

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2008-016

December 23, 2008

EDMONTON POLICE SERVICE

Case File Number F4070

Office URL: www.oipc.ab.ca

Summary: The Applicant, a Justice of the Peace, requested records relating to a complaint made against him by the Public Body, the Edmonton Police Service. The Edmonton Police Service (“EPS”) responded but severed several records pursuant to sections 4, 17, 21, 24 and 27 of the *Freedom of Information and Protection of Privacy Act* (“the Act”).

The Applicant requested a review of the EPS’ response by the Office of the Information and Privacy Commissioner (“this Office”). The Applicant questioned the severing of the records and if the EPS had performed an adequate search and provided him with all of the responsive records. The EPS raised the issue that this Office had lost jurisdiction over this matter as the result of an alleged failure to comply with section 69 of the Act.

The Adjudicator found this Office had not lost jurisdiction over this matter. Further, the Adjudicator decided that the EPS had conducted a proper search and fulfilled its duty under section 10 of the Act. However, the Adjudicator found that there were instances where the EPS had not properly applied sections 17, 21, 24 and 27 of the Act.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act* R.S.A. 2000, c. F-25, ss. 1(h), 1(i)(x), 1(n), 1(q), 4, 6(2), 10, 12, 16(1)(b), 17, 21, 22, 23, 24, 27, 69; 70, 72, *Interpretation Act* R.S.A. 2000 c. I-8 s. 28(1)(r); *Judicature Act* R.S.A. 2000 c. J-8; *Legal Profession Act* R.S.A. 2000 c. L-8; *Personal Information Protection Act* S.A. 2003,

c. P-6.5 s. 50(5); *Youth Criminal Justice Act* R.S.A. 2000 c. Y-1; **B.C.**: *Freedom of Information and Protection of Privacy Act* R.S.B.C. 1996 c. 165 s. 16(1)(b);

Authorities Cited: **AB:** Orders 96-006, 96-017, 96-019, 97-016, 99-017, 99-028, 2000-019, 2000-021, 2000-029, 2000-032, 2001-038, F2002-011, F2002-024, F2004-003, F2004-018, F2004-026, F2005-030, F2006-031, F2006-014, F2007-004, F2007-007, F2007-021. **BC:** Order 02-19.

Cases Cited: *Solosky v. The Queen*, [1980] 1 S.C.R. 821; *Bridgeland-Riverside Community Association v. City of Calgary*, [1982] A.J. No. 692 (C.A.); *Petherbridge v. City of Lethbridge*, [2000] A.J. No. 1187 (Q.B.); *Rahman v. Alberta College and Assn. of Respiratory Therapy* [2001] A.J. No. 343 (Q.B.); *Kellogg Brown and Root Canada v. Alberta (Information and Privacy Commissioner)* [2007] ABQB No. 499, [2008] ABCA 384.

I. BACKGROUND

[para 1] On March 21, 2007, the Applicant, a Justice of the Peace, wrote to the Public Body, the Edmonton Police Service (“EPS”), and stated, “I would appreciate if I could receive copies of the correspondence and all other of my personal information that your FOIP office has jurisdiction over.”

[para 2] On April 25, 2007, the EPS responded to the Applicant’s request, providing him with responsive records. The EPS indicated that some of the information in the responsive records had been withheld or severed pursuant to sections 4(1)(a), 17(1), 17(4)(b), 17(4)(g)(i)(ii), 24(1)(b), 27(1)(a), 27(1)(b)(iii), and 27(1)(c)(iii) of the *Freedom of Information and Protection of Privacy Act* (the “Act” or the “FOIP Act”).

[para 3] On April 27, 2007, the Applicant wrote to this Office and requested a review of the EPS’ reply to his FOIP request. The Applicant stated, “I seek greater clarification for the documents that have been edited and the basis for the editing.” Further, the Applicant wanted clarification as to whether a thorough search had been conducted by the EPS as, among the responsive records he had received, there were documents written by a member of the EPS legal team with whom he had had no contact. Therefore, as part of the request for review to this Office, the Applicant suggested that notes or other records relating to information supplied by EPS officers to the EPS legal team exist and should have been located and disclosed. Finally, he noted that the EPS did not provide him with copies of complaints written by various EPS members about the Applicant to two Judges of the Provincial Court of Alberta, which had been provided to him from sources other than the EPS.

[para 4] On May 1, 2007, this Office sent a letter to the Applicant and the EPS stating that the Applicant’s request for review had been received by this Office and was being referred to a Portfolio Officer for investigation and mediation. The letter enclosed this Office’s review procedures and advised that the anticipated date of completion of the review was July 27, 2007. According to the EPS’ affidavit, by way of letter to the parties

dated June 11, 2007, the Portfolio Officer provided the results of his review of this matter.

[para 5] On June 14, 2007, the Applicant wrote to this Office requesting an inquiry into this matter to address the concerns he had raised in his letter of April 27, 2007. He stated that his concerns had not been addressed and that, “[t]here are still letters of complaint that were sent by the police that I received copies of [presumably from some other source] which are not referenced at all in the EPS FOIP disclosure.”

[para 6] On August 8, 2007, the Director of Adjudication wrote to the parties advising that this matter had been received by the Adjudication Unit. The letter advised of timelines for the inquiry and that the anticipated date to complete the inquiry was June 30, 2009. As well, the parties were provided with contact information for the person who could answer any questions.

[para 7] On March 7, 2008, the EPS wrote a letter to this Office stating that in the EPS’ opinion, this Office had lost jurisdiction over this matter pursuant to section 69(6) of the Act.

[para 8] On July 4, 2008, the Notice of Inquiry was sent to the parties which included the EPS’ jurisdiction objection as an issue.

[para 9] On August 7, 2008 the EPS requested that an additional issue be added to this inquiry. This request was granted by this Office, and on August 12, 2008, an Amended Notice of Inquiry was provided to the parties that included the issue of whether section 21 of the Act had been properly applied by the EPS.

[para 10] The EPS provided submissions. The Applicant did not provide any submissions.

II. RECORDS AT ISSUE

[para 11] The records at issue are the severed portions and withheld pages of responsive records of the EPS file relating to a complaint made by the EPS regarding the Applicant. As well, the Applicant suggests that additional records exist that were not provided.

III. ISSUES

[para 12] According to the Notice of Inquiry dated July 4, 2008 and the Amended Notice of Inquiry dated August 12, 2008, the issues are as follows:

Issue A:

Did the Commissioner or his delegate lose jurisdiction on the basis of alleged non-compliance with section 69(6) of the Act?

Issue B:

Are the records in the custody or under the control of the Public Body as set out in section 4(1)(a) of the Act?

Issue C:

Does section 17(1), 17(4)(b), 17(4)(g)(i)(ii) of the Act (personal information) apply to the information withheld?

Issue D:

Did the Public Body properly apply section 24(1)(b)(i)(ii)(iii) (advice) to the information withheld?

Issue E:

Did the Public Body properly apply section 27(1)(a), 27(1)(b)(iii) and 27(1)(c)(iii) (privileged information) of the Act to the information withheld?

Issue F:

Did the Public Body meet its duty to the Applicant, as provided by section 10(1) of the Act? In this case the Adjudicator will consider whether the Public Body conducted an adequate search for responsive records/information.

Issue G:

Did the Public Body properly apply section 21 of the Act (intergovernmental relations) to the records/information?

IV. DISCUSSION OF ISSUES

Issue A: Did the Commissioner or his delegate lose jurisdiction on the basis of alleged non-compliance with section 69(6) of the Act?

[para 13] In its submissions, the EPS states that the Commissioner, or his delegate, did not complete the review of this matter within 90 days and did not properly extend the time for completing the review, as required by section 69(6) of the Act. The EPS relies on the Court of Queen's Bench finding in *Kellogg Brown and Root Canada v. Alberta (Information and Privacy Commissioner)* [2007] ABQB No. 499 ("KBR"). The finding in *KBR* was recently appealed to the Alberta Court of Appeal and was dismissed on the basis the issue was moot.

[para 14] Order F2006-031 was issued by this Office on September 22, 2008. In that Order, the Public Body was also the EPS. The Commissioner addressed many of the jurisdictional arguments raised by the EPS in this matter. I agree with the Commissioner's findings in Order F2006-031 and will follow and apply the reasoning of the Commissioner in Order F2006-031 to the specific facts before me in this matter.

Did the Commissioner or his delegate comply with section 69(6) of the Act?

[para 15] The EPS argues that jurisdiction has been lost over this inquiry by virtue of alleged non-compliance with section 69(6) of the Act, which states:

69(6) An inquiry under this section must be completed within 90 days after receiving the request for the review unless the Commissioner

- (a) notifies the person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review that the Commissioner is extending that period, and*
- (b) provides an anticipated date for the completion of the review.*

[para 16] Section 69(6) of the Act sets a 90-day timeline within which the Commissioner "must" complete a review. In this matter, the Applicant's request for review was received by this Office on April 27, 2007. Therefore, on its assumption that this Office received the Applicant's request for review on May 1, 2007, the EPS argues that the Commissioner ought to have completed the review by July 27, 2007 in order to comply with section 69(6) of the Act.

