

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2019-27

August 21, 2019

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Numbers F6420/F6843

Office URL: www.oipc.ab.ca

Summary: Two Applicants made separate access to information requests to Alberta Justice and Solicitor General [Public Body] under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 [FOIP Act]. The First Applicant made two requests and the Second Applicant one request. The first request from the First Applicant was for the Contingency Fee Agreement [CFA] and the second request was for documents related to the CFA, in particular, records regarding the arrangements the Province made with outside counsel to pursue litigation under the *Crown's Right of Recovery Act*, S.A. 2009, c. C-35 to recoup smoking-related health care costs. The Second Applicant's request was for all records related to the contract tendering process, the selection process of counsel and any requests for proposals and bids submitted connected to the CRA litigation.

During the beginning of the Inquiry in 2014, the External Adjudicator raised a Preliminary Evidentiary Issue [PEI], which resulted in a phase of the Inquiry taking place regarding the PEI and the release of Decision F2014-D-04/Order F2014-51.

On August 30, 2018, the External Adjudicator issued Interim Decision F2018-D-01/Order F2018-38 [2018 Interim Decision/Order]. The 2018 Interim Decision/Order confirmed the Public Body's decision to deny the Applicants access to those Records at Issue where it had met its burden of proof that it had properly relied on s. 27(1)(a) of the *FOIP Act*. The 2018 Interim Decision/Order also held that the Public Body failed to meet its burden of proof, pursuant to s. 71(1) of the *FOIP Act*, for other Records at Issue where it had claimed legal privilege.

Because of the fundamental importance of solicitor client privilege and litigation privilege, rather than order the immediate release of the records where the burden of proof had not been met, the External Adjudicator decided, in the circumstances, it was reasonable to issue an interim decision to give the Public Body the opportunity to provide additional evidence. This opportunity came as part of the 2018 Interim Decision/Order [the interim decision part referred to throughout as the 2018 Interim Decision], rather than a demand letter, as the External Adjudicator had consistently made requests for further evidence and the Public Body had been given many opportunities to respond. The 2018 Interim Decision applied to the Records at Issue over which the Public Body had claimed legal privilege pursuant to s. 27(1)(a) where it had failed to meet its burden of proof, pursuant to s. 71(1) of the *FOIP Act* and, for some of the Records at Issue, where the Public Body also claimed that the mandatory exception in s. 16 applied. The Public Body provided two submissions in response to the 2018 Interim Decision, in which it submitted the 2018 Revised Index that included new descriptions for the Records at Issue in the

Additional Information Column. The Public Body made it clear these were to be added to form part of its submissions in the Inquiry.

In the 2018 Interim Decision, the External Adjudicator proposed the Public Body provide direct evidence from the Affiant of the 2017 Affidavit of Records or affidavit evidence from government officials. Having failed to do so in its initial response to the 2018 Interim Decision, the Public Body was asked by the External Adjudicator to confirm that the Affiant of the 2017 Affidavit of Records could attest to the new evidence provided in the Additional Information Column in the 2018 Revised Index, which confirmation the Public Body failed to provide with its second and final submission.

In addition to relying on its earlier submissions and affidavits from when the Inquiry began in 2014, the Public Body submitted the 2017 Affidavit of Records (in-house counsel) with an Exhibited Index [2017 Exhibited Index] for the Records at Issue, all of which was submitted to meet its evidentiary burden of proof for the exceptions claimed, in particular, its claim to both solicitor client privilege and litigation privilege pursuant to s. 27(1)(a).

As in this Inquiry, where a public body claims legal privilege over records, it may elect not to provide the Records at Issue to an adjudicator. In such instances, the onus is on a public body to provide sufficiently clear, convincing, and cogent evidence in order to meet its burden of proof under s. 71(1) of the *FOIP Act*, in accordance with the *Solosky* test for solicitor client privilege or the *Lizotte* criteria for litigation privilege, and the evidentiary requirements as set out in *ShawCor*, the Alberta Rules of Court and the *OIPC Privilege Practice Note (2016)*.

The evidence submitted for some of the Records at Issue over which legal privilege had been claimed, however, did not meet the *Solosky* test for solicitor client privilege or the *Lizotte* criteria for litigation privilege and fell short in meeting the evidentiary requirements as set out in *ShawCor*, the Alberta Rules of Court and the *OIPC Privilege Practice Note (2016)*. For the Records at Issue where the Public Body had failed to discharge its burden of proof, the External Adjudicator issued the 2018 Interim Decision giving the Public Body the opportunity to gather evidence and authority to support its decision to withhold the Records at Issue, subject to the terms of the 2018 Interim Decision. The External Adjudicator reasoned that because of the importance of legal privilege, she was not prepared to issue an Order requiring the Public Body to give the Applicant access to these records, which could potentially place legally privileged information in jeopardy of being revealed, simply because the Public Body had fallen short in meeting its duty to provide sufficiently clear, convincing, and cogent evidence to meet its burden of proof. Details of the significant gaps in the evidence were provided in the 2018 Interim Decision/Order.

Based on the “*Additional Information*” provided by the Public Body, the External Adjudicator was able to decide that the Public Body had met its burden of proof that it had properly *relied* on s. 27(1)(a) of the *FOIP Act* for some of the Records at Issue described in the Order as “*Properly withheld as privileged.*” On this basis, the External Adjudicator confirmed the decision of the Public Body to refuse the Applicant access to these Records at Issue. Where the Public Body has met its burden of proof that it has properly relied on s. 27(1), the External Adjudicator decided it was unnecessary to consider the exercise of its discretion as that issue had been decided in the 2018 Interim Decision/Order where she indicated the ruling with respect to discretion would apply to the Records at Issue to be considered under the terms of the 2018 Interim Decision: that is, the Public Body properly applied the s. 27(1)(a) exception by exercising its discretion to refuse access to legally privileged information.

In the Order, where the Public Body had failed, on a balance of probabilities, to meet its burden of proof that it had properly relied on s. 27(1)(a) of the *FOIP Act*, the External Adjudicator ordered the Public Body to give the Applicant access to those Records at Issue in their entirety, described in the Order as “*Producible.*” For other Records at Issue described in the Order as “*Producible [possible redactions]*”, the External Adjudicator ordered the Public Body to reconsider its decisions and provide the Applicant access to the Records at Issue in redacted form, thereby providing access to the Applicant of any information not protected by legal privilege, in accordance with s. 6(2) of the *FOIP Act*.

The External Adjudicator discussed the fact that the Public Body submitted the “*Additional Information*” evidence in a new Column of the 2018 Revised Index, which it provided without a supporting new Affidavit of Records or an amended 2017 Affidavit of Records. The new evidence in the Additional Information Column of the 2018 Revised Index amended, corrected and added new evidence that in effect replaces or displaces evidence in the previously submitted 2017 Exhibited Index. She considered that the more reasonable approach for the Public Body to have taken would have been to provide a correcting or supplementary affidavit because the 2018 Revised Index had been upgraded with new evidence by way of the “*Additional Information*.” In this case, however, the External Adjudicator did not consider it reasonable to totally discount the unsworn evidence because the Public Body had failed to provide the new evidence in the form of a new or amended Affidavit of Records but rather she stated it was a question of the weight to be given to the new evidence. The External Adjudicator also commented on the fact that the evidence in the “*Additional Information*” could have been provided earlier in the Inquiry as it was evidence available to the Public Body since the outset of the Inquiry, was not information protected by legal privilege, and by doing so may have avoided some of the delay in the proceedings, including the necessity for the 2018 Interim Decision. The External Adjudicator stated her opinion that the preferred approach would be for the Public Body to bring the same vigour with which it claims to be protecting legally privileged records to producing sufficiently clear, convincing, and cogent evidence to support that claim in a timely fashion.

The External Adjudicator considered the Public Body's reliance on the s. 16 exception for the Records at Issue where it had failed to discharge its burden of proof in relation to s. 27(1)(a) under the terms of the 2018 Interim Decision. For every Record at Issue where it had claimed s. 16, the Public Body also relied on s. 27(1)(a) and, therefore, these records were not available to the External Adjudicator for review. In its responses to the 2018 Interim Decision, the Public Body failed to provide any submissions or evidence in the “*Additional Information*” with respect to the mandatory exception in s. 16 of the *FOIP Act*, where it was required to do so under the terms of the 2018 Interim Decision. The totality of the evidence provided by the Public Body throughout the Inquiry fell far short of meeting the three-part test for s. 16 (business interests of a third party). For the Records at Issue falling under the 2018 Interim Decision where the Public Body had met its burden of proof pursuant to s. 27(1)(a) by providing “*Additional Information*”, s. 16 need not be considered for those Records at Issue. For those Records at Issue where it has not met its burden of proof with respect to s. 27(1)(a) and s. 16 has also been claimed, the External Adjudicator held that where the Public Body had failed to meet its burden of proof with respect to s. 16, the Public Body was ordered to give the Applicant access to those Records at Issue, subject to possible redactions.

Near to the end of the Inquiry, specifically on June 26, 2019, the Second Applicant notified the External Adjudicator that it was his/her intention to withdraw his/her Request for an Inquiry [Case File #F6747]. The External Adjudicator acknowledged receipt of the Second Applicant's withdrawal on July 3, 2019. In 2014, the Information and Privacy Commissioner had merged these three Requests for Inquiry into one Inquiry of which Case File #F6747 was one. There was one set of Records at Issue that was responsive to the three access to information requests from two Applicants and, therefore, the Records at Issue remained unchanged. As a result of the notification received from the Second Applicant, throughout the Order, the External Adjudicator referred to Applicant, in the singular, unless the context clearly required otherwise.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 2(a), 6(2), 16, 27(1)(a), 71(1), 72, 72(2)(a), 72(2)(b); *Crown's Right of Recovery Act*, S.A. 2009, c. C-35.

Authorities Cited: **AB:** Decision F2014-D-04/Order F2014-51; Interim Decision F2018-D-01/Order F2018-38.

