other provisions in section 40 permit the disclosure of the Applicant's personal information, it is not necessary to obtain her consent.

[para 108] In this case, the Public Body argues that it was authorized to disclose the Applicant's personal information under sections 40(1)(e) and (g). It states (initial submission, part 2, at para. 23):

> As noted in para 22. above, APS was legislatively required to provide the documents to the Arbitration Board. The documents were provided in their entirety, including the applicant's Social Insurance Number so that the Board could identify that the documents related to the correct member, personally and specifically. Such disclosure is authorized under section 40(l)(g) of the Act. In addition, Legal Services advised that in proceedings such as these, parties are under an implied undertaking to consider the relevant portions of the documents, i.e. use the documents solely for the purposes of the proceeding and for no collateral or other purpose.

[para 109] The Public Body provided a signed copy of the final Notice to Produce (it is also located in the records at issue provided to the Applicant). It states that it is in relation to a grievance arbitration brought by the Applicant's union, against the Applicant's former employer. It is addressed to a particular Public Body employee, JW, and it requires JW to produce the pension plan "disability benefit application form and supporting medical documentation" of the Applicant. It is signed by the chair of the Board.

[para 110] The Public Body states that the Arbitration Board is acting under the authority of the *Arbitration Act*, R.S.A. 2000, c. A-43. Specifically, the Public Body points to section 29 of that Act, which states in part:

> *29(1) A party may serve a person with a notice requiring the person to attend and give evidence at the arbitration at the time and place named in the notice.*

(2) The notice has the same effect as a notice in a court proceeding requiring a witness to attend at a hearing or produce documents and shall be served in the same way.

[para 111] The Applicant does not deny that the disclosure occurred in relation to an arbitration proceeding between her (and/or her union) and her former employer. She does not deny that her disability pension was somehow relevant to that proceeding.

[para 112] I agree that the Board has the authority to issue a Notice to Produce as it did. It follows that the Public Body's disclosure of the personal information contained in the records subject to that Notice was authorized under section 40(1)(g).

[para 113] Regarding the extent of the Public Body's disclosure, the Applicant has raised concerns about what specifically was disclosed by the Public Body to her former employer's counsel. This concern is raised primarily in relation to her arguments about the inappropriateness of the draft Notices being exchanged.

[para 114] A similar situation was considered in Order F2018-59. In that case, the complainant had been a resident on the campus of the University of Alberta. The complainant and University were involved in a hearing before the Residential Tenancy Dispute Resolution Service (RTDRS). The complainant claimed that the University disclosed personal information about him to the RTDRS that wasn't relevant to the matter before the RTDRS. In making a determination, I considered the past Orders of this Office, and found (at paras. 25-34):

> In Order F2008-029, the Director of Adjudication considered the meaning of the term "necessary" in section 41(b). In that case, the public body disclosed a police report containing an individual's personal information to a third party organization, pursuant to an information-sharing agreement, for the purpose of enabling the organization to provide assistance to victims of domestic violence. The Director of Adjudication stated (at para. 51):
>
> > In the context of section 41(b), I find that "necessary" does not mean "indispensable" – in other words it does not mean that the CPS could not possibly perform its duties without disclosing the information. Rather, it is sufficient to meet the test that the disclosure permits the CPS a means by which they may achieve their objectives of preserving the peace and enforcing the law that would be unavailable without it. If the CPS was unable to convey this information, the caseworkers would be less effective in taking measures that would help to bring about the desired goals. Because such disclosures enable the caseworkers to achieve the same goals as the CPS has under its statutory mandate, the disclosure of the information by the CPS also meets the first part of the test under section 41(b).
>
> This analysis has also been applied to the standard of what is necessary under section 40(4) (see Order F2015-01, at paras. 25-26).

Whether personal information was used or disclosed beyond the extent necessary for the stated purpose has been considered in past Orders of this Office. In Order F2015-01, an investigator at Human Services investigated a claimant under the Assured Income for the Severely Handicapped (AISH) program. The investigator contacted two third parties to obtain information about the claimant. In doing so, the investigator disclosed the claimant's personal information to clarify what information she was seeking. Those disclosures were found to have met the test for 'necessary' as set out in Order F2008-029 because "if the investigator was precluded from disclosing the Complainant's personal information as she did, she would have been less effective in conducting a thorough investigation" (at para. 35).

In Order F2012-05, I considered whether the WCB used a claimant's personal information beyond what was necessary in conducting an investigation under the *Workers' Compensation Act* (WCA). In that case, the WCB investigator had collected the claimant's personal information in a letter from a third party. The letter included personal information that was not ultimately relevant to the claim. The claimant had argued that the WCB was not authorized to collect or use the personal information in the letter. I found that the WCA authorized the investigation and therefore it was not appropriate for me to base the WCB's authority to collect and use the information under the FOIP Act on the basis of whether I believed the information was relevant to the WCB's investigation. To do so would be to encroach upon the WCB's statutory function. I said (at para. 42):

> In my view, certainly so long as these bodies are gathering and evaluating evidence in good faith and the belief that it may be or is relevant, it is not my role to second-guess their performance of these duties.

Regarding the extent of the Public Body's use of the information under section 39(4), I said (at para. 43):

> The case manager considered the information that had been presented to her by the claims investigator to enable her to make her determination and issue her decision, as she was entitled to do. There is nothing to suggest that she used the information for any extraneous or bad-faith purpose.