[para 17] The EPS' calculation of the timeline is slightly flawed. According to the *Interpretation Act*, when calculating this timeline, the date the request was received should not be counted. Therefore, 90 days from May 1, 2007 is actually July 30, 2007. In any event, the Applicant's request for review was received by this Office on the date that it was sent, April 27, 2007, and 90 days from this date is July 26, 2007.

[para 18] Section 69(6) of the Act allows the Commissioner to extend the time to complete the review beyond the 90 days by notifying the parties to the review that he is extending the period and providing an anticipated date of completion of the review.

[para 19] On May 1, 2007, the Commissioner sent a letter to the EPS stating that he had authorized an investigation into this matter and anticipated that the review would be complete by July 27, 2007. This date is outside of 90 days from the date that the request for review was received by this Office. The letter further stated, "...I may extend this period if additional time is needed. I will notify you in writing if the date is extended."

[para 20] The EPS argues that the May 1, 2007 letter was not a proper extension notice under section 69(6) of the Act. It states that the letter does not purport to extend the timelines in section 69(6) of the Act, as the anticipated date of completion given is a reiteration that the Portfolio Officer will complete the review within 90 days as required by the Act.

[para 21] In order that it be a reiteration that the review would be completed within 90 days from the date that the request for review was received, the anticipated date for completion would have to have been stated as July 26, 2007. Therefore, as the date of July 27, 2007 was beyond the initial 90 day period, the review of this matter was being extended.

[para 22] As well, section 69(6) of the Act does not dictate specific language that ought to be used. In Order F2006-031 the Commissioner stated:

Section 69(6) does not specify the precise wording for notifying the parties about an extension of time and providing an anticipated date for completion of the review....

Therefore, I can notify that time is extended by a communication to the parties made by me or on my behalf, which makes it clear to the parties that the process will continue beyond 90 days.

(Order F2006-031 at paragraphs 38-39)

[para 23] Therefore, I find that the letter of May 1, 2007 did extend the 90-day timeline contemplated in section 69(6) of the Act, and that the Commissioner, and I as his delegate, have not lost jurisdiction over this matter.

[para 24] However, even if I am incorrect in finding that the May 1, 2007 letter properly extended the time for completion of the review of this matter, I still find that the matter was properly extended on August 8, 2007.

[para 25] The investigation was completed by a Portfolio Officer from this Office on June 11, 2007. The Applicant requested an inquiry into this matter by way of letter to this Office dated June 14, 2007. On August 8, 2007, less than two months after receipt of the Applicant's request for inquiry, a letter was sent to the EPS by the Director of Adjudication which stated:

This file...has been received by the Adjudication Unit. If a decision is made to hold an inquiry in this matter, it will be scheduled. Inquires are currently being scheduled at the end of 2007 or the beginning of 2008.

[para 26] The letter went on to give approximate timelines for the procedural steps which would follow and concluded by stating, “The anticipated date of completion of the review is June 30, 2009.”

[para 27] The EPS concedes that the form of this letter is a proper extension notice as contemplated by section 69(6) of the Act. However, the EPS states that since this letter was sent after the initial 90-day period had expired, the 90-day timeline was not properly extended by the August 8, 2007 letter.

[para 28] There is nothing in section 69(6) of the Act that requires the 90-day timeline to be extended within the initial 90 days. This was not an issue before the Court in *KBR*. However, this issue was addressed by the Commissioner in Order F2006-031. He stated:

In my view, the placement of the phrase “within 90 days” indicates that the 90 days refers only to my duty to complete the inquiry, and does not refer to my power to extend the 90-day period in section 69(6)(a) and section 69(6)(b). To the extent that there is any ambiguity, by interpreting section 69(6) purposively as I will do below, the provision allows me to extend the time after the 90-day period expires.

(Order F2006-031 at paragraph 54)

[para 29] After going through the exercise of purposively interpreting section 69(6) the Commissioner stated:

In my opinion, neither the purpose of the FOIP Act in general nor section 69(6) in particular is advanced by interpreting the provision as creating an absolute “deadline”, beyond which a proceeding that is underway cannot continue unless I have, before the 90 days expires, expressly stated that the matter will continue beyond 90 days, and projected a new final date for completion.

(Order F2006-031 at paragraph 63)

[para 30] The Commissioner then found that, “...section 69(6) allows me to extend the 90-day period and provide an anticipated date for completion of the review, and notify the parties accordingly, after the 90 days have expired.” (Order F2006-031 at paragraph 70)

[para 31] I agree with and adopt the Commissioner’s reasoning in Order F2006-031. I find that that the timeline under section 69(6) of the Act can be extended after the initial 90-day period has expired. Therefore, I find that the August 8, 2007 letter from this Office to the parties was a proper extension notice as contemplated by section 69(6) of the Act.

Is section 69(6) of the Act mandatory or directory?

[para 32] As I stated above, much of the EPS' submission relies on the decision of *KBR*, in which the Court of Queen's Bench examined the effect of non-compliance with section 50(5) of the *Personal Information Protection Act* ("PIPA") on the Commissioner's jurisdiction. The Commissioner decided in Order F2006-031 that the analysis of the purpose provision in the FOIP Act leads to an interpretation of section 69(6) of the FOIP Act that differs from Justice Belzil's interpretation of section 50(5) of PIPA. For this reason, and in the event I am incorrect in my finding that section 69(6) of the FOIP Act was not breached, it is necessary to interpret section 69(6) of the FOIP Act to decide if it is mandatory or directory.

[para 33] In Order F2006-031, the Commissioner applied current statutory interpretation principles to determine if the section 69(6) of the FOIP Act was mandatory or directory. He examined:

- i. The existing interpretation of section 69(6) of the FOIP Act;
- ii. The words of section 69(6) of the FOIP Act in their entire context;
- iii. The purpose of the FOIP Act;
- iv. The scheme of the FOIP Act; and
- v. The intention of the Legislature in enacting the FOIP Act

[para 34] The Commissioner noted that he has a duty under section 69 of the FOIP Act to conduct an inquiry where one is requested unless section 70 of the Act applies. He then concluded:

If the effect of section 69(6) is to deprive me of jurisdiction if I do not complete an inquiry within 90 days and do not extend the time, I can avoid my duty by failing to do those things. A duty to conduct an inquiry becomes potentially meaningless if it can be defeated by the decision maker simply failing to conduct the inquiry or failing to extend the time. This leads to the conclusion that my duty to conduct an inquiry under the FOIP Act remains, whether or not the time limit in section 69(6) has been exceeded.

(Order 2006-031 at paragraph 119)

[para 35] The Commissioner went on to state:

...when section 69(6) is considered independently of the Court's interpretation of section 50(5) of PIPA, the emphasis on the rights of individuals for both aspects of the FOIP Act (personal information protection as well as access) leads to the conclusion that section 69(6) should not be interpreted so as to allow the frustration of these central purposes – protecting the rights of individuals – by a failure to meet timelines.

(Order 2006-031 at paragraph 120)

[para 36] The Commissioner then concluded that:

...the meaning that I assign and have historically assigned to section 69(6) is that it permits me to take control of the process and move the matter forward. Section 69(6) sets up an initial short time frame within which, should the matter be concluded, there is no need for the process to be managed in terms of its timing. If the 90 days is likely to expire before completion, or has expired and the matter has not been completed, it is then up to me to take steps to ensure that the process moves forward by setting dates for further required steps. The purpose and terms of the provision are fulfilled so long as I apprise the parties of developments and the steps they are to take in an ongoing way.

(Order 2006-031 at paragraph 124)

[para 37] The Commissioner concluded that section 69(6) of the FOIP Act is not mandatory but directory. I agree with and adopt the reasoning of the Commissioner in Order 2006-031 and also find that, using statutory interpretation principles, section 69(6) of the FOIP Act is directory. Therefore, even if I am incorrect in my finding that section 69(6) was not breached, I still find that there was no loss of jurisdiction, as section 69(6) is directory, and a breach would not lead to a loss of jurisdiction.

Applying KBR:

[para 38] Finally, in the event that I am incorrect and section 69(6) of the Act is mandatory and not directory, I will apply factors detailed by the Court of Queen's Bench in *KBR* to this matter. In Order F2006-031 the Commissioner noted that the law surrounding the mandatory/directory distinction has evolved such that the distinction has essentially been surpassed. Therefore, it is necessary to examine if the legislature intended a loss of jurisdiction to result from a breach of a section that contains obligatory language (Order F2006-031 at paragraphs 151-184).

[para 39] The Alberta Court of Appeal has also made note of this evolution in *Bridgeland-Riverside Community Association v. City of Calgary* [1982] A.J. No. 692 (C.A.) ("*Bridgeland*"), and subsequent decisions following that decision. In *Bridgeland*, the Court said:

In my view, no concept is more sterile than that which says that a proceeding is a nullity for failure of compliance with a procedural rule and without regard to the effect of the failure. ...