Cases Cited: *Canadian Natural Resources Ltd. v. ShawCor Ltd.*, 2014 ABCA 289; *Solosky v. The Queen*, [1980] 1 SCR 821; *Lizotte v. Aviva Insurance Company of Canada*, 2016 SCC 52; *Calgary (Police Service) v. Alberta (Information and Privacy Commissioner)*, 2019 ABQB 109; *Alberta v. Suncor Inc.*, 2017 ABCA 221; *Alberta (Municipal Affairs) v. Alberta (Information and Privacy Commissioner)*, 2019 ABQB 436.

Other Sources Cited: Alberta Rules of Court, Part 5: ss. 5.7, 5.8, 5.10, 5.27; Part 10: ss. 10.7-10.8; OIPC Privilege Practice Note (2016).

TABLE OF CONTENTS FOR ORDER

- I. Background
- II. Records at Issue
- III. Issues in the Inquiry
- IV. Discussion of Issues
- V. Findings
- VI. Order

I. BACKGROUND

[para 1] On August 30, 2018, I issued Interim Decision F2018-D-01/Order F2018-38 [2018 Interim Decision/Order]. Included as part of the 2018 Interim Decision/Order was an interim decision [which is referred to *infra* as the 2018 Interim Decision] that gave rise to the last phase of the Inquiry. The 2018 Interim Decision read as follows:

VII. INTERIM DECISION

...

I have found that I am unable to decide whether the Public Body has properly relied on s. 27(1)(a) of the FOIP Act to claim solicitor client privilege and/or litigation privilege for the Records at Issue described at para. 7.B supra. The Public Body has not established that the information it withheld is legally privileged and, therefore, that it properly fits under the s. 27(1)(a) exception; though it remains possible that the information may be subject to legal privilege. Because of the fundamental importance of safeguarding against the erosion of privileged information, rather than order the disclosure of these records to the Applicants, pursuant to s. 72(2)(b) of the FOIP Act, I have decided to provide the Public Body with the opportunity to gather evidence and authority, presently absent from the 2017 Affidavit of Records and Exhibited Index, with respect to its application of s. 27(1)(a) for both solicitor client privilege and litigation privilege for the Records at Issue described at para. 7.B supra and, thereafter, to make a decision in a manner that complies with the evidentiary requirements as set out in ShawCor, the Alberta Rules of Court and the OIPC Privilege Practice Note. Specifically, but not limited to, the Public Body should consider providing the following kinds of evidence: direct evidence from in-house counsel that is not general in nature but that addresses legal privilege for each specific Record at Issue, direct evidence from senior government officials attesting to those specific Records at Issue where they were providing legal advice versus policy advice, direct evidence from senior government officials attesting to those specific Records at Issue where they were acting in the role as a representative of a client public body versus when acting in the capacity as a solicitor in a 'solicitor client' relationship, where a Record at Issue involves conversations by non-solicitor representatives of a public body that may be part of a continuum discussing legal advice, an unredacted copy of the Exhibited Index of Records of Records in camera (details of the Records at Issue that have been REDACTED described at para. 7.B.ii) and complete descriptors for the professional title or role for individuals named in the Records at Issue described at para. 7.I supra where the Public Body elects to continue to claim s. 27(1)(a).

In complying with this Interim Decision, after it has made a decision regarding its reliance on s. 27(1)(a) for both legal privileges, thereafter, the Public Body is under a statutory duty to decide whether the mandatory exception in s. 16(1) properly applies to the Records at Issue described at para. 7.F.ii supra. Once it has made a decision with respect to s. 27(1)(a), the Public Body will be

required to gather evidence and authority, specifically evidence sufficient to meet the three-part test that the mandatory exception s. 16(1) requires. Thereafter, if it is unable to meet its burden of proof that both s. 27(1)(a) and s. 16(1) do apply, the Public Body is to provide the Applicants with access to the Records at Issue in accordance with the Findings supra.

The Public Body will have 60 days from the date it receives this Interim Decision to gather evidence and authority to support its application of s. 27(1)(a) and s. 16(1). If the Public Body determines that neither solicitor client privilege nor litigation privilege applies to the Records at Issue to which it has applied s. 27(1)(a) and s. 16(1) also does not apply, then it must disclose the records to the Applicants after the 60 days have expired. On or before that date, the Public Body will provide a decision to the Applicants, copied to me, explaining whether it is withholding the Records at Issue on the basis of solicitor client privilege and/or litigation privilege and/or information harmful to the business interests of a third party or whether it has decided to provide the Applicants access to any of the Records at Issue that are the subject of the Interim Decision.

I reserve jurisdiction over this Inquiry with respect to the Interim Decision only. Following the 60 days, the Inquiry will resume, if necessary, to dispose of any outstanding issues in relation to the Public Body's compliance with the Interim Decision, specifically, its disposition regarding the Records at Issue described at paras. 7.B and 7.F.ii supra. If the subject records are disclosed to the Applicants because the Public Body decides that s. 27(1)(a) and s. 16(1) do not apply, that will end the matter. For those Records at Issue where the Public Body submits that either or both legal privileges under s. 27(1)(a) and/or s. 16(1) apply, the Inquiry will resume to determine if the Public Body has met its burden of proof in its decision made under the Interim Decision.

The final disposition of those issues I am able to decide is set out in the Order that follows in Part VIII.

[2018 Interim Decision/Order, at paras. 216-220]

[para 2] It is unnecessary for present purposes to review the most recent Order in this Inquiry, which is fully laid out in the 2018 Interim Decision/Order, at paras. 221-225. To my knowledge (as no copy was received), the Public Body did not provide a decision to the Applicant where it had decided to withdraw its reliance on previously claimed exceptions, in particular s. 27(1), in order to comply with the terms of the 2018 Interim Decision.

[para 3] The rationale for my decision to issue an interim decision was discussed in the 2018 Interim Decision/Order in the opening paragraph of the 2018 Interim Decision, as follows:

One preliminary point regarding the Interim Decision that follows. I am unwilling to issue an Order in this Inquiry requiring the disclosure of Records at Issue thereby placing potentially legally privileged information in jeopardy because the Public Body has failed to discharge its burden of proof to provide sufficiently clear, convincing, and cogent evidence that the information in any specific Record at Issue is subject to legal privilege. Therefore, I have made a decision to give the Public Body the opportunity to make a decision for specific Records at Issue pursuant to the Interim Decision where it has fallen short in satisfying its burden of proof. In some circumstances, other adjudicators have addressed this type of evidentiary gap through correspondence with the Public Body in advance of completing an inquiry. In this Inquiry, however, the 2017 Notice of Continuation and subsequent correspondence, detailed supra, already put the Public Body on notice of what evidence was required and, therefore, this Interim Decision is the next logical step in this Inquiry. [Refer to Order F2014-38/Decision F2014-D-02]

[2018 Interim Decision/Order, at para. 215]

[para 4] On November 2, 2018 the Public Body provided its first response to the 2018 Interim Decision, within the time allotted, a copy of which it provided to the Applicant. The cover letter read as follows:

RE: Case File Numbers F6420/F6747/F6843 (the "Inquiry")

We write with reference to your Interim Decision F2018-D-01, Order F2018-38 (the "Interim Decision") which was delivered August 30, 2018.

As part of the Interim Decision, you have extended the option to the Public Body to provide additional information and evidence where, in your view, it has fallen short of satisfying its burden of proof with respect to the claims of privilege over certain records.

Accordingly, please find enclosed a copy of the Index of Records, which has been revised to provide additional information with respect to the privilege claims made by the Public Body in this Inquiry (the "Revised Index"). Please note that the body of the Revised Index remains unchanged from the Index attached to the Affidavit of [in-house counsel] sworn November 15, 2017. Instead, we have added an extra column labelled "Additional Information" which provides either a further and better description of the record, or provides a correction, as the case may be. No further evidence in the nature suggested at page 102 of the Interim Decision will be forthcoming from the Public Body, as we take the position that the information provided in the Revised Index is more than sufficient to support the claims of privilege over the Records at Issue in the Inquiry.

We understand that after reviewing this additional information you will then be in a position to provide a Final Decision with respect to the Inquiry and look forward to receipt of the Final Decision in due course.

Should you have any issues accessing the Revised Index please do not hesitate to contact me directly.

[Emphasis added]

[para 5] The Public Body's letter of November 2, 2018 gave rise to a number of issues. As a result, on November 30, 2018, I corresponded with the Public Body seeking further clarification, which correspondence, copied to the Applicant, read as follows:

Re: Inquiry #F6420/#F6747/#F6843: Public Body Response to Interim Decision F2018-D-01

I refer to your recent correspondence, dated November 2, 2018, which you indicated was in reference to the Interim Decision F2018-D-01 [Interim Decision]. In that letter you stated:

As part of the Interim Decision, you extended the option to the Public Body to provide additional information and evidence where, in your view, it has fallen short of satisfying its burden of proof with respect to the claims of privilege over certain records.

Accordingly, please find enclosed a copy of the Index of Records, which has been revised to provide additional information with respect to the privilege claims made by the Public Body in this Inquiry (the "Revised Index"). Please note that the body of the Revised Index remains unchanged from the Index attached to the Affidavit of [name of in-house counsel] sworn November 15, 2017. Instead, we have added an extra column labelled "Additional Information" which provides either a further and better description of the record, or provides a correction, as the case may be. No further evidence in the nature suggested at page 102 [para. 216] of the Interim Decision will be forthcoming from the Public Body, as we take the position that the information provided in the Revised Index is more than sufficient to support the claims of privilege over the Records at Issue in the Inquiry.

[Emphasis added]

On my initial review of your cover letter, I was heartened by what you said you had provided. You are correct that the November 2018 Revised Index provides an additional column with a further description or a correction for some of the Records at Issue which fall under the Interim Decision.

In the cases of these records, the newly added column appears to have been populated with substantive information. This is a good start.