These conclusions from Orders F2015-01 and F2012-05 apply in this case as well. I have found that the Public Body was authorized to disclose the Complainant's personal information for the RTDRS hearing. The Public Body argued that the information provided to it by the GSA and later included in the Public Body's application to the RTDRS all had "enough of a line of connection so as to not raise any flags with Residential Services" (at para. 28). It further argued (at paras. 31-32):

> Parties make their best efforts to determine which records may be relevant to the adjudicator, but ultimately it is the role of the adjudicator to determine which records are relevant and necessary.
>
> Furthermore, if evidence submitted in good faith was deemed not relevant by the hearing adjudicator and a party to the hearing could then use that assessment to make a privacy complaint, it would create a chilling effect on the quasi-judicial process, potentially limiting legal rights. If there is some line of connection to the issues at hand, then parties must be allowed a reasonable margin of error in attempting to determine what will and will not ultimately be considered relevant and necessary by an adjudicator.

> Having reviewed the documents attached to the Public Body's application to the RTDRS, I agree that there is a logical connection to the matter at issue in the hearing. Whether the Public Body's disclosure of all of those documents was necessary for the purposes of section 40(4) cannot be an assessment made with hindsight knowledge of what the RTDRS considered to be relevant to its decision.
>
> Rather, I agree with the Public Body that parties must have 'some reasonable margin of error' when deciding what material to submit to a decision-maker in a quasi-judicial proceeding. Public bodies must be permitted to make their best case; what is ultimately considered to be relevant to the proceeding is a determination for the decision-maker.
>
> I do not mean to suggest that being a party to a court or quasi-judicial proceeding will give public bodies *carte blanche* with respect to disclosing personal information. In a situation where some or all of the personal information disclosed for a proceeding does not have any logical connection to the matters at hand, section 40(4) may not be met.
>
> In this case, there is a logical connection between the documents submitted by the Public Body and the matter before the RTDRS, such that it was reasonable for the Public Body to believe it may be relevant to the decision. Therefore, it is my view that the Public Body disclosed the Complainant's personal information in good faith. I find that the disclosure was not beyond what was necessary for the purpose of section 40(4). To find otherwise could unreasonably fetter a public body's ability to make its case in court or quasi-judicial proceedings.

[para 115] Neither party has identified what was included in the Public Body's disclosure package. The Public Body states that it disclosed only what was identified in the Notice. As a party to the proceeding before the Board, the Applicant would presumably have knowledge of what was included in the package. Indeed, the Applicant included with her rebuttal submission a copy of an email provided to her in response to her request, which states that the disclosure package (i.e. the records disclosed in response to the Notice to Produce) would include the same information previously provided to the Applicant as part of a routine disclosure. Given this, the Applicant was aware of what information was contained in the disclosure package and did not identify any information she believes was more than necessary to disclose.

[para 116] Having reviewed the records and submissions, nothing before me leads me to doubt the Public Body's claim that it disclosed only the information identified in the Notice. I conclude, on a balance of probabilities, that the Public Body disclosed only what was necessary to meet the purpose of the disclosure, as required by section 40(4).

[para 117] I note that in one of the records at issue provided to the Applicant, the Public Body expressed a concern to the former employer's counsel, that the draft Notice was overly broad. The Applicant included a copy of this email with her rebuttal submission. The Public Body stated in this email that the Notice would encompass records that likely have no relevance to the matter before the Board. The Public Body asked that the scope of the Notice be narrowed to include only records relating to the Applicant's disability pension benefits, or records created within the relevant time frame.

[para 118] In my view, whether or not the Public Body took this step, it would be authorized to disclose whatever information was specified in the Notice to Produce. From a privacy standpoint, it is commendable that the Public Body exercised due diligence to ensure that only information relevant to the proceeding would be encompassed by the Notice and therefore disclosed for the proceeding.

V. ORDER

[para 119] I make this Order under section 72 of the Act.

[para 120] I find that the Public Body properly withheld personal information to which section 17(1) applies.

[para 121] I find that section 24(1) does not apply to the information withheld under that provision on pages 467, 538-539, and 610-611. I order the Public Body to disclose this information as set out in paragraphs 38- 47.

[para 122] I find that section 27(1)(a) applies to the information as described in paragraphs 68-70, and 75-76. I find that this provision does not apply to information already disclosed to the Applicant, as discussed at paragraphs 80-84.

[para 123] I find that section 27(1)(c) applies to the information as described in paragraphs 77-78. I find that this provision does not apply to information already disclosed to the Applicant, as discussed at paragraphs 80-84. The Public Body must conduct a review of the records listed at paragraph 77 to ensure it is withholding only substantive information, as set out in paragraph 79. The remaining information in each record to which section 27(1)(c) does not apply must be disclosed to the Applicant. I also order the Public Body to exercise its discretion whether to withhold information under section 27(1)(c), per paragraphs 88-95.

[para 124] I find that section 27(1) does not apply to some information as set out at paragraphs 80-84. I order the Public Body to disclose that information to the Applicant.

[para 125] I find that the Public Body was authorized to disclose the Applicant's personal information.

[para 126] I further order the Public Body to notify me and the Applicant in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

_____

Amanda Swanek
Adjudicator