I would put aside the debate over void or voidable, irregularity or nullity, mandatory or directory, preliminary or collateral. These are only ways to

express the question shall or shall not a procedural defect (whether mandated by statute or common law) vitiate a proceeding. In my view, absent an express statutory statement of effect, no defect should vitiate a proceeding unless, as a result of it, some real possibility of prejudice to the attacking party is shown, or unless the procedure was so dramatically devoid of the appearance of fairness that the administration of justice is brought into disrepute.

(*Bridgeland* at paragraphs 27 and 28)

[para 40] The Alberta Court of Queen's Bench more recently revisited the evolved analysis in *Petherbridge v. City of Lethbridge* [2000] A.J. No. 1187 (Q.B.), and stated:

This case [*Bridgeland*] provides, at 368, that a procedural defect, whether contrary to statute or common law, does not vitiate a proceeding unless:

- (a) a statute prescribes such an effect;
- (b) a real possibility of prejudice to the attacking party is shown; or
- (c) the procedure was so dramatically devoid of the appearance of fairness that the administration of justice is brought into disrepute.

[para 41] The EPS argues that the conclusion in *KBR* ought to be applied to this matter without consideration of the individual facts of this matter and how they fit with the factors outlined by the Court in *KBR*. I disagree with this argument. Not only is it clear that the Court in *KBR* placed an emphasis on the factors in the case before it in coming to its conclusion, but given the evolution of the mandatory/directory analysis, it is necessary to examine if the legislature intended a loss of jurisdiction in this particular matter (Order F2006-031 at paragraph 139).

[para 42] The Court in *KBR* began by looking at the wording and context of section 50(5) of PIPA. I have adopted the reasoning of the Commissioner in Order 2006-031 as it related to a determination that section 69(6) of the FOIP Act is directory and not mandatory. However, as the Commissioner did in Order F2006-031, for the purposes of discussion, I will assume that the wording of section 69(6) of the FOIP Act makes the provision obligatory, and proceed to determine if the remaining factors cited in *KBR* lead to the conclusion that the Legislature intended this Office to lose jurisdiction should section 69(6) of the FOIP Act be breached (Order F2006-031 at paragraph 150).

[para 43] The next factor the Court considered was the operational effect that a finding that section 50(5) of PIPA is mandatory would have on this Office. The Court in *KBR* concluded that it would not be difficult for the Commissioner to comply with the letter of section 50(5) of PIPA, and therefore, there would be little or no negative operational impact. In Order F2006-031 the Commissioner described the operational impact that a finding that section 69(6) of the FOIP was mandatory as follows:

A finding that section 69(6) is mandatory has the potential to leave me without jurisdiction on all FOIP Act cases and inquiries in my Office, and render all FOIP Act orders of my Office a nullity, which would have a significant negative operational impact on the FOIP Act.

(Order F2006-031 at paragraph 174)

[para 44] Therefore, I find that the negative operational impact that a finding that section 69(6) is mandatory would have weighs in favour of a finding that the Legislature would not have intended a loss of jurisdiction to result from a breach of section 69(6) of the FOIP Act.

[para 45] Next, the Court in *KBR* considered the impact on the complainant and affected organization depending on whether section 50(5) of PIPA was found to be mandatory. The Court considered the prejudice to the Organization should section 50(5) of PIPA be directory and to the Complainant should section 50(5) of PIPA be mandatory, and found that the result would be neutral.

[para 46] The EPS argues that it would suffer prejudice if section 69(6) of the FOIP Act were not mandatory and gives specific examples, but states the examples may not all be applicable to this matter. I am not certain which ones would be applicable in this matter. However, most deal with uncertainty on when submissions would be required, and stress. The examples of prejudice mentioned by the EPS may be inconvenient but they do not constitute prejudice. I therefore reject the argument that the EPS has suffered prejudice as the result of delays, just as the Commissioner did in Order F2006-031 when presented with the same argument and factors (Order F2006-031 at paragraph 166-167).

[para 47] I acknowledge that because this matter deals with an access request, which can be made at any time, it could be argued that should this Office lose jurisdiction over this matter, there is no prejudice suffered by the Applicant, as the Applicant could start the process over again with a new access request. This will cost the Applicant, the EPS and this Office time and money but, ultimately, these costs, would be borne by all parties.

[para 48] That being said, the Applicant's request may be time-sensitive. So, while the EPS will simply have to start a process that it does routinely over again, the Applicant may suffer actual prejudice at having to wait for another access request to be processed. However, the Applicant made no argument to this effect

[para 49] The Court next considered if there were alternative remedies available to the complainant. In *KBR*, the Court found that the complainant could bring a grievance under labour law or make a complaint under human rights legislation. The EPS argues that this factor should not be considered in this matter as it has nothing to do with legislative intent. That may be true, but in this part of the Order I am applying the factors outlined in *KBR*. Further, there is nothing in the *KBR* decision that would indicate that the Court wanted to place more emphasis on one factor than on another.

[para 50] The only evidence provided to me regarding an alternative remedy was EPS' contention that the Applicant can make another access request for the same records and start the entire FOIP process over again. Pursuing the same remedy under the same Act at a different time is not an alternative remedy. I am aware of no alternative remedies available to the Applicant in this matter. Therefore, I find that there is no alternative remedy available to the Applicant to gain access to the records which he has requested, beyond the procedure set out in the Act. This weighs in favour of the Legislature not intending that this Office should lose jurisdiction for a breach of section 69(6) of the FOIP Act in this matter.

[para 51] Finally, the Court in *KBR* considered if a finding that section 50(5) of PIPA is mandatory would be contrary to public interest. The Court found that it would be in the public interest to promote timely resolution of complaints. In *KBR*, Justice Belzil considered the case of *Rahman v. Alberta College and Assn. of Respiratory Therapy* [2001] A.J. No. 343 (Q.B.) ("*Rahman*") in which the Court interpreted as directory a provision requiring a disciplinary hearing to be held within 90 days. Justice Belzil distinguished this case because the Court in *Rahman* had found that there was no prejudice to the respondent resulting from the delay, and because there was no ability under the statute in *Rahman* to extend time.

[para 52] In Order F2006-031, the Commissioner considered *Rahman* and found that it applied. The Commissioner found that the balance of prejudice favoured the Complainant. As well, because completion dates were not accurately predictable given the variables in each matter, the ability to extend the time under section 69(6) of the FOIP Act did not make compliance easily achievable. Therefore, the Commissioner found, based on the principle in *Rahman* that the public interest is best served where a decision maker, whose role includes performing a public duty, fulfills that role.

[para 53] In Order F2006-031, the Commissioner was dealing with a complaint and not an access request. Therefore, the balance of prejudice may be slightly different in that matter than in this matter. However, given that there is no prejudice to the EPS in this matter, and the importance of the Commissioner fulfilling his obligations under the FOIP Act, I would still adopt the reasoning of the Commissioner and find that this Office should not lose jurisdiction over this matter based on legislative intent.

[para 54] The Commissioner considered an additional factor in Order F2006-031, the seriousness of the breach. In that Order the Commissioner found that the breach was trivial or technical. I find the same in this matter, for the reasons that follow.

[para 55] This Office received the Applicant's request for review on April 27, 2007 and on May 1, 2007 advised the EPS that a request for review had been received. The EPS was also advised that an investigation would proceed and the review would be completed by July 27, 2007, unless more time was needed. This Office provided the EPS with a copy of the procedures that this Office follows in conducting a review. Included in this document is the following section:

Timelines for review

An inquiry must be completed within 90 days after the request for review is received by the Commissioner. The Commissioner has the authority to extend the timeline for completion of the inquiry (section 69(6)). Notification of extensions will be issued to parties accordingly. The Commissioner's practice is to extend the timeline by sending:

- Notices of extensions to the parties during mediation; or
- A Notice of Inquiry to the parties when the applicant has requested that the matter proceed to inquiry.

[para 56] The investigation and review by the Portfolio Officer was completed on June 11, 2007, and on that date the EPS was advised of the results of the Portfolio Officer's review. This did not resolve the matter. This Office received a request for an inquiry from the Applicant on June 14, 2007 and the matter was sent to the Adjudication Unit of this Office. On August 8, 2007, this Office advised the EPS that this matter was being considered for an inquiry. The letter advised of approximate timelines for the procedural steps required to complete an inquiry, and the name of a contact person at this Office. As well, the EPS was advised that the anticipated date for completion of this review was June 30, 2009. The parties were sent the Notice of Inquiry on July 4, 2008. This is the longest delay in the entire process but is still well within the timelines of which the EPS was advised in the August 8, 2007 letter. The EPS was kept informed of timelines and contact numbers and was fully engaged in this process throughout the investigation and adjudication stage.