But you are not correct that the body of the November 2018 Revised Index remains unchanged from the Exhibited Index attached to [name of in-house counsel]'s 2017 Affidavit of Records. As you are aware, the November 15, 2017 Exhibited Index that was attached to the 2017 Affidavit of Records was amended twice. First on November 21, 2017 to correct the Exhibited Index to add five pages that were missing. Then again on January 17, 2018, in order for you to be able to incorporate a column for the count for each Record at Issue and the end document numbers, which were added to ensure all pages of the Records at Issue were accounted for. In the letter that accompanied the January 2018 Revised Index you confirmed the updated January 17, 2018 Exhibited Index was to form part of your submissions [Refer to para. 23 of the (2018) Interim Decision].

A. The Revised Index does not remain unchanged

Relying on the 2017 Affidavit of Records, as upgraded, to conduct a comparison with the November 2018 Revised Index you provided in response to the Interim Decision, the following are a few examples of how the November 2018 Revised Index, referred to as Index below, does not, in fact, remain unchanged:

- 1. The "Count" Column [far left column] has been completely eliminated.*
- 2. Information that was in the "People or Organizations Between" Column has been removed: examples Doc Counts 1-140. There may be other examples.*
- 3. Information in the "People or Organizations CC" Column has been altered or is missing: example Doc Count 140. There may be other examples.*
- 4. The titles of some of the Columns in the November 2018 Revised Index have been altered and the order these Columns appear in the Index is switched with no explanation: "People or Organizations To" and "People or Organizations From" have replaced "People/Organizations From" and "People/Organizations To." The information in the two Columns that have been switched may be the same, though this will require further scrutiny. This is, nevertheless, a change to the Index.*

The Findings, Interim Decision and Order are wholly reliant on the "Doc Count" number to identify each specific Record at Issue. It would be greatly appreciated if you could restore the "Count" Column. The November 2018 Revised Index, which you indicate was revised only by adding one column labelled "Additional Information", has in fact been changed, as detailed supra. These need to be corrected.

B. The Revised Index does not provide a description/correction for all the Records at Issue that fall under the Interim Decision

The "Additional Information" populating the Revised Index is the information required but unfortunately has only been provided for some of the Records at Issue that fall under the Interim Decision. There is a significant gap for some of the Records at Issue. In para. 7.B.i under Findings, I listed each specific record by reference to its Doc Count number where I found the Public Body had failed to meet its burden of proof pursuant to s. 71 of the FOIP Act to establish the record was subject to either or both legal privileges. The "Additional Information" Column has not been populated with any information for some of the Doc Counts listed under para. 7.B.i. This requires correction.

The Public Body had failed to claim any exception(s) for Records at Issue listed at para. 7.J of the Interim Decision. For these Records at Issue the Public Body has still failed to claim any exception in the text of the "Additional Information" Column. This requires correction.

You indicated that you have chosen not to provide any of the other evidence referred to in the Interim Decision. On that basis, I trust that you appreciate the significance of the weight that must be given to the "Additional Information" evidence in the Revised Index, as that is all there is to measure whether or not the Public Body has met its burden of proof as outlined in the Interim Decision. It would be inherently unfair to the Applicants and dismissive of the adjudication process if any submissions regarding specific records like the CFA were to be held in reserve. As I stated at para. 65 of the Interim Decision:

By providing minimal descriptions, if any, other than to describe them as contingency fee agreements, the Public Body seems to be taking the position that the CFA is to be automatically classified as legally privileged. There are, in fact, competing authorities with respect to lawyer's bills, retainers, and contingency fee agreements. What appears to be clear is that disclosure can only be permitted where there is no reasonable possibility that the disclosure of a document will directly or indirectly reveal a communication protected by legal privilege. When it has not made the records or detailed descriptions of the records available in camera, the burden on the Public Body is to provide descriptions that adequately satisfy its burden of proof to establish the record as subject to legal privilege without revealing that privilege.

This absence of evidence for the affected Records at Issue needs to be addressed where "Additional Information" has not been provided and, thus, remains an outstanding task.

As your response to the Interim Decision is based solely on a revision of the Exhibited Index to the 2017 Affidavit of Records, as upgraded, please confirm that [name of in-house counsel] remains the affiant of the November 2018 Revised Index, which incorporates the "Additional Information" Column. If this is not the case, please indicate the source of the evidence.

To conclude, what you stated in your cover letter that you were providing is what is required by the Interim Decision. What you provided is not what you stated you were providing: Revised Index consistent with the text of your November 2, 2018 correspondence.

It is acknowledged that preparing this kind of evidence can be intense and time-consuming. It requires attention to detail. What appears to be required for your response to fulfill what is set out in the Interim Decision and what is stated in your cover letter is time. It is clear that the Interim Decision did not provide you with sufficient time to prepare your complete and intended response.

Therefore, I am extending the response time (taking into account the upcoming holiday season) for an additional 70 days.

[para 6] On February 1, 2019, the Public Body provided its second and final submission in response to my correspondence seeking clarification, within the time allotted, a copy of which it provided to the Applicant, which read as follows:

RE: Inquiry F6420/F6747/F6843: Public Body Response to Interim Decision F2018-D-01

We are in receipt of your correspondence dated November 30, 2018. In order to address the concerns raised in your letter, we have reviewed the information contained in the Index provided to you on January 17, 2018 (the "January Index"), as well as the information provided in the Index provided to you on November 3, 2018 [sic] (the "Revised Index").

As noted in our correspondence from January 17, 2018, the January Index was intended to form part of the submissions of the Public Body. We apologize for any confusion caused by only referring to the "Index attached to the Affidavit of [name of in-house counsel] in our November 2, 2018 letter, rather than the January Index.

To be clear, the January Index, and now the Revised Index, forms part of the evidence of the Public Body in this Inquiry. Further, it was not the intention of the Public Body to change or alter any of the substantive information provided in the January Index in the Revised Index, other than to add and populate a column called "Additional Information." As such, we have investigated the suggestion in your most recent letter that the Revised Index has changed from the January Index.

After reviewing the Indexes and consulting with our paralegal (who generated the Revised Index), we provide the following responses to the issues specifically enumerated in your letter:

1. You are correct in identifying that the "count" column was not included in the Revised Indexes. In order to avoid any issues or further confusion in future, please find enclosed a searchable PDF copy of the Revised Index with this column added back.
2. We have reviewed the information in the "People or Organizations Between" column and have not been able to identify any examples where information has been removed, including the example you specifically identified- Doc Counts 1-140.
3. We have reviewed the information in the "People or Organizations CC" column and have not been able to identify any examples where information has been removed, including the example you specifically identified- Doc Count 140.
4. You note that the order of some of the columns have been switched. I have spoken to our paralegal who advises this was merely a function of the information being generated by our document review software. At the time that the "Additional Information" column was added to the Indexes and then regenerated, it would appear that the order of these columns switched. However, there were no changes to any of the substantive information in either of these columns either by our paralegal or by anyone in our office.
5. With respect to the documents identified in 7.J of the Interim Decision, the Public Body has now populated the "Additional Information" column for those three documents that you identified were missing information regarding the exemptions claimed. This information is contained in the searchable PDF copy of the Revised Index enclosed with this letter.

For final and further clarification, we confirm that other than the addition of the "Additional Information" column, the Public Body has not made any substantive changes to the information provided in the Revised Index. To the extent that software has rearranged some of the information in the Indexes when they were re-generated, this was done through inadvertence and was in no way intended to represent a substantive change to the evidence of the Public Body in this Inquiry. We further confirm that the Revised Index forms part of the submissions of the Public Body in this Inquiry.

In your correspondence you note that additional information has been provided by the Public Body with respect to some but not all of the Records at Issue in the Inquiry. This is correct. It has been and continues to be the Public Body's position that it has provided more than sufficient evidence to substantiate its claims with respect to the privilege asserted over the records as identified in the Revised Index in this Inquiry.

In light of your generous extension of time and invitation to provide even further evidence, the Public Body has carefully reviewed the Records at Issue, as well as the information provided in

the Revised Index, and confirms that no additional information will be forthcoming from the Public Body in this Inquiry.

As such, we look forward to the receipt of your Final Decision in this Inquiry.
[Emphasis added]

[para 7] On February 8, 2019 I issued an Extension Letter for the anticipated completion date of the Inquiry to October 31, 2019 to the Minister for the Public Body, copied to the parties. Near the end of the Inquiry, on June 26, 2019, the Second Applicant gave notice that it was his/her intention to withdraw his/her Request for an Inquiry [Case File #F6747], which notice I acknowledged on July 3, 2019. As a result of the notification received from the Second Applicant, throughout the Order, reference is made to Applicant, in the singular, unless the context clearly requires otherwise.

II. RECORDS AT ISSUE

[para 8] The 2018 Revised Index provided by the Public Body in response to the 2018 Interim Decision on November 2, 2018 (and a second modified copy provided February 1, 2019) have been examined with respect to the Records at Issue that were the subject of the 2018 Interim Decision (plus some records not at issue for which the Public Body provided a submission, discussed *infra*). The Records at Issue that fall under the terms of the 2018 Interim Decision, described at paras. 7.B.i and 7.B.ii the 2018 Interim Decision/Order, are as follows:

I make the following findings in this Inquiry for Case Files #F6420, #F6747, and #F6843:

...

7. *The Exhibited Index has been carefully examined with respect to the descriptors for evidence for each Record at Issue for the following factors: who is a party to the communication, is their role specified, is the Record at Issue dated, how is the Record at Issue described, is seeking legal advice or discussing pending or ongoing litigation referred to (without citing it), is a person identified as counsel a party to the exchange, have any columns been REDACTED, is the specific Record at Issue marked as privileged or private, is there any other evidence the Record at Issue was intended to be confidential, is the professional role of named individuals provided, is it clear when in-house counsel or senior government officials are providing legal advice versus policy advice, where identified as being a lawyer is information provided as to whether the person is acting as a solicitor versus as a representative of a client public body, has one or more of the legal privileges been specified for the Record at Issue, have pleadings been referred to or described that are part of pending or ongoing litigation and, further, does the 2017 Affidavit of Records support the evidence for each specific Record at Issue in the Exhibited Indices. These factors have all been taken into account in order to decide, on a balance of probabilities, whether the evidence submitted by the Public Body is sufficiently clear, convincing, and cogent to meet its burden of proof. When the 2017 Affidavit of Records and its Exhibited Indices are read and reviewed together and these are measured against the backdrop of the legal requirements discussed supra, I make the following findings with respect to each specific Record at Issue;*

...