[para 57] Therefore, if my finding that the August 8, 2007 letter properly extended the time is incorrect, this would mean that this Office lost jurisdiction despite sending an extension letter less than two weeks after the 90-day period was up. Given what I have outlined above, I do not believe the legislature intended to have such a trivial breach lead to the loss of jurisdiction of this Office over this matter.

[para 58] Finally, as noted above, the Alberta Court of Appeal in *Bridgeland* set out factors to be considered when determining if non-compliance with a procedural provision will have a vitiating effect. Section 69(6) of the FOIP Act is a procedural provision.

[para 59] The FOIP Act does not prescribe the consequence that jurisdiction should be lost. As well, the EPS has not suffered any prejudice nor would there be a real possibility that it would suffer prejudice as the result of any breach of section 69(6) of the FOIP Act. Finally, as I decided above, even if there was a breach of section 69(6) of the FOIP Act, it was not so serious as to deprive the procedure of the appearance of fairness and bring the administration of justice into disrepute. On the basis of the factors set out in the *KBR*, Order F2006-031 and *Bridgeland*, I find that any failure to meet the terms of section 69(6) should not be held to vitiate these proceedings.

Conclusion on jurisdiction:

[para 60] I find that there was no breach of section 69(6) of the Act in this matter. In the alternative, if there was a breach, I find that section 69(6) of the Act is directory and therefore the breach did not lead to a loss of jurisdiction by this Office. Finally, in the further alternative, if there was a breach and section 69(6) of the Act is mandatory, I find that it would be contrary to legislative intent for this Office to lose jurisdiction in the circumstances of this matter.

Issue B: Are the records in the custody or under the control of the Public Body as set out in section 4(1)(a) of the Act?

[para 61] The EPS argues that pages 79-82, 109 and 152-154 of the responsive records provided to this Office contain information from court files.

[para 62] Pages 79-82, 109 and 152-154 of the responsive records are “Recognizance” reports for separate accused third parties, signed by the Applicant in his official capacity as a Justice of the Peace, detailing charges against the accuseds and the conditions of their release.

[para 63] If the EPS is correct and these records form part of the Court record, the Act does not apply to the records and there is no obligation, under the Act, to disclose the records to the Applicant. As well, I do not have jurisdiction to review a Public Body’s refusal to provide records that fall under section 4 of the Act to an Applicant.

[para 64] Section 4(1)(a) of the Act states:

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

(a) information in a court file, a record of a judge of the Court of Appeal of Alberta, the Court of Queen’s Bench of Alberta or The Provincial Court of Alberta, a record of a master of the Court of Queen’s Bench of Alberta, a record of a sitting justice of the peace or a presiding justice of the peace under the Justice of the Peace Act, a judicial administration record or a record relating to support services provided to the judges of any of the courts referred to in this clause;

...

[para 65] Therefore, section 4(1)(a) of the Act applies to “information in a court file” and includes a record of a sitting Justice of the Peace or a presiding Justice of the Peace.

[para 66] With the exception of a handwritten note on page 80 of the responsive records, I find that the records at pages 79-82, 109 and 152-154 are copies of information in a court file or, alternatively, a record of a presiding Justice of the Peace, and are therefore excluded from the Act (Order F2007-007). Page 80 contains a handwritten note by an unknown author. I have no evidence that this handwritten note is “information on a court file”. Therefore, I cannot find that this handwritten note falls under section 4(1)(a) of the Act.

[para 67] As section 4 of the Act speaks directly to the jurisdiction of the Commissioner under the Act, even if parties do not raise it, I can speak to whether a record falls under section 4 of the Act or not. Given this, it is appropriate to point out that the responsive records provided by the EPS to this Office and the Applicant contain copies of transcripts of Court proceedings. These records are found at pages 65-78 and 100-101 of the responsive records.

[para 68] These transcripts constitute information on a court file under section 4(1)(a) of the Act (Order F2007-021 at paragraph 23). Therefore, although the EPS did not withhold these records under section 4(1)(a) of the Act, I find that I have no jurisdiction over the records beyond determining that they do indeed fall under section 4(1)(a).

[para 69] I do not mean to say that the EPS should not have disclosed the records. I simply mean that this Office has no jurisdiction to review the EPS’ decision to release, sever or withhold the records. The EPS argues that portions of the transcripts should be severed pursuant to section 17. As I have no jurisdiction over these records, I will not comment on whether section 17 applies to the portions of the transcripts, as argued by the EPS.

Issue C: Does section 17(1), 17(4)(b), 17(4)(g)(i)(ii) of the Act (personal information) apply to the information withheld?

[para 70] The EPS argues that information on pages 2, 3, 5, 6, 8, 9, 10, 11, 13, 14, 15, 16, 18, 19, 20, 21, 23, 24, 26-28, 32-35, 37-49, 54, 56, 57, 60, 61, 64-69, 71, 73-75, 78-86, 89-98, 102-118, 120, 121, 123-154 and 156-162 of the responsive records contain information that is subject to the mandatory exception found in section 17 of the Act.

[para 71] Section 17(1) of the Act 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 72] Numerous orders issued by this Office have stated that in order for section 17 to apply, two criteria must be met. First, the information being severed or withheld must

be personal information, and second, the disclosure of the third party's personal information must be an unreasonable invasion of the third party's personal privacy.

[para 73] The onus to prove that the severed information is a third party's personal information rests with the EPS. Once the EPS has established this, the onus is on the Applicant to prove that the disclosure of the information would not be an unreasonable invasion of the third party's personal privacy (see Orders 99-028 at paragraph 12, 2000-032 at paragraph 25, F2002-024 at paragraph 17).

Personal information:

[para 74] Personal information is defined in section 1(n) of the Act as:

- 1(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 75] To fit under the definition of personal information in the Act, the information must be about an identifiable individual. A non-exhaustive list of examples of personal information is outlined in subsections (i) to (ix). Much of the information severed by the EPS pursuant to section 17 fits under the definition of personal information. This information includes names, phone numbers and addresses. There are also records that contain information about third parties' ethnic origin, marital status, family status and criminal history.

[para 76] In addition to the examples listed in section 1(n) of the Act, this Office has found that month and day of birth, initials (when a third party is identifiable), physical description, signatures, fax numbers and e-mail addresses can be personal information in the proper context (Orders F2006-014 at paragraphs 29, 30, 31; 99-017 at paragraph 60, 2000-029 at paragraph 22; 97-016 at paragraph 39; 2000-032 at paragraph 28 and 2001-038 at paragraph 37). Some of the information severed by the EPS fits under these categories.

[para 77] However, on careful review of the records severed by the EPS pursuant to section 17, I note there are many pieces of information that were severed from the records that do not fit within the examples of personal information defined in section 1(n) of the Act. Therefore, in order to be personal information, it must be information about an identifiable individual.

[para 78] Pages 5, 6, 15, 16, 56, 57, 112 and 113 of the responsive records had information severed from them pursuant to section 17. The information was the name of the office or fax number to which correspondence was being sent. I find that this is not personal information as defined by the Act and should not have been severed by the EPS on this basis. For information to be personal information, it must be about an individual, which means a single human being. This excludes information about organizations when that information is not about an identifiable individual (Order F2002-011 at paragraph 35).

[para 79] The same is true of the information on pages 39, 42, 46, 110, 120 and 123, where the EPS severed the confidentiality notices at the bottom of e-mail communications. The confidentiality notices do contain an e-mail address and phone number for the organization with which the EPS was communicating. However, both the e-mail and the phone number were for the general help desk of the organization and, therefore, not information about an identifiable individual.

[para 80] Pages 28, 41, and 124 contain statements severed from the records which contain no information about an identifiable individual, and is therefore not personal information.

[para 81] As I have found that none of the information detailed above is personal information, the EPS has failed to prove that this information meets the first criterion under section 17 of the Act. This means that the EPS has failed to meet its onus of proof as required by section 17 of the Act.

Invasion of third party's personal privacy:

[para 82] The second aspect of the section 17 exclusion is that the release of the personal information be an unreasonable invasion of a third party's personal privacy. Subsections 2 through 5 of section 17 of the Act provide guidelines as to what a public body is to consider when making this determination. The portions of Section 17(2) through 17(5) of the Act relevant to this matter state:

17(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

...

- (e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council,*

...

(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 83] The onus to prove that disclosure would not result in an unreasonable invasion of a third party's personal privacy is on the Applicant. As I stated earlier, I did not receive submissions from the Applicant in this matter. The EPS cited subsections of section 17(5) of the Act in its submissions, but did not provide information indicating to which pieces of severed information these subsections applied.

[para 84] On review of the records that the EPS provided to me *in camera*, I find that there are several pieces of information that the EPS severed incorrectly, as their disclosure would not constitute an unreasonable invasion of a third party's privacy.

[para 85] Generally, the information that I am speaking of consists of names of third parties acting in their official capacity, names of employees of public bodies executing their job duties, titles or official designations of individuals acting in their official capacity, or business contact information.

[para 86] In Order F2004-026, the Commissioner considered earlier Orders made by this Office that found that employees of public bodies could be third parties for the purposes of applying section 17 of the Act. In Order F2004-026, the Commissioner dealt with much of the same type of information as is at issue in this matter.

[para 87] The Commissioner found that while the description of a person's position may be personal information, by operation of section 17(2)(e) of the Act, disclosing position descriptions or titles would not be an unreasonable invasion of a third party's privacy (Order F2004-026 at paragraph 105).

[para 88] As well, the Commissioner found that while business contact information is personal information, the fact that the information is publicly available would weigh in favour of disclosure. The Commissioner stated:

Section 17(4)(g)(i) potentially applies to such information. This provision creates a presumption that disclosure of a name together with other personal information about the person is an unreasonable invasion of personal privacy. Arguably, the presumption should be interpreted so as not to apply to business contact information because it is routinely disclosed by public bodies. (Indeed, it may be disclosed by reference to section 40(1)(bb.1)). Even if the presumption does apply, in my view, the public availability of the information is a factor under section 17(5) that has sufficient weight (in favour of disclosure), that disclosure of business contact information in this case would not give rise to an unreasonable invasion of personal privacy.

(Order F2004-026 at paragraph 106)

[para 89] Finally, the Commissioner dealt with the issue of names alone of public servants acting to discharge their work-related responsibilities. The Commissioner stated:

I do not need to decide if this is a factor under section 17(5) that weighs in favour of disclosure (for example under section 17(5)(a)), or 17(5)(c)), or whether there are any other such factors. This is because I find there are no factors under section 17(5) that weigh against disclosure of these names alone. At most what the names alone (found in the context of responsive documents) reveal, is that public servants were discharging work-related responsibilities relative to a particular subject matter. I have already held that the inferences about work-related activities that may be drawn from the names as they appear in the context of the records in this case are not personal information. Because this is so, the presumption under section 17(4)(g) (that disclosure would be an unreasonable invasion of personal privacy) does not apply. ... Neither does disclosure of the names have any potential to unfairly harm someone or unfairly damage their reputation under sections 17(5)(e) or 17(5)(h). There are no other applicable provisions in section 17(5) that would favour withholding the names.

(Order F2004-026 at paragraph 117)

[para 90] Pages 2, 6, 9, 10, 11, 14, 19, 20, 21, 24, 27, 28, 35, 37, 38, 40, 41, 43, 47, 49, 54, 56, 57, 64, 85, 86, 98, 110, 112, 113, 116, 120 and 123 of the responsive records contain names of third parties who are public servants acting in their capacity as public servants in fulfilling duties associated with their employment by public bodies. Therefore, I do not agree with the EPS that these names should be severed pursuant to section 17 of the Act.

[para 91] As well, on pages 5, 6, 10, 11, 20, 21, 37, 38, 40, 41, 43, 47, 54, 56, 57, 60, 98, 111, 112, 113, 115, 116, 120, and 123 the EPS has incorrectly severed business contact information for public servants acting in their employment capacities.

[para 92] Pages 9, 10, 11, 14, 19, 20, 21, 24, 27, 35, 60, 64, and 116 contain titles of individuals working for public bodies and therefore, this information is not properly severed under section 17 of the Act.

[para 93] Pages 9, 14, 15, 16, 19, 24, 27, 61 and 64 of the responsive records contain a name and a title of an employee of an organization which is not a public body. However, the individual is being sent and sending letters in his capacity as an employee at an organization that deals with complaints from the public. His name, contact information and the fact that the organization he works with deals with complaints from the public are known to the public, and therefore, I find that the reasoning mentioned above relating to public servants applies, and that there are no section 17(5) factors weighing in favour of severing the information. Therefore, I order disclosure of the individual's name and title.

Personal information that is part of a law enforcement record:

[para 94] Section 17(4) of the Act lists situations where personal information is presumed to be an unreasonable invasion of a third party's privacy. Section 17(4) of the Act states:

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

...

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

[para 95] Although the term "law enforcement record" is not defined in the Act, "law enforcement" is defined at section 1(h) of the Act as follows:

1(h) "law enforcement" means

(i) policing, including criminal intelligence operations,

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

investigation or by another body to which the results of the investigation are referred, or

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

[para 96] Record is defined under section 1(q) of the Act as follows:

1(q) “record” means a record of information in any form and includes notes, images, audiovisual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records;

[para 97] The EPS argues that personal information contained on pages 65-82, 90-97, 102-109, 127-133, 136-154 and 156-162 of the responsive records is part of a law enforcement record, as it relates directly to the enforcement of *Criminal Code* offences. As I have found that section 4(1)(a) of the Act applies to the transcripts at pages 65-78 of the responsive records and the Recognizance reports found at pages 79-82, 109 and 152-154, I will not comment on the EPS’ arguments regarding the severed information in those records.

[para 98] The remainder of these pages contain reports and various internal EPS documents such as case tracking reports, arrest approval reports, occurrence reports, witness statements, police notes and arrest booking details. I find that all of these records are part of a law enforcement record under section 17(4)(b) of the Act, as they directly relate to a police investigation that could lead to a sanction as defined in section 1(h)(ii) of the Act.

[para 99] The EPS further argues that there are several responsive records that are subject to the *Youth Criminal Justice Act* which prohibits the disclosure of a young offender’s name and therefore fit under section 17(4)(b). The EPS makes the same argument for complaints made under the *Judicature Act* or the *Legal Profession Act*. The EPS did not provide me with any specifics as to the particular information to which it means this argument to apply.

[para 100] On my review of the responsive records, I note that within the severed part of the responsive records are references to accused individuals who are under the age of 18 years. Most of that information is contained in records I have already found to be law enforcement records. Therefore, I have already found that the EPS can sever the youths’ personal information, including their names and criminal histories. All other information

that is contained in records which are not law enforcement records, which could relate to accused youths, can be severed under section 17(4)(g)(i), which I will deal with later in this Order. With this finding, I do not think that providing anything in the records that I will order to be provided to the Applicant violates the *Youth Criminal Justice Act*.

[para 101] As the EPS did not provide me with page references to the information it claims constitutes law enforcement records by operation of the *Legal Profession Act* or the *Judicature Act*, I can only assume that the EPS is referring to the complaint letter sent to the Courts about the how the Applicant was performing his duties as a Justice of the Peace, which was copied to various individuals working for public bodies and to the Law Society of Alberta. The letter was merely copied to the Law Society, and other information in the responsive records indicates that the Law Society did not treat it as a complaint. Therefore, I find that there was no complaint made to the Law Society, and thus I reject the EPS' arguments in this regard.

[para 102] However, among the severed records provided to the Applicant was a complaint made to the Chief Judge of the Provincial Court of Alberta regarding the Applicant's conduct in several bail hearings that were before him as a Justice of the Peace. The EPS argues that a complaint about a Justice of the Peace is dealt with under the *Judicature Act* and sanctions can be imposed under that same act. It says that this brings the responsive records under the definition of law enforcement record. In Order F2007-007, the Adjudicator determined that complaints made and investigated by the Chief Judge relating to Justices of the Peace under the *Judicature Act* fell under the definition of law enforcement record.

[para 103] The complaint letter to the Chief Judge regarding the Applicant's conduct severs the name of a lawyer who appeared before the Applicant in a bail hearing in which the Applicant was presiding as a Justice of the Peace. Given that the complaint letter falls under the definition of law enforcement record, the presumption that the disclosure of the lawyer's name on pages 8, 13, 18, 23 and 26 is an unreasonable invasion of the individual's personal privacy would apply. Section 1(h)(ii) of the Act defines law enforcement as follows:

(h) "law enforcement" means

...

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

...

[para 104] Reviewing section 17(5) of the Act, I see no compelling reasons that would negate this presumption in relation to name of the individual found on those pages.

[para 105] I have found that the complaint letter is part of a law enforcement record, and therefore there is a presumption that the disclosure of the lawyer's name is an unreasonable invasion of the lawyer's personal privacy. The "cc" portion of the complaint letter shows it was sent and copied to various employees of public bodies and another organization, in their official capacities as employees of the public bodies and the organization. The finding that the complaint letter is a law enforcement record does not affect my findings above regarding the names and contact information of these employees acting in the course of their employment to whom a copy of the complaint letter was sent. I find that, following the reasoning in Order F2004-026, the factors in section 17(5) of the Act weigh in favour of disclosing the names and contact information of employees acting as recipients of the letter in the course of their employment with the public bodies and the organization, as per my reasoning above.

Section 17(4)(g) of the Act:

[para 106] The EPS argues that section 17(4)(g) applies to personal information severed from the responsive records. Section 17(4)(g) of the Act 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 third party's name when

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

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

[para 107] Therefore, to apply section 17(4)(g)(i) of the Act, there must be a record that contains a third party's name and other personal information about him or her. I find this to be the case wherever an accused's name is mentioned in the records (pages 32, 43, 44, 47, 48, 83, 84, 89, 102, 110, 114, 117, 118, 120, 122, 124, 125, 126, 134, and 135) as the accuseds' names always appear with some reference to other personal information about them, most often criminal history or age. There are no factors in section 17(5) of the Act that would weigh in favour of disclosure of this third party personal information.