B. *Section 27(1)(a) (Insufficient Evidence of either Legal Privilege)*

[NOTE: Records at Issue over which solicitor client privilege and litigation privilege have been claimed where the Public Body has failed to meet its burden of proof with sufficiently clear, convincing, and cogent evidence that either legal privilege applies to meet the ShawCor evidentiary test to demonstrate the Solosky test for solicitor client privilege and/or part of a continuum of communications that fall within solicitor client and/or litigation privileges. Some of the Records at Issue in this category include those showing REDACTED in one or more Columns. For all of these records because the space for document type or title is REDACTED, it is impossible to make a determination with respect to s. 27(1)(a). These Records at Issue will form part of the Interim Decision.]

[NOTE: On a review of the Records at Issue disclosed to the Applicants, it is apparent that the senior government officials involved in the process of the selection of a law firm to pursue the CRA Litigation, who have been identified as lawyers, were frequently acting in their senior administrative capacity and not as legal counsel to the Public Body. The affiant of the 2017 Affidavit of Records, at paras. 5-10, claimed these individuals were at all times acting as legal counsel but did not refer to any records specifically in making that claim. The Exhibited Index and the other records that were available to me do not support that claim and no direct evidence from the three senior government officials formed any of part the Public Body's submissions. In making determinations regarding the records under para. 7.B, I have taken this into account.]

i. Referring to the Records at Issue by Doc Count number (Column 1) and where shown as more than one Record at Issue, the numbers are inclusive:

2-3, 5, 7, 14, 17, 19-22, 26, 28, 30-31, 35, 37, 40, 42-43, 46, 48-49, 53, 63, 73, 75-76, 85-87, 91, 94, 96, 98, 100, 102, 106, 108, 111, 115-116, 118, 120, 122, 127-132, 136, 138, 141, 143-144, 150, 152-153, 156, 158, 160-161, 164, 166-167, 176, 178, 180, 182, 185-186, 188, 190, 194, 196, 198, 200-207, 210-211, 223, 227, 230-236, 238-239, 243-244, 246-250, 255-256, 259-261, 263-277* [263-273, 275-277], 279-280, 285, 287, 289, 291, 297-298, 302, 305, 308, 311, 314, 317, 319, 322-324, 326-328, 334, 338, 340, 342-343, 346-347, 349, 351, 353, 356, 359-360, 362, 364-365, 367-368, 370, 372-373, 375, 379-380, 383, 386-389, 391, 394, 396, 399-401, 403, 406-409, 411, 413-414, 417, 420, 422-424, 426, 428-430, 434, 457, 459, 474-476, 479-480, 496-498, 506, 522, 543-545, 548, 550, 554-556, 560, 562, 567-572, 576** [567-576], 581, 591, 597-598, 605

ii. Of the Records at Issue at para. 7.B.i, the following 41 records have information REDACTED in one or more Columns in the Exhibited Index:

3, 21, 26, 46, 63, 156, 210, 230-231, 233-236, 238-239, 243-244, 246-250, 255-256, 259-261, 263-266, 268-269, 272, 302, 356, 372, 391, 407, 434, 522
[2018 Interim Decision/Order, at para. 213]

[para 9] The single asterisk under para. 7.B.i *supra* indicates that there is an error in the record count. Corrected in square brackets. Contained within Doc Counts 263-277 is one record [Doc Count 274], which the Public Body had already released. The double asterisk under para. 7.B.i *supra* indicates where the Public Body has correctly provided "Additional Information" for Doc Counts 573-575. Again, corrected in square brackets. I turn now to outline the issues.

III. ISSUES IN THE INQUIRY

[para 10] There are three issues to consider at this stage of the Inquiry with respect to the Public Body's submissions in response to the 2018 Interim Decision, which are as follows:

Issue #1

- Whether the Public Body met its burden of proof under s. 71(1) of the FOIP Act by providing sufficiently clear, convincing, and cogent evidence to comply with the legal and evidentiary terms set out in the 2018 Interim Decision with respect to its reliance on s. 27(1)(a) of the FOIP Act;

Issue #2

- Whether the Public Body's decision to submit the "Additional Information" in the newly added Column of the 2018 Revised Index without providing with a supplementary/correcting Affidavit of Records impacts on the weight to be given to the new evidence; and

Issue #3

- *Whether the Public Body has met its burden of proof by providing sufficiently clear, convincing, and cogent evidence to comply with the legal and evidentiary terms set out in the 2018 Interim Decision with respect to its claim that the mandatory exception in s. 16 of the FOIP Act applied to some of the Records at Issue.*

IV. DISCUSSION OF ISSUES

A. Issue #1: Whether the Public Body met its burden of proof under s. 71(1) of the FOIP Act by providing sufficiently clear, convincing, and cogent evidence to comply with the legal and evidentiary terms set out in the 2018 Interim Decision with respect to its reliance on s. 27(1)(a) of the FOIP Act.

[para 11] The Public Body provided two submissions in response to the terms of the 2018 Interim Decision, reproduced *supra*. The first submission included the 2018 Revised Index to which the Public Body added a whole new Column entitled “*Additional Information.*” After receiving a request from me, the Public Body submitted a second submission that included a modified 2018 Revised Index. In this submission, the Public Body provided further clarification as to how the 2018 Revised Index had been modified but which revisions, the Public Body submitted, other than the addition of the Additional Information Column, did not substantively change the content of the body of the 2017 Exhibited Index attached to the 2017 Affidavit of Records and/or the updated Index provided on January 17, 2018. The Public Body indicated it was able to provide clarification after reviewing the respective indexes and consulting with its paralegal, who was responsible for generating the 2018 Revised Index, and who indicated that it was simply a function of the information being re-generated by the document review software.

[para 12] The following describes the kinds of information submitted by the Public Body in the new Additional Information Column added to the 2018 Revised Index:

- supplementary evidence to provide a more detailed description for specific Records at Issue including descriptors of parties to the record (including names and professional titles) and more detail about the nature of the communication for each;
- new information for the affected Record at Issue where the descriptions had previously been REDACTED in one or more Columns in the 2017 Exhibited Index to the 2017 Affidavit of Records; and
- corrections of errors for records (not at issue) and for Records at Issue where the Public Body removed and/or replaced exceptions on which it was relying for records (not at issue) and for specific Records at Issue.

[para 13] The first issue is with respect to the Public Body’s reliance on s. 27(1)(a) in claiming legal privilege over the Records at Issue as set out in the 2018 Interim Decision. Section 27(1)(a) of the *FOIP Act* reads as follows:

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 14] In reviewing the Public Body’s submissions, I have been cognizant of a recent decision in the Court of Queen’s Bench of Alberta, which laid out a useful list of questions to consider with respect to the issue of legal privilege. On February 19, 2019, Mr. Justice Hall released a decision in *Calgary (Police Service) v. Alberta (Information and Privacy Commissioner)*, in which he outlined a series of questions to be asked to test for legal privilege for each disputed Record at Issue, in the case before him, as follows:

Having heard counsel's submissions and reviewed relevant case law, I have determined, in this case, that the appropriate test for privilege in respect of each of the disputed records, is as follows:

- 1) *Is there a communication between a solicitor and a client?*
- 2) *Does the communication entail the seeking, giving or receiving of legal advice?*
- 3) *Is the communication intended by the parties to be confidential?*
- 4) *Is the lawyer acting as a lawyer?*
- 5) *What was the purpose for which the record came into existence?*
- 6) *Is the particular communication part of a continuum in which legal advice is given?*
- 7) *Does the particular communication reveal that legal advice has been sought or given?*
- 8) *If there is any privileged information, can it be reasonably severed from the rest of the record, without revealing the privilege?*

[Calgary (Police Service) v. Alberta (Information and Privacy Commissioner), 2019 ABQB 109, at para. 6]

[para 15] I have found Justice Hall's list of questions instructive in reviewing the evidence submitted by the Public Body in response to the terms of the 2018 Interim Decision. I have emulated the format adopted by Mr. Justice Hall to lay out my Findings *infra* for each Record at Issue: identify the Record at Issue (by page number or Doc Count) and make a Finding. In this case, in addition, I have added an Order for each Record at Issue incorporating all three into the Table *infra*. In making a Finding with respect to whether the Public Body has met its burden of proof that it properly *relied* on legal privilege for each specific Record at Issue where it has been claimed under s. 27(1)(a) of the *FOIP Act*, I have also taken into account the discussion regarding legal privilege set out in the 2018 Interim Decision/Order [Refer to paras. 48-123]. For many of the Records at Issue that fall under the terms of the 2018 Interim Decision, I find the Public Body has met its burden of proof under s. 71(1) of the *FOIP Act* by providing sufficiently clear, convincing, and cogent evidence to comply with the terms set out in the 2018 Interim Decision with respect to its reliance on s. 27(1)(a). The Order for these Doc Counts reads "*Properly withheld as privileged*" in the Table *infra*. Where the Public Body has met its burden of proof that it has properly relied on s. 27(1)(a), it is unnecessary to go on to consider the exercise of its discretion as that was decided in the 2018 Interim Decision/Order [Refer to paras. 124-135]. As I stated in the 2018 Interim Decision/Order:

The Public Body goes on to cite Order F2010-007, which reads, in part, as follows:

Section 27(1)(a) states that the head of a public body may refuse to disclose any information that is subject to any legal privilege, including solicitor-client privilege. As a result, section 27(1)(a) is discretionary, given that the head is not required by the FOIP Act to withhold information subject to legal privilege.

In Ontario (Public Safety and Security) v. Criminal Lawyers' Association, 2010 SCC 23, the Supreme Court of Canada commented on the authority of the Ontario Information and Privacy Commissioner to review the way in which the head of a public body exercises discretion to withhold information in response to an access request.