[para 108] As well, pages 3, 9, 14, 19, 24, 27, 33 and 34 contain both the name of a lawyer who appeared before the Applicant when the Applicant was acting as a Justice of

the Peace, as well as another person's opinion about the lawyer. An individual's opinion about the lawyer is the lawyer's personal information pursuant to section 1(n)(viii) of the Act. I find that this gives rise to the presumption that there is an unreasonable invasion of the lawyer's personal privacy, which is not defeated by the factors listed in section 17(5) of the Act. Therefore, the EPS properly severed the name of the lawyer on those pages.

[para 109] Although I have determined that much of the information severed by the EPS was done correctly, I note that many of the records mentioned were completely withheld pursuant to section 17 of the Act.

[para 110] Section 6(2) of the Act states:

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

[para 111] If personal information that is properly severed is so intertwined in the record that its severing would render the remainder of the record meaningless, the public body may withhold the entire record (Order 96-019 at paragraphs 46-48). However, many of the withheld pages of the responsive records do not meet this criterion, and thus entirely withholding rather than severing them was inappropriate.

[para 112] Applying section 17(4)(b) of the Act, I find that it was proper for the EPS to sever third party personal information from these records. However, as in many instances the EPS withheld the entire record and not just the personal information contained in the record, I will provide the EPS with copies of the records which I have severed in accordance with section 17 and section 6(2) of the Act. I will order the EPS sever the records in the same manner and that it should disclose the balance of the information.

[para 113] As the EPS applied multiple sections to various records, I will comment further about those pages below.

Issue D: Did the Public Body properly apply section 24(1)(b) (advice) to the information withheld?

[para 114] The EPS argues that the discretionary exclusion in section 24(1)(b) of the Act applies to pages 2, 31-34, 37, 38, 47-49, 83, 84, 124-126 and 155 of the responsive records. It states that all of these records are consultations or deliberations between EPS employees and others about what should be done regarding complaints and how the EPS should proceed.

[para 115] Section 24(1)(b) of the Act states:

24(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal

...

- (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 116] Previous Orders issued by this Office have stated that for this exception to apply to information, the consultation or deliberations must have been:

- (i) sought or expected, or be part of the responsibility of a person by virtue of that person's position,
- (ii) directed toward taking an action, and
- (iii) made to someone who can take or implement the action.

(Order F2004-026 at paragraph 57)

[para 117] Order 96-006 defines consultation and deliberation as follows:

...a "consultation" occurs when the views of one or more officers or employees is sought as to the appropriateness of particular proposals or suggested actions. A "deliberation" is a discussion or consideration, by the persons described in the section, of the reasons for and against an action. Here again, I think that the views must either be sought or be part of responsibility of the person from whom they are sought and the views must be sought for the purpose of doing something, such as taking an action, making a decision or a choice.

(Order 96-006 at page 10)

[para 118] It must also be noted that in Order F2004-026 the Commissioner clearly stated that it is only the portions of a record that reveal the substance of the consultations or deliberations that ought to be withheld under section 24(1)(b) of the Act. He stated:

In my view, section 24(1) does not generally apply to records or parts of records that in themselves reveal *only* any of the following: that advice was sought or given, or that consultations or

deliberations took place; that particular persons were involved in the seeking or giving of advice, or in consultations or deliberations; that advice was sought or given on a particular topic, or consultations or deliberations on a particular topic took place; that advice was sought or given or consultations or deliberations took place at a particular time.

(Order F2004-026 at paragraph 71)

[para 119] The Commissioner then stated:

Sections 24(1)(a) does not permit the withholding of who gave advice; it permits the withholding of advice. In my view the words “reveal advice” means ‘reveal what the advice was’, Similarly, with respect to section 24(1)(b), “reveal ... consultations or deliberations” means ‘reveal what the consultations or deliberations were’.

(Order F2004-026 at paragraph 75)

[para 120] The Commissioner applied this reasoning to parts of an e-mail that reveal, “only that comments are being sought or provided” (Order F2004-026 at paragraph 76). The Commissioner also noted that in the case before him, given the access request, the “...disclosure of the subject line in much of the correspondence does not reveal information that cannot be derived from the very fact the documents are responsive.” (Order F2004-026 at paragraphs 76 and 77).

[para 121] In conclusion, the Commissioner found that only the substantive part of the consultations and deliberations may be severed:

Thus, in my view, the exceptions in section 24(1)(b) embrace the substantive parts of communications that seek an opinion as to the appropriateness of particular proposals respecting a course of action to be decided, including any background materials that inform the advisors about the matters relative to which advice is being sought, and are thus inextricably interwoven with the questions being asked (“consultations”). This includes correspondence between government departments and third-party advisors, which was conveyed by a department to the Public Body for the purpose of providing background to enable the giving of advice.

(Order F2004-026 at paragraph 78)

[para 122] I find that only the body of the e-mail found at page 2 of the responsive records may be withheld under section 24(1)(b) of the Act. The e-mail addresses and subject line do not form part of the substantive consultations and deliberations under

section 24(1)(b) of the Act. However, I will comment further about page 2 of the responsive records under my analysis under section 27 of the Act below.

[para 123] I do not believe that the EPS properly applied section 24(1)(b) of the Act to the entirety of pages 31-34, 37-38 and 47-49 of the responsive records. These pages are more properly dealt with under section 27 of the Act and I will comment on these pages below.

[para 124] Pages 83, 84, 124, 125, 126 and 155 of the responsive records are all records of internal communications providing background information, with the exception of the handwritten note on page 124 which was severed pursuant to section 27(1)(a) of the Act, which I will deal with below. These communications are themselves part of the substantive consultations or deliberations.

[para 125] Finally, the EPS provided me with evidence that in severing the information from the responsive records, it took into consideration the relationship that it has with those it was consulting with. Specifically given the nature of the communications specifics about complaints that may be made regarding the ethical administration of justice, there is an expectation of confidentiality in its communications with departments, such as Alberta Justice. Given the evidence I have before me, I find that the EPS properly exercised its discretion when it applied section 24 to these pages.

[para 126] Therefore, I find that these pages, in their entirety, were properly withheld by the EPS under section 24(1)(b) of the Act.

Issue E: Did the Public Body properly apply section 27 (privileged information) of the Act to the information withheld?

[para 127] In its submissions, the EPS argues that it withheld records on the basis of section 27(1)(a) of the Act only and not any other subsections of section 27 of the Act.

[para 128] Section 27(1)(a) of the Act 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,

...

[para 129] The EPS claims that pages 2-4, 28-35, 43-49, 55, 85-87, 99, 120-121, 124-126, 134-135 and 155 of the responsive records are records subject to solicitor-client privilege. As I have already found that pages 125, 126 and 155 were properly severed

pursuant to section 24(1)(b) of the Act, I will not comment on these records by reference to section 27(1)(a) of the Act.

[para 130] With respect to the remaining pages referenced above, according to the principles articulated in *Solosky v. The Queen*, [1980] 1 S.C.R. 821, reiterated by this Office in Order F2004-003, in order to establish solicitor-client privilege a record must be a:

1. communication between solicitor and client;
2. which entails the seeking or giving of legal advice, and
3. which is intended to be confidential by the parties.

Communication between solicitor and client:

[para 131] I accept the EPS' argument that solicitor-client privilege attaches to communications between in-house counsel and their clients, the same as it would if outside legal counsel were involved. In this case, the clients with which in-house counsel was communicating are EPS members, using the EPS in-house legal department. As well, lawyer's briefing notes or working papers also fall under this exclusion (Order 2000-021 at paragraph 41).

[para 132] Pages 2, 120 and 121 of the responsive records are communications between counsel. I was provided with no evidence that a solicitor-client relationship existed between these counsel. Therefore, in this case, I find that there is no evidence of a solicitor-client relationship and the first criteria set out in the Solosky test for solicitor-client privilege is not met. Thus the EPS may not withhold these pages under section 27(1)(a) of the Act.

[para 133] Page 124 is a communication between EPS employees that was later forwarded to legal counsel. This means that the record technically fits under part one of the Solosky test. However, just sending records to counsel does not automatically mean that they are covered by solicitor-client privilege. They must meet the other two parts of the test (Order 2000-019 paragraphs 38-39).

Seeking or giving legal advice:

[para 134] In Order 96-017, the Commissioner defined "legal advice" as advice that includes, "a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications." (Order 96-017 at paragraph 23). Order F2004-003 stated:

...this test is satisfied where the person seeking advice has a reasonable concern that a particular decision or course of action may have legal implications, and turn to their legal advisor to determine what those legal implications might be."
(Order F2004-003 at paragraph 29)

[para 135] In this matter, the EPS members were seeking advice from legal counsel on how best to deal with the Applicant's behavior during bail hearings. The EPS provided me with an affidavit which stated that EPS members would often come to the legal department of the EPS to seek advice on how best to proceed with complaints regarding the administration of justice, that is, whether a matter should be dealt with by way of an appeal of a finding of the Justice of the Peace at the bail hearing, or by complaint to the Chief Judge of the Provincial Court of Alberta about the manner in which the Justice of the Peace disposed of the matter. In this case the Applicant's conduct was dealt with by way of complaint to the Chief Judge of the Provincial Court of Alberta under the *Judicature Act*. Given this, I find that where the EPS members contacted the in-house legal staff at the EPS, they were doing so with a reasonable concern that a course of action may have legal implications, in that they were trying to choose between two available courses of action, both involving the Court, and they were asking their counsel how to proceed.

[para 136] Some of the responsive records provided information directly to legal counsel regarding what had occurred at bail hearings. They do not contain a direct request for advice; however, the information was supplied to legal counsel in order to give a factual background to assist legal counsel in choosing what to advise and how to draft the complaint. I find that providing this factual information, regarding the advice sought, is appropriately caught under the umbrella of seeking legal advice as part of the "continuum of communications". (Order F2004-003 at paragraph 31)

[para 137] However, there are also records that were provided by EPS members to their superiors, who are not lawyers, providing a recounting of events that occurred at various bail hearings. Although these records were eventually forwarded to the EPS' in-house legal department, the EPS did not provide me with evidence that the EPS members gave the records to their superiors in order to obtain legal advice or that this information was provided to their superiors to be passed on to legal counsel. The EPS also did not provide me with evidence that the information was supplied by the superior to in house counsel to seek advice. As the Commissioner stated in Order 2000-019:

In my view, it is not sufficient for a finding of solicitor-client privilege that a public body gave records to the public body's solicitor. Without any evidence as to the confidential legal advice that was sought or given and who sought or to whom the legal advice was given, I am not prepared to find that every record dropped off or otherwise given to a public body's solicitor has been given in confidence for the purpose of giving or seeking legal advice.

If it were otherwise, many of a public body's records could be run by or funneled through a public body's solicitor and be excepted under the Act, thereby ripping the heart out of solicitor-client privilege. Just because a solicitor may have been involved is not

enough to find that solicitor-client privilege applies to records: see B.C. Order 00-08.

(Order 2000-019 at paragraphs 38-39)

[para 138] Without any more evidence, I cannot find that these records are covered by solicitor-client privilege.

Supplied in confidence:

[para 139] Although an expectation of confidentiality is necessary to prove solicitor-client privilege, an express statement is not. I may imply an expectation of confidentiality given the nature of the records. In this matter, I find that where legal advice was sought or given by legal counsel the expectation of confidentiality relative to records was implicit. (Order F2004-003 at paragraph 30)

[para 140] Finally, I note that pages 47-49, which I have found meet the test for solicitor-client privilege, are primarily e-mail communications between solicitor and client that were subsequently forwarded by the EPS in-house counsel to another solicitor, not employed by the EPS. There is, therefore, a question of whether the privilege was waived. Solicitor-client privilege belongs to the client and can only be waived by the client. Therefore, as the transfer of records was not a waiver of the solicitor-client privilege, I find that pages 47-49 were properly withheld by the EPS as privileged.

Conclusion on section 27(1)(a) of the Act:

[para 141] I find that section 27(1)(a) of the Act was properly applied to pages, 3, 4, 28-29, 30, 31-34, 43, 44, 45, 46, 47, 48, 49, 55, 86, 87, 99, 134 and 135.

[para 142] I further find that section 27(1)(a) of the Act does not apply to pages 35, 85, 120 and 121 of the responsive records as these records are not communications between a solicitor and a client. In the case of page 35, I was not provided with any evidence as to the identity of the author of the handwritten notes. In addition, in relation to page 120, there is no legal advice being sought.

[para 143] Finally, I find that pages 124, 126 and 155 are not covered by the exclusion under section 27(1)(a) of the Act, as they are communications between EPS members, and I have no evidence that legal advice was being sought from legal counsel.

[para 144] Having reviewed the EPS' submissions and evidence, I find that in all cases where I have found that it properly applied section 27(1)(a) of the Act, it did so to protect confidential information for the purpose of maintaining privilege, and that this is a proper exercise of the EPS' discretion under section 27(1)(a) of the Act.

Section 27(1)(b) and 27(1)(c) of the Act:

[para 145] Although not explicitly argued or applied by the EPS, the information and records found at pages 37-42, 47, 54, 98, 110, 116, 117, 120, 121 and 123 that were improperly severed pursuant to sections 21, 24 and 27(1)(a) of the Act would have been properly severed pursuant to section 27(1)(c), which states:

27(1) The head of a public body may refuse to disclose to an applicant

...

(c) information in correspondence between

(i) the Minister of Justice and Attorney General,

(ii) an agent or lawyer of the Minister of Justice and Attorney 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 Attorney General or by the agent or lawyer.

[para 146] As well, I find that pages 2 and 85 of the responsive records, which were improperly severed or withheld pursuant to section 24 and 27(1)(a) fit properly into section 27(1)(b) of the Act which reads:

27(1) The head of a public body may refuse to disclose to an applicant

...

(b) information prepared by or for

(i) the Minister of Justice and Attorney General,

(ii) an agent or lawyer of the Minister of Justice and Attorney General, or

(iii) an agent or lawyer of a public body,

in relation to a matter involving the provision of legal services,

...

[para 147] Although sections 27(1)(b) and 27(1)(c) were not explicitly referred to on the responsive documents or in the EPS' submissions, I find that the substance of the EPS submissions allows me to find that it took into consideration all appropriate elements of sections 27(1)(b) and 27(1)(c) when severing the records, even though the EPS ultimately decided to sever under a provision of the Act that was not correct. Since the principle the EPS used to withhold these records (the confidential seeking of advice or consultations with lawyers employed at the Ministry of Justice) fits within section 27(1)(c), I see no reason to deprive the EPS of its ability to apply section 27(1)(c) at this point.

[para 148] The same is true where background information was provided by legal counsel at the EPS to other legal counsel employed by the EPS. In those instances I find that section 27(1)(b) would apply. As the Commissioner stated in Order F2004-026:

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

(Order F2004-026 at paragraph 52)

[para 149] In Order F2004-026, the Commissioner was faced with a situation where the public body raised an exclusion late in the process and not at the time of the initial response to the Applicant. I understand that allowing the EPS to withhold information under section 27(1)(b) and 27(1)(c) of the Act takes this analysis a step further, but I feel it is appropriate to do so in these limited circumstances, for the same principles as those on which the Commissioner relied on in Order F2004-026.

[para 150] As section 27(1) is a discretionary exception, even if section 27(1) applies to records, a public body may choose to apply the exception or not. After deciding that the discretionary exception applies, a public body must consider whether it should apply the exception nonetheless. In determining this, a public body must:

1. consider the object and purpose of the Act;
2. show that it took all relevant factors into consideration;
3. exercise its discretion in good faith, for a proper purpose and based only on relevant considerations.

(Order F2007-004 paragraphs 18-22)

[para 151] In all cases where I have found that the EPS ought to have applied section 27(1)(b) and 27(1)(c) of the Act to the records, I find that it did so to protect necessary confidentiality relative to the provision of advice and legal services and I find that this is a proper use of the EPS' discretionary power under sections 27(1)(b) and 27(1)(c) of the Act. I make this finding even though the EPS ultimately named the wrong sections as the basis for its severing and withholding of the information.

Issue F: Did the Public Body meet its duty to the Applicant, as provided by section 10(1) of the Act? In this case the Adjudicator will consider whether the Public Body conducted an adequate search for responsive records/information.

[para 152] Section 10(1) of the Act reads:

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 153] Given the information I have been provided by the EPS, I find that there was no breach of the EPS' duty under section 10 of the Act.

[para 154] I do note that although the EPS used section 21 of the Act as a basis for severing several records, and that it noted this exception on the records themselves, the EPS' response to the Applicant did not refer to section 21 of the Act. This is an issue that would more properly fall under section 12(1) of the Act which states:

12(1) In a response under section 11, the applicant must be told

- (a) whether access to the record or part of it is granted or refused,*
- (b) if access to the record or part of it is granted, where, when and how access will be given, and*
- (c) if access to the record or to part of it is refused,*
 - (i) the reasons for the refusal and the provision of this Act on which the refusal is based,*
 - (ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and*

(iii) that the applicant may ask for a review of that decision by the Commissioner or an adjudicator, as the case may be.

[para 155] Whether section 12 of the Act was complied with was not an issue put before me, nor was it raised by the Applicant, even after the EPS made both this Office and the Applicant aware of its failing in this regard when it requested that issue G be added to this inquiry. As stated above, section 21, which I will deal with below, was applied to the responsive records and noted on the records it was just not quoted in the response *letter*. Given these facts, I see no reason to add the issue of a possible breach of section 12 of the Act to this inquiry.