We view the records falling under the s. 19 solicitor-client exemption differently. Under the established rules on solicitor-client privilege, and based on the facts and interests at stake before us, it is difficult to see how these records could have been disclosed. Indeed, Major J., speaking for this Court in McClure, stressed the categorical nature of the privilege:

... solicitor-client privilege must be as close to absolute as possible to ensure public confidence and retain relevance. As such, it will only yield in certain clearly defined circumstances, and does not involve a balancing of interests on a case-by-case basis. [Emphasis in original]

Accordingly, we would uphold the Commissioner's decision on the s. 19 claim.

...

*No case-by-case analysis or balancing of interests or rights is necessary or appropriate with respect to s. 27(1)(a) where proper reliance has been demonstrated. For those Records at Issue where, based on the evidence provided, I am able to decide on a balance of probabilities, that the Public Body has properly relied on solicitor client privilege and/or litigation privilege, detailed under Findings *infra*, I find the Public Body has properly applied the s. 27(1)(a) exception by exercising its discretion to refuse access to legally privileged information to the Applicants. **This will apply equally under the Interim Decision for those Records at Issue where the Public Body is able to meet its burden of proof to demonstrate that s. 27(1)(a) applies.***

[2018 Interim Decision/Order, at paras. 133 and 135]

[Emphasis added]

[para 16] Where the Public Body has failed to meet its burden of proof with respect to its reliance on s. 27(1), the Order for these Doc Counts reads “*Producible*” or “*Producible [possible redactions]*” in the Table *infra*. In making a Finding that the Public Body has or has not met its burden of proof with respect to its claim to legal privilege for some of the Records at Issue, it is important to discuss some of the evidentiary issues that arose.

[para 17] I begin with examples of where new evidence has been added to the 2018 Revised Index. In this Inquiry, there are a total of 41 Records at Issue, where information had been REDACTED in the 2017 Exhibited Index attached to the 2017 Affidavit of Records. The Public Body relied on s. 27(1)(a) for all of these Records at Issue and, therefore, they were not made available to review. These Records at Issue are all subject to the terms of the 2018 Interim Decision, at para. 216, the Doc Counts for which are as follows:

3, 21, 26, 46, 63, 156, 210, 230, 231, 233, 234, 235, 236, 238, 239, 243, 244, 246, 247, 248, 249, 250, 255, 256, 259, 260, 261, 263, 264, 265, 266, 268, 269, 272, 302, 356, 372, 391, 407, 434, 522

[2018 Interim Decision/Order, at para. 213, para. 7.B.ii]

[para 18] For all but three of these Records at Issue [Doc Counts: 26, 46, 272], I have found that the “*Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.*” This relates to a question I raised in the 2018 Interim Decision/Order: has the REDACTED information not been made available to me because it would reveal legally privileged information? In its 2017 PBSS when referring to the 2017 Affidavit of Records, the Public Body submitted that certain information had been REDACTED from the 2017 Exhibited Index because it would allow a party to ascertain the content of the privileged information [Refer to the 2018 Interim Decision/Order, at para. 38]. I find that on a review of the “*Additional Information*” provided for the REDACTED Records at Issue, the answer to the question is ‘no’ in all cases: it does not reveal privileged information. I appreciate that the “*Additional Information*” in the 2018 Revised Index may not, in all instances, be the exact text that was REDACTED. Without the records available, I have no way of determining that. But this raises a follow-up question: why was the text put in the 2017 Exhibited Index and then REDACTED in the first place? In lieu of redacting the Index of the Records at Issue, the Public Body could have provided the “*Additional Information*” it submitted in response to the 2018 Interim Decision in order to establish that the Applicant has no right of access to each specific Record at Issue by meeting its burden of proof pursuant to s. 71(1) of the *FOIP Act* at some point earlier in this Inquiry.

[para 19] The Additional Information Column has been populated with new information, which may or may not quote, paraphrase or summarize what has been REDACTED. What the new information in

the Additional Information Column appears to do is describe relevant details about the communication in the specific record without disclosing any legally privileged information. It is important to recall what was said in the Discussion in the 2018 Interim Decision/Order: there was not one example where the Affiant of the 2017 Affidavit of Records attested to a *specific* record or provided information as to why information for a specific Record at Issue had been REDACTED. This highlights the fact that some of the “*Additional Information*” amounts to unsworn evidence as there is no way for me to confirm how the evidence in the Additional Information Column relates to what has been REDACTED: what did the Affiant of the 2017 Affidavit of Records actually attest to? It is acknowledged that evidence in quasi-judicial hearings need not be in affidavit form. In this case, however, it is the index exhibited to the 2017 Affidavit of Records that has been revised, which when submitted as the 2017 Exhibited Index, was sworn evidence. The issue regarding information that had been REDACTED in the 2017 Exhibited Index provided by the Public Body was fully discussed in my 2018 Interim Decision/Order [Refer to paras. 105-115].

[para 20] Who may have prepared the Records at Issue and the Index for the Records at Issue may have changed over time: the FOIP Director [2014 PBIS at Tab 3], the Affiant of the 2017 Affidavit of Records [in-house counsel] and/or a paralegal. This observation is not a criticism as it is up to a public body as to who manages its records and prepares its documentation. What bears attention, however, is the weight to be given to the “*Additional Information*” in the 2018 Revised Index. The Public Body did not indicate who prepared, revised and/or amended the 2018 Revised Index and simply indicated it was regenerated by its paralegal and that it had reviewed it. It is, in my opinion, important to keep in mind, given the significance of legal privilege, that the Affidavit of Records and its accompanying Index form the foundation of the evidence the Public Body must provide in order to meet its burden of proof to establish, on a balance of probabilities, it has properly relied on s. 27(1)(a) of the *FOIP Act* with respect to its claim of legal privilege for specific Records at Issue.

[para 21] The Public Body submits that, other than adding in the Additional Information Column, the 2018 Revised Index has not substantively changed the 2017 Exhibited Index attached to the 2017 Affidavit of Records and/or the updated Index provided on January 17, 2018, a submission I do not find persuasive. The fact is that the evidence in the Additional Information Column, in addition to providing new information, also amends/changes information in columns in the previously submitted 2017 Exhibited Index. In addition to the discussion *supra* regarding new evidence to replace the REDACTED parts of the 2018 Revised Index, the fact is that the Public Body has acknowledged its errors with respect to s. 27(1)(a): by adding in a new claim to s. 27(1)(a) or withdrawing its reliance on s. 27(1)(a) for specific Records at Issue, details of which are discussed here and outlined in the Table *infra*. All of these Records at Issue fell under the terms of the 2018 Interim Decision [Refer to the 2018 Interim Decision, at paras. 215-219], the Doc Counts for which are reproduced at para. 8 *supra*. Of particular importance is how the 2018 Revised Index has been changed with respect to the Public Body’s reliance on s. 27(1)(a) in claiming legal privilege for specific Records at Issue. The following provides an overview of relevant examples:

A. Public Body has *added* its reliance on s. 27(1)(a):

Doc Counts: 276, 575

B. Public Body has *withdrawn* its reliance on s. 27(1)(a):

Doc Counts: 9, 16, 27, 29, 36, 41, 45, 47, 51, 74, 77, 93, 95, 101, 109, 112, 117, 124, 139, 142, 145, 154, 159, 162, 165, 168, 177, 179, 189, 195, 197, 212, 224, 228, 312, 318, 320, 325, 333, 339, 354, 363, 366, 369, 371, 374, 384, 395, 397, 412, 425, 427, 535, 561

[para 22] The 2018 Revised Index submitted in response to the 2018 Interim Decision also contained errors or omissions including:

A. Public Body failed to provide any Additional Information for Records at Issue subject to the terms of the 2018 Interim Decision

There are a total of 68 Records at Issue subject to the terms of the 2018 Interim Decision where the Public Body failed to submit any “Additional Information” in the 2018 Revised Index. By doing so, with two exceptions, the Public Body has, as a result, failed to meet its burden of proof that it properly relied on s. 27(1)(a) of the *FOIP Act*.

Doc Counts: 2, 7, 14, 19, 20, 22, 28, 31, 35, 40, 49, 53, 73, 76, 94, 98, 108, 111, 116, 122, 138, 141, 144, 150, 153, 158, 161, 164, 167, 176, 178, 182, 186, 188, 194, 196, 211, 223, 227, 273, 317, 319, 324, 327, 338, 347, 349, 353, 359, 362, 365, 368, 373, 383, 394, 396, 401, 408, 409, 411, 417, 424, 426, 560

[NOTE: There are two exceptions: Doc Counts: 459 and 597 discussed in Findings *infra*.]

B. Public Body has provided Additional Information for records not subject to the terms of the 2018 Interim Decision: Not Records at Issue

There is a total of 64 records *not* at issue under the 2018 Interim Decision for which the Public Body has provided “Additional Information.”

Doc Counts: 9, 16, 27, 29, 36, 41, 45, 47, 51, 74, 77, 93, 95, 101, 109, 112, 117, 124, 139, 142, 145, 154, 159, 162, 165, 168, 177, 179, 181*, 184*, 189, 195, 197, 212, 224, 228, 274*, 286*, 288*, 290*, 295*, 312, 318, 320, 325, 333, 339, 354, 363, 366, 369, 371, 374, 384, 385*, 390*, 395, 397, 412, 425, 427, 535, 553, 561

[NOTE: Of the records marked with an asterisk, the following Doc Counts were part of the 2018 Interim Decision/Order, at para. 213, para. 7.A, where I already found the Public Body had met its burden of proof under s. 27(1)(a): 181, 184, 286, 288, 290, 295, 385, 390. For the remaining record marked with an asterisk, Doc Count 274, this record had already been released by the Public Body prior to the 2018 Interim Decision/Order]

[para 23] Without considering it necessary to make a specific finding in this regard, I make the following observation: there is evidence to suggest that the Public Body may have adopted the “blanket” approach in claiming reliance on s. 27(1)(a) of the *FOIP Act* and/or populating the Privilege Column in its 2017 Exhibited Index in this Inquiry. Some of the deficiencies discussed *supra* support this observation and, therefore, it is important to note that this approach is contrary to the purpose set out in s. 2(a) of the *FOIP Act*: “to allow any person a right of access to the records ... subject to limited and specific exceptions as set out in this Act” and to what the case law has held to be required. As I stated in the 2018 Interim Decision/Order:

The Public Body has applied both solicitor client privilege and litigation privilege to the majority of the Records at Issue. This in and of itself is not necessarily a problem. It is completely conceivable that any specific record could legitimately contain information protected by both solicitor client privilege and litigation privilege. The descriptions provided in this case, however, pay limited attention to making a distinction as to what information falls under which legal privilege and, importantly, how the information in each specific record fits under either privilege.

Suncor cannot, merely by having legal counsel declare that an investigation has commenced, throw a blanket over all materials “created and/or collected during the internal investigation” or “derived from” the internal investigation, and thereby extend solicitor-client privilege or litigation privilege over them. This Court stated in ShawCor, at para 84, that “[b]ecause the question is the purpose for which the record was originally brought into existence, the mere fact that a lawyer became involved is not automatically controlling.” And further, at para 87, the Court stated that “the purpose behind the creation of a record does not change simply because the record is forwarded to, or through, in-house counsel, or because in-house counsel directs that all further investigation records should come to him or her.”

[*Alberta v. Suncor Inc*, 2017 ABCA 221, at para. 34]
[2018 Interim Decision/Order, at para. 57; Refer also to paras. 94-96]
[Emphasis added]

[para 24] I fully understand that not all evidence submitted in quasi-judicial hearings needs to be in affidavit form. In this case, however, the 2017 Affidavit of Records and its 2017 Exhibited Index were submitted as sworn evidence from in-house counsel. The 2018 Revised Index submitted in response to the 2018 Interim Decision provided a significant amount of new evidence, which has been added to the 2018 Revised Index that in effect replaces or displaces evidence in the 2017 Exhibited Index attached to the 2017 Affidavit of Records, long after the latter was sworn. The new “*Additional Information*” evidence has been added into what has been submitted as the 2018 Revised Index, which has not been provided with an affidavit. I find that adding the “*Additional Information*” to the 2018 Revised Index amounts to the Public Body submitting new evidence in the Inquiry, which constitutes a substantive change to the foundational index exhibited to the 2017 Affidavit of Records. Based on that Finding, what requires discussion is the weight to be given to the “*Additional Information*” in the 2018 Revised Index when the Public Body has failed to provide that evidence in affidavit form: either by submitting a re-affirmed 2017 Affidavit of Records, with an amended exhibited 2018 Revised Index, to acknowledge and attest to the substantive additions/corrections to its 2017 Exhibited Index or by submitting a newly sworn supplementary Affidavit of Records to accompany the 2018 Revised Index. I find that the “*Additional Information*” is unsworn evidence submitted by the Public Body in the substantively 2018 Revised Index. This leads to a discussion of the next issue, to which I now turn.

B. Issue #2: Whether the Public Body’s decision to submit the Additional Information in the newly added Column of the 2018 Revised Index without providing a supplementary/correcting Affidavit of Records impacts on the weight to be given to the new evidence.

[para 25] It is, in my opinion, important to keep in mind that an exhibited index that is attached to an affidavit of records forms the foundation of the evidence provided by a public body to meet its burden of proof under s. 71(1) of the *FOIP Act* as to whether it has properly relied on legal privilege for each specific Record at Issue. This is particularly the case when the Records at Issue claimed to be legally privileged are not made available to an adjudicator for review. In its November 2, 2018 submission, the Public Body made it clear that “*the Index of Records, which has been revised to provide additional information with respect to the privilege claims made by the Public Body in this Inquiry.*” The new evidence, in the Additional Information Column that has been added to the 2018 Revised Index, has not been provided with a supporting affidavit. I find that adding the “*Additional Information*” to the 2018 Revised Index amounts to the Public Body submitting new unsworn evidence in the Inquiry, which evidence makes substantive changes *both* by providing new information in the Additional Information Column *and* by that information amending, correcting or changing information in *other* columns of the 2017 Exhibited Index and the 2018 Revised Index. Based on that Finding, what requires discussion is the weight to be given to the “*Additional Information*” in the 2018 Revised Index.

[para 26] I found it inexplicable as to why the Public Body failed to provide the new evidence with a supporting affidavit: such as, a supplementary or correcting Affidavit of Records with the “*Additional Information.*” It remains unclear why this step was not taken. No explanation was provided other than what the Public Body stated in its letter dated November 2, 2018, which correspondence is reproduced at para. 4 *supra*. Despite having already made this request, in my letter dated November 30, 2018, I made a final attempt by soliciting a minimal response from the Public Body, which is reproduced at para. 5 *supra*. The Public Body’s response reproduced at para. 6 *supra* did not respond to my specific request to provide a confirmation that the Affiant could attest to the new evidence submitted in the 2018 Revised Index. In this case, the 2018 Revised Index with the Additional Information Column was submitted long after the sworn evidence in the 2017 Affidavit of Records from the in-house counsel Affiant. That means, by way of example, that the Affiant of the 2017 Affidavit of Records swore certain records were or were not subject to legal privilege, which claim has now been amended or substantively changed by the new evidence submitted. In my opinion, this demonstrates the need for a supplementary or correcting

Affidavit of Records or, at the very least, sworn confirmation from the Affiant with respect to the “Additional Information” added to the 2018 Revised Index, which index prior to the revisions was exhibited to his/her 2017 Affidavit of Records [Refer to the discussion in the 2018 Interim Decision/Order, at para. 39, where the details of the evidence of the Affiant of the 2017 Affidavit of Records and its 2017 Exhibited Index reports that s/he attested to having reviewed all of the Records at Issue in the 2017 Exhibited Index and submits that the Public Body objects to produce the Records listed as subject to solicitor client privilege, litigation privilege or both].

[para 27] It is well understood that adjudicators delegated under the *FOIP Act* are not obliged to strictly adhere to the practice rules governing Court proceedings. But in response to the recent Supreme Court of Canada decisions about records over which legal privilege has been claimed not being producible, the Alberta Information and Privacy Commissioner [OIPC Commissioner], relying on the Alberta Rules of Court as adopted in the *ShawCor* decision, issued the *OIPC Privilege Practice Note (2016)*, which reads in part as follows:

In Alberta (Information and Privacy Commissioner) v. University of Calgary, 2016 SCC 53 (CanLII), the Supreme Court of Canada (SCC) suggested that the rules applicable to claims of solicitor-client privilege in the context of civil litigation apply to privilege claims in the context of access requests. The SCC also cited Canadian Natural Resources Ltd. v. ShawCor Ltd., 2014 ABCA 289 (CanLII), 580 A.R. 265 as the relevant authority in Alberta. In this case, the Alberta Court of Appeal discussed the application of Rules 5.7 and 5.8 of the Rules of Court (producible records, and records for which there is an objection to produce). The Court stated (at paras. 42-43):

...Therefore, in explaining the grounds for claiming privilege over a specific record, a party will necessarily need to provide sufficient information about that record that, short of disclosing privileged information, shows why the claimed privilege is applicable to it. Depending on the circumstances, this may require more or less than the “brief description” contemplated under Rule 5.7(1)(b) although we expect that oftentimes the brief description will suffice.

Accordingly, under either interpretation of the relevant Rules, a party must provide a sufficient description of a record claimed to be privileged to assist other parties in assessing the validity of that claim. From this, it follows that all relevant and material records must be numbered and, at a minimum, briefly described, including those records for which privilege is claimed. As noted, though, this is subject to the proviso that the description need not reveal any information that is privileged.

This is the basis for the practice note for the provision of evidence by Respondents claiming solicitor-client privilege over records. The practice note also applies to litigation privilege on the basis of the significance attributed to that privilege by the SCC in Lizotte v. Aviva Insurance Company of Canada, 2016 SCC 52.
[OIPC Privilege Practice Note (2016), at p. 1]
[Emphasis added]

[para 28] This points to how both the Courts and the OIPC Commissioner have turned to the Alberta Rules of Court as the legal and logical source for the rules governing the provision of evidence. As the *OIPC Privilege Practice Note (2016)* states the “(SCC) suggested that the rules applicable to claims of solicitor-client privilege in the context of civil litigation apply to privilege claims in the context of access requests.” On that basis, I consider it appropriate to turn to the Alberta Rules of Court for guidance in this situation where new evidence with respect to the Public Body’s claim of legal privilege has been submitted. Submission of the “Additional Information” in this Inquiry may be seen as analogous or similar to when a new, relevant and material record arises in a proceeding, [Alberta Rule of Court 5.10], which requires a supplementary Affidavit of Records, or when a person questioned on an Affidavit of Records provides an incorrect or misleading answer as a result of new information [Alberta Rule of Court 5.27], which requires a correcting affidavit. The importance of affidavit evidence was brought to the

attention of the Public Body in the 2017 Notice of Continuation of the Inquiry and in the 2018 Interim Decision/Order:

*In the 2017 Notice, I impressed upon the Public Body **the importance of providing affidavit evidence** from lawyers who had knowledge about the information over which it was claiming legal privilege. If one or more of the affiants was in-house counsel, I urged the Public Body to provide robust evidence regarding the potential for his/her duplicate roles. This would enable me to measure if the communications met the criteria for the solicitor client framework, as set out by the SCC in the Solosky, Pritchard and Campbell decisions. That is, whether or not solicitor client privilege can be applied is dependent on the Public Body providing evidence as to the nature of the relationship, the subject matter of the advice (legal or policy) and the circumstances in which it is sought or rendered without revealing any privileged information.*

[2018 Interim Decision/Order, at para. 75]

[Emphasis added]

[para 29] For some of the Records at Issue, the new evidence in the “*Additional Information*” in the 2018 Revised Index has provided descriptive information and detail, record by record, as required by the *Solosky* decision, which reads, in part, as follows:

*... privilege can only be claimed **document by document**, with each document being required to meet the criteria for the privilege ...*

[*Solosky v. The Queen*, [1980] 1 SCR 821, at p. 838; See also discussion of the *ShawCor* decision in the 2018 Interim Decision/Order, at para. 73]

[Emphasis added]

[para 30] The “*Additional Information*”, however, which adds new and amends existing evidence, has not been provided as a sworn exhibit to an Affidavit of Records. In order to be able to give the appropriate weight to the evidence in the Additional Information Column in the 2018 Revised Index, which amended or substantively changed evidence *throughout* the 2017 Exhibited Index, I turned to the Alberta Rules of Court for guidance. In this case, even when prompted to do so, the Public Body disregarded my request as if it considered a new affirmation or a re-affirmation an unnecessary step. This amounts to the Public Body submitting new evidence in the Inquiry in order to meet its burden of proof that it has properly relied on legal privilege pursuant to s. 27(1)(a) without an accompanying up-to-date affidavit of records and exhibited index. Given the importance of legal privilege as the primary issue in this Inquiry and the central role the 2017 Affidavit of Records and its 2017 Exhibited Index play in meeting its evidentiary burden *particularly where there are substantive changes to the evidence*, I find that it would have been reasonable for the Public Body to turn its attention to the Alberta Rules of Court for guidance and to have the Affiant re-affirm his/her 2017 Affidavit of Records, as amended by the 2018 Revised Index, or swear a supplementary Affidavit of Records attaching the 2018 Revised Index that contains the “*Additional Information*.”