Issue G: Did the Public Body properly apply section 21 of the Act (intergovernmental relations) to the records/information?

[para 156] The EPS argues that several pages of the responsive records were properly withheld under section 21(1)(b) of the Act. The EPS states that, “some of the Responsive Records on pages 6, 10, 11, 14-16, 19-21, 24, 27, 35, 37-49, 54, 60, 64, 95-98, 106, 107, 110, 112, 113, 116, 117, 120, 123, 131-133 are communications and information exchanged between the EPS and other governmental agencies...” From my review of the records, the EPS seems to have applied section 21 of the Act to information on page 5 as well.

[para 157] I found that pages 95-97, 106-107 and 131-133 of the responsive records were properly withheld under section 17 and therefore, I will not comment on these pages.

[para 158] Pages 37-42, 43-46, 47-49, 54, 98, 110, 116, 117, 120 and 123 are more appropriately dealt with under section 27 and I have commented on those above, with the exception of the handwritten notes on pages 110 and 123.

[para 159] The EPS acknowledges that it bears the burden of proof, “...to demonstrate that the Responsive Records were withheld because they were confidential intergovernmental communications.”

[para 160] Further, the EPS argues that it withheld these records reasonably and it argues that disclosure of, “...these communications would serve to undermine or hamper future exchanges between the EPS and other governmental agencies.”

[para 161] The relevant portions of section 21 of the Act state:

21(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm relations between the Government of Alberta or its agencies and any of the following or their agencies:

(i) the Government of Canada or a province or territory of Canada,

(ii) a local government body,

(iii) an aboriginal organization that exercises government functions, including

(A) the council of a band as defined in the Indian Act (Canada), and

(B) an organization established to negotiate or implement, on behalf of aboriginal people, a treaty or land claim agreement with the Government of Canada,

(iv) the government of a foreign state, or

(v) an international organization of states,

or

(b) reveal information supplied, explicitly or implicitly, in confidence by a government, local government body or an organization listed in clause (a) or its agencies

[para 162] Order F2004-018 sets out the criteria that must be established in order to have section 21(1)(b) apply:

a) the information must be supplied by a government, local government body or an organization listed in clause (a) or its agencies;

b) the information must be supplied explicitly or implicitly in confidence;

c) the disclosure of the information must reasonably be expected to reveal the information; and

d) the information must have been in existence in a record for less than 15 years.

Was the information supplied by a government or local government body?

[para 163] Most of the information which the EPS severed pursuant to section 21(1)(b) of the Act, which I have not dealt with in other parts of this Order, is information which the EPS created and supplied to various individuals acting in their official capacities with public bodies or the Law Society of Alberta. Although the EPS is a local government body as defined by the Act, I find that it has not met its burden of proof under this section and cannot claim this exclusion.

[para 164] In order to establish if section 21 of the Act applies, the EPS must provide me with information as to who supplied the information, so that it can be determined if the information was supplied by a government, local government body or other organization listed in section 21(1)(a) of the Act. Who supplied the information is not obvious with regard to pages 5, 6, 10, 11, 14, 15, 16, 19, 20, 21, 24, 27, 35, 64, 112 and 113 and the handwritten notes on pages 110 and 123. The information severed on these pages was mainly names and contact information for various employees of public bodies and the Law Society as well as miscellaneous notes.

Was the information supplied explicitly or implicitly in confidence?

[para 165] The information the EPS severed on the basis of section 21(1)(b) included fax cover sheets, names of individuals to whom communications were copied, e-mail correspondence and letters between various individuals.

[para 166] A large portion of the severed information relates to who received a copy of the complaint letter, that is, to whom besides the addressee the EPS sent a copy of the letter. The letter was copied to six individuals working in their official capacities with various organizations. The EPS severed only the names and the titles of the individuals to whom copies of the complaint letter were sent. It disclosed the letter itself to the Applicant, with some information severed pursuant to section 17 of the Act.

[para 167] To support its argument under section 21 of the Act, the EPS states that the complaint processes under the *Legal Profession Act* and the *Judicature Act* are confidential processes. However, these processes are not confidential relative to the person about whom the complaint is made. I was provided with no evidence from the EPS that it expected that the complaint letter would be kept confidential from the Applicant. In fact, the EPS has already disclosed this information to the Applicant as a result of the Applicant's access request.

[para 168] In any event, it is not the substance of the complaint letter that was severed pursuant to section 21 of the Act but the information as to which persons were to be given copies of the letter. I was not advised who supplied this information.

[para 169] As well, as the individuals supplied with the letter were employees of public bodies and the Law Society acting in their capacities as such, this is publicly available

information, and not something that was supplied in confidence by the various individuals. Further, their names were copied not only to the recipient of the complaint letter, but to each other. I was not provided with evidence that the names, titles and contact information for these individuals was provided to the recipient in confidence. Given that this information was also provided to the other individuals to whom the letters were copied, and that the EPS ought to have known that the letter would be shown to the Applicant so he could defend his actions, I cannot find that confidentiality was implied.

[para 170] I find that the information on pages 5, 6, 10, 11, 14, 15, 16, 19, 20, 21, 24, 27, 64, 112 and 113 was not severed properly under section 21(1)(b) of the Act because it was not supplied “in confidence”.

[para 171] I am also unable to find that the information on page 35, which was severed pursuant to section 21(1)(b) of the Act, was information that was supplied in confidence. This information appears to be simply a note on a file and is not addressed to anyone. I cannot find that it was supplied to anyone, much less that this was done in confidence.

[para 172] Given my findings above that the information severed by the EPS does not fit the first two criteria required by section 21(1)(b), I do not need to analyze if the severed information meets the next two criteria under section 21(1)(b).

V. ORDER

[para 173] I make this Order under section 72 of the Act.

[para 174] I find that this Office has not lost jurisdiction over this matter.

[para 175] I find that pages 58, 59, 65-82, 100-101, 109 and 152-154 inclusive fall under section 4(1)(a) of the Act and therefore I do not have jurisdiction over those pages of the responsive records, except for the handwritten note on page 80, which I order the EPS to disclose to the Applicant.

[para 176] I find that the EPS improperly applied section 17 of the Act to information on pages 2, 5, 6, 9, 10, 11, 14, 15, 16, 19, 20, 21, 24, 27, 35, 56, 57, 60, 61, 64, 111, 112, 113, 115, 118, 136-151 and 156-162 of the responsive records and order the EPS to disclose the severed information on those pages to the Applicant.

[para 177] I uphold the EPS’ decision to withhold information pursuant to section 17 of the Act on pages 8, 9, 13, 14, 18, 19, 23, 24, 26, 27, 61, 89, 90-92, 93, 94, 95-97, 102-105, 106-107, 108, 114, 118, 127, 128, 129-130, 131-133, 136-151 and 156-162 of the responsive records, subject to proper severing. For clarity, I will provide the EPS with copies of pages 9, 14, 19, 24, 27, 61, 118, 136-151 and 156-162, which I have severed in accordance with my conclusions under section 17 of the Act. I order it to provide the unsevered portions to the Applicant.

[para 178] I uphold the EPS' decision to withhold the following pages of the responsive records under section 24(1)(b) of the Act: 83, 84, 124, 125, 126 and 155, with the exception of the handwritten note on page 124, which I order the EPS to disclose.

[para 179] I find that the EPS improperly applied section 24(1)(b) of the Act to pages 37-38 of the responsive records and order the EPS to disclose the severed information on those pages to the Applicant.

[para 180] I uphold the EPS' decision to withhold the following pages of the responsive records under sections 27(1)(a) of the Act: 3, 4, 28, 29, 30, 31-34, 43, 44, 45, 46, 47, 48, 49, 55, 86, 87, 99, 134 and 135.

[para 181] I also find that pages 2 and 85 of the responsive records may be withheld by the EPS pursuant to section 27(1)(b) of the Act and that pages 37-42, 47, 54, 98, 110, 116, 117, 120, 121 and 123 of the responsive records may be withheld by the EPS pursuant to section 27(1)(c) of the Act, with the exception of the handwritten note on page 123, which I order the EPS to disclose.

[para 182] I find that the EPS' improperly applied section 27(1)(a) to page 35 of the responsive records and order the EPS to disclose the severed information on that page to the Applicant.

[para 183] I find that the EPS performed an adequate search for records responsive to the Applicant's request and fulfilled its duty under section 10(1) of the Act.

[para 184] I find that the EPS improperly applied section 21 of the Act to pages 5, 6, 10, 11, 14, 15, 16, 19, 20, 21, 24, 27, 35, 60, 64, 112, 113 and the handwritten notes on pages 110 and 123 of the responsive records and order the EPS to disclose the severed information on those pages to the Applicant.

[para 185] I further order the EPS to notify me, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order.

Keri H. Ridley
Adjudicator