[para 31] In this case, I do not consider it reasonable to totally discount the evidence in the Additional Information Column in the 2018 Revised Index simply because the Public Body failed to provide the new evidence in the form of an amended or supplementary Affidavit of Records. Rather, it was a question of the weight to be given to the new evidence. For some of the Records at Issue where the evidence in the Additional Information Column is sparse, submitting the 2018 Revised Index with an accompanying affidavit as sworn evidence, would have assisted the Public Body *vis à vis* its burden of proof. I have, however, considered the Public Body’s submissions in their totality, applying the evidentiary standard of a balance of probabilities, in order to make my Findings record by record [Refer to the 2018 Interim Decision/Order, at paras. 45 and 52]. The unsworn “*Additional Information*”, however, is being given less weight than it might otherwise be given because the Public Body failed to provide an amended or supplementary Affidavit of Records with its 2018 Revised Index: confirmation from the Affiant that s/he could attest to the information populating the Additional Information Column in the 2018 Revised Index, as that evidence adds to, amends and/or corrects what the Public Body has submitted for each specific Record at Issue.

[para 32] I turn now to the final discussion regarding the evidence. Equally problematic to the evidence not being provided in affidavit form is the fact that the Public Body has failed to provide any or insufficient “*Additional Information*” for 66 of the Records at Issue contrary to the terms of the 2018 Interim Decision, as discussed *supra*. Of these Records at Issue, in particular, there are 57 Records at Issue described in whole or in part as the “*Contingency Fee Agreement*” including CFA drafts, that fell under the terms of the 2018 Interim Decision, where the Public Body failed to provide any evidence and has, as a result, failed to meet its burden of proof to establish it properly relied on s. 27(1)(a) with respect to its claim of legal privilege:

Doc Counts: 2, 7, 14, 19, 20, 28, 31, 35, 40, 49, 53, 73, 76, 94, 98, 108, 111, 116, 122, 138, 141, 144, 150, 153, 158, 161, 164, 167, 176, 178, 182, 186, 188, 194, 196, 211, 223, 227, 317, 319, 324, 327, 338, 347, 349, 353, 359, 362, 365, 368, 373, 383, 394, 396, 409, 411, 424, 426

[para 33] The Public Body continued to treat any Record at Issue described as the CFA or a draft, in its entirety, as subject to legal privilege, for which the Public Body appeared to consider it unnecessary to provide any evidentiary base to substantiate that claim in the Additional Information Column. This pattern was brought to the attention of the Public Body many times, most recently in my November 30, 2018 correspondence, reproduced at para. 5 *supra*, the relevant part of which read as follows:

*The “Additional Information” populating the Revised Index is the information required but unfortunately has only been provided for some of the Records at Issue that fall under the Interim Decision. There is a significant gap for some of the Records at Issue. In para. 7.B.i under Findings, I listed each specific record by reference to its Doc Count number where I found the Public Body had failed to meet its burden of proof pursuant to s. 71 of the FOIP Act to establish the record was subject to either or both legal privileges. **The “Additional Information” Column has not been populated with any information for some of the Doc Counts listed under para. 7.B.i. This requires correction.***

*You indicated that you have chosen not to provide any of the other evidence referred to in the Interim Decision. **On that basis, I trust that you appreciate the significance of the weight that must be given to the “Additional Information” evidence in the Revised Index, as that is all there is to measure whether or not the Public Body has met its burden of proof as outlined in the Interim Decision.** It would be inherently unfair to the Applicants and dismissive of the adjudication process if any submissions regarding specific records like the CFA were to be held in reserve. As I stated at para. 65 of the Interim Decision:*

*By providing minimal or bare descriptions, other than to describe them as contingency fee agreements, **the Public Body seems to be taking the position that the CFA is to be automatically classified as legally privileged. There are, in fact, competing authorities with respect to lawyer’s bills, retainers, and contingency fee agreements. What appears to be clear is that disclosure can only be permitted where there is no reasonable possibility that the disclosure of a document will directly or indirectly reveal a communication protected by legal privilege. When it has not made the records or detailed descriptions of the records available in camera, the burden on the Public Body is to provide descriptions that adequately satisfy its burden of proof to establish the record as subject to legal privilege without revealing that privilege.***

This absence of evidence for the affected Records at Issue needs to be addressed where “Additional Information” has not been provided and, thus, remains an outstanding task.
[Emphasis added]

[para 34] The issue of the CFA was discussed in the 2018 Interim Decision/Order [Refer to paras. 60-76]. It is recognized that there are competing authorities regarding contingency fee agreements, retainers and lawyers’ bills *vis à vis* legal privilege. As a result, in this case, I specifically requested, but did not receive, evidence from the Public Body to support its position regarding the CFA. The Alberta Rules of Court [Part 10 ss. 10.7-10.8] detail the *mandatory* particulars in order for a CFA to be

enforceable. Some of these may amount to template-type provisions in the CFA. No explanation was forthcoming from the Public Body as to why it failed to populate the Additional Information Column, other than to indicate it would not be doing so. Nor did the Public Body explain why it was unable to redact the legally privileged information from any of the CFA-related Records at Issue, thus enabling it to fulfil its statutory obligation to provide the Applicant access to as much information as possible, pursuant to s. 6(2) of the *FOIP Act*. As Justice Hall stated as one of his questions for the appropriate test for legal privilege in his decision that I referred to at para. 14 *supra*: “*If there is any privileged information, can it be reasonably severed from the rest of the record, without revealing the privilege?*” The Findings *infra* reflect the outcome of the Public Body *failing to provide any evidence* in the Additional Information Column for the Records at Issue subject to the terms of the 2018 Interim Decision described as the CFA or draft CFA.

[para 35] One concluding point with respect to the discussion regarding legal privilege. On examination of the contents of the Additional Information Column, the name and/or roles in the descriptors for people or organizations who are a party to the communication and the subject matter of that communication or document have been added for many Records at Issue. The reason for drawing attention to this fact is for the following reasons: first, in every instance where “*Additional Information*” has been provided, it is reasonable to assume all that information would have been available to the Public Body when the Inquiry began; second, none of it is information that would have disclosed legally privileged information; third, had the information been provided years ago, in many instances, it would have constituted sufficient evidence for the Public Body to meet its burden of proof in a more timely fashion; and fourth, providing this information years ago may have avoided these Records at Issue being the subject of the 2018 Interim Decision, which also contributed to the long life of this Inquiry.

[para 36] While being cautious in managing legally privileged information contained within Records at Issue is understandable and correct, the Public Body adopted a minimalist approach in preparing and providing evidence to establish it properly relied on s. 27(1)(a) of the *FOIP Act* up until its submissions in response to the 2018 Interim Decision and, in some instances, including in those submissions. The preferred approach, in my opinion, would be for the Public Body to bring the same vigour with which it claims to be protecting legally privileged records to producing sufficiently clear, convincing, and cogent evidence to meet its burden of proof under s. 71(1) of the *FOIP Act* that it has properly *relied* on s. 27(1)(a) for information that is subject to legal privilege in a timely fashion.

C. Issue #3: Whether the Public Body has met its burden of proof by providing sufficiently clear, convincing, and cogent evidence to comply with the legal and evidentiary terms set out in the 2018 Interim Decision with respect to its claim that the mandatory exception in s. 16 of the *FOIP Act* applied to some of the Records at Issue.

[para 37] I turn now to the issue of the Public Body’s reliance on s. 16. For ease, the relevant portion of para. 7.F.ii from the Findings in the 2018 Interim Decision/Order are reproduced here:

*F. Section 16 (Disclosure harmful to Third Party Business Interest)
Section 16 (Disclosure harmful to Third Party Business interest has been claimed but has not been proven to apply)*

...

ii. Records for which s. 16 has been claimed and will need to be re-considered (as it is a mandatory exception) where, under the Interim Decision, the Public Body decides that s. 27(1)(a) does not apply.

Referring to the Records at Issue by Doc Count number (Column 1) and where shown as more than one Record at Issue, the numbers are inclusive:

2, 7, 14, 20, 26, 28, 31, 35, 40, 43, 46, 49, 53, 63, 73, 76, 91, 94, 98, 108, 111, 115-116, 122, 138, 141, 144, 150, 153, 158, 161, 164, 167, 176, 178, 180, 182, 186, 188, 194, 196, 211,

223, 227, 231, 233-236, 238, 244, 246, 248, 250, 256, 259, 263, 265, 272, 317, 319, 324, 338, 342, 347, 353, 359-360, 362, 365, 368, 373, 383, 394, 396, 409, 411, 424, 426, 498

[para 38] In the 2018 Interim Decision/Order I discussed the s. 16 mandatory exception at paras. 167-175. The test for s. 16 was discussed at paras. 168-169, as follows:

Section 16(1) is a mandatory exception that obliges a public body to refuse access to information in a record where the disclosure of the information meets the three-part statutory test. In order to demonstrate that this mandatory exception does, in fact, apply to the Records at Issue, the Public Body must provide evidence that demonstrates all three conditions are met:

- 1. the records must contain trade secrets, or commercial, financial, labour relations, scientific or technical information;*
- 2. the fact the disclosure must reveal this type of information means that the severed information must not already be in the public domain; **and***
- 3. the records must contain information that is “of a Third Party” (Order F2004-013, at para. 11, quoting Order 99-008)*

[Order F2014-49, at para. 32]

[Emphasis in original and added]

For every Record where the Public Body has claimed s. 16(1) it has also applied s. 27(1)(a) and, therefore, these records were not available for review. The descriptions in the Exhibited Index provide little, if any, evidence to support a finding that the s. 16(1) three-part test has been met.

[2018 Interim Decision/Order, at paras. 168-169]

[Emphasis in original]

[para 39] Pursuant to the terms of the 2018 Interim Decision, the Public Body was required to provide sufficiently clear, cogent, and convincing evidence to meet its burden of proof under s. 71(1) of the *FOIP Act* for both s. 27(1)(a) and s. 16 of the *FOIP Act*, which terms read as follows:

In complying with this Interim Decision, after it has made a decision regarding its reliance on s. 27(1)(a) for both legal privileges, thereafter, the Public Body is under a statutory duty to decide whether the mandatory exception in s. 16(1) properly applies to the Records at Issue described at para. 7.F.ii supra. Once it has made a decision with respect to s. 27(1)(a), the Public Body will be required to gather evidence and authority, specifically evidence sufficient to meet the three-part test that the mandatory exception s. 16(1) requires. Thereafter, if it is unable to meet its burden of proof that both s. 27(1)(a) and s. 16(1) do apply, the Public Body is to provide the Applicants with access to the Records at Issue in accordance with the Findings supra.

[2018 Interim Decision, at para. 217]

[para 40] For every Record at Issue where the Public Body has claimed s. 16, it has also relied on s. 27(1)(a) and, therefore, these records were not available for my review. In its response to the 2018 Interim Decision, the Public Body failed to provide any submissions or evidence in the Additional Information Column with respect to the mandatory exception in s. 16 of the *FOIP Act*, where it was required to do so under the terms of the 2018 Interim Decision. As its November 2, 2018 correspondence reads, the Public Body appears to have limited its submissions in response to the 2018 Interim Decision to legal privilege without providing evidence or authority with respect to s. 16, as required by the terms of the 2018 Interim Decision. It is on that basis that I now turn to the specifics with respect to the Findings regarding the s. 16 mandatory exception.

[para 41] The Public Body has not consistently claimed s. 16 for the CFA or drafts of the CFA. Examples are cited here simply to point out the inconsistencies in the Public Body's claim to s. 16 for Records at Issue purporting to be the CFA and/or a draft or an excerpt of a draft CFA. The Public Body does not provide an explanation for its inconsistent application of s. 16 to Records at Issue purporting to be CFA or CFA drafts. Other than the general assertions in its 2014 PBIS, the Public Body did not provide sufficiently clear, cogent and convincing evidence to meet the three-part test for s. 16. This is

important because s. 16 is a mandatory exception, which means the Public Body is under a statutory duty to deny access to the Applicant to the Records at Issue where it meets its burden of proof that s. 16 applies. The following Doc Counts demonstrate the inconsistent claim to s. 16 (***not an exhaustive list but a sample only***):

Section 16 *not* claimed for CFA or draft CFA Doc Counts: 19, 349

Section 16 claimed for CFA or draft CFA Doc Counts: 2, 7, 14, 20, 35, 40, 49, 94, 98

[para 42] For some of these Records at Issue, in the 2018 Interim Decision/Order, I held that the Public Body had met its burden of proof for s. 27(1)(a) and, therefore, it was unnecessary to consider whether s. 16 applies [Refer to para. 7.F.i of the 2018 Interim Decision/Order reproduced *supra*]. These were not, therefore, Records at Issue under the 2018 Interim Decision. There were Records at Issue where the Public Body failed to meet its burden of proof under the 2018 Interim Decision/Order for s. 27(1)(a) [Refer to para. 7.F.ii of the 2018 Interim Decision/Order]. These fell under the terms of the 2018 Interim Decision. Of those Records at Issue under the 2018 Interim Decision, the Public Body provided “*Additional Information*” and in doing so met its burden of proof for s. 27(1)(a) of the *FOIP Act* for the following Doc Counts:

Doc Counts: 63, 115, 180, 231, 233-236, 238, 244, 246, 248, 250, 256, 259, 263, 265, 342, 360, 498

[NOTE: Additional Information provided for Doc Count 385 that is not a Record at Issue under the 2018 Interim Decision. At para. 213 of the 2018 Interim Decision/Order, I found the Public Body had met its burden of proof to establish that it had properly relied on s. 27(1)(a) for Doc Count 385.]

[para 43] The Records at Issue falling under the 2018 Interim Decision for which the Public Body has now met its burden of proof pursuant to s. 27(1)(a) by providing “*Additional Information*”, similar to under the 2018 Interim Decision/Order, it is unnecessary to consider whether the Public Body met its burden under s. 16. But for those Records at Issue where the Public Body has not met its burden of proof with respect to s. 27(1)(a), the Findings in the Table *infra* describe where s. 16 has also been claimed. The following Doc Counts are the Records at Issue where the Public Body has *not* met its burden of proof for s. 27(1)(a) and has, in addition, failed to meet its burden of proof for s. 16 [three-part test outlined *supra*], which Doc Counts are included in the Table *infra*:

Doc Counts: 2, 7, 14, 20, 26, 28, 31, 35, 40, 43, 46, 49, 53, 63, 73, 76, 91, 94, 98, 108, 111, 115-116, 122, 138, 141, 144, 150, 153, 158, 161, 164, 167, 176, 178, 182, 186, 188, 194, 196, 211, 223, 227, 244, 317, 319, 324, 338, 342, 347, 353, 359, 362, 365, 368, 373, 383, 394, 396, 409, 411, 424, 426

[para 44] In its submissions in response to the terms of the 2018 Interim Decision, the Public Body failed to provide any evidence in the Additional Information Column with respect to its claim that the mandatory exception in s. 16 of the *FOIP Act* applied to some of the information, which the Public Body is under a statutory duty to withhold, and, as a result, has failed to discharge its burden of proof. The totality of the evidence provided by the Public Body throughout the Inquiry [For discussion about s. 16 in the 2018 Interim Decision/Order refer to paras. 167-175] fell far short of meeting the three-part test for s. 16 (business interests of a third party). The results of the Public Body failing to meet its burden of proof with respect to s. 16 of the *FOIP Act* for the Records at Issue where it claims it applies are detailed in the Findings in the Table *infra*.

V. FINDINGS

[para 45] I turn now to the Findings for the final phase of the Inquiry. The Findings are limited solely to the specific Records at Issue stipulated in the 2018 Interim Decision. The evidence for each of these specific Records at Issue has been reviewed as it has been described by the Public Body in the multiple indexes submitted, summarized as follows:

- Index received August 6, 2014 as part of the 2014 Public Body Initial Submission
- Index (updated) received January 19, 2017 with copies of a portion of the Records at Issue provided to the External Adjudicator only
- 2017 Exhibited Index received November 15, 2017 attached to the 2017 Affidavit of Records as part of the 2017 Public Body Initial (supplementary) Submission
- Electronic searchable copy of 2017 Exhibited Index received on November 21, 2017 that included the 5 pages missing from the 2017 Exhibited Index provided on November 15, 2017
- Index (updated) received January 17, 2018 with the 2017 Public Body Rebuttal Submission
- 2018 Revised Index received November 2, 2018 in the Public Body's first response to 2018 Interim Decision
- 2018 Revised Index (modified) received February 1, 2019 in the Public Body's second and final response to the 2018 Interim Decision

[para 46] The Public Body made it clear in its responses to the 2018 Interim Decision that the 2018 Revised Indexes are to form part of its submissions in the Inquiry and, therefore, all of the indexes submitted over the course of the Inquiry have been considered. For the purpose of adjudicating the Public Body's response to the terms of the 2018 Interim Decision in relation to the specific Records at Issue, it is the 2017 Exhibited Index (with the 2017 Affidavit of Records) and the 2018 Revised Index that has been given the greatest attention, the latter two in the list *supra* being the indexes into which the Public Body incorporated the Additional Information Column.

[para 47] The first issue to be decided is whether the Public Body has met its burden of proof to establish it has properly *relied* on s. 27(1)(a) of the *FOIP Act*, with respect to claiming solicitor client privilege and/or litigation privilege. In answering the question, I have considered all of the evidence submitted by the Public Body including the "*Additional Information*" in the 2018 Revised Index despite the fact that the latter evidence has not been submitted in affidavit form. Throughout the 2018 Revised Index, in some instances, the Public Body has met its burden of proof for solicitor client privilege (some of which may also be protected by litigation privilege). For examples (***not an exhaustive list but a sample only***), refer to:

Doc Counts: 5, 21, 30, 37, 42, 48, 128, 143, 180, 210

[para 48] There are other instances, however, where the Public Body has not met its burden of proof for solicitor client privilege but has met the burden of proof for litigation privilege. For examples, refer to (***not an exhaustive list but a sample only***):

Doc Counts: 63, 75, 106, 115, 130, 156, 230, 231, 233, 234, 236, 238, 239, 244, 246, 247

[para 49] In the Table that follows *infra*, the Order for each specific Record at Issue where the Public Body has, on a balance of probabilities, met its burden of proof that it has properly relied on s. 27(1)(a), reads as "*Properly withheld as privileged.*" For these Records at Issue, it is unnecessary to consider the exercise of its discretion as that was decided in the 2018 Interim Decision/Order [Refer to paras. 124-135]. These include all of the 41 Records at Issue where the information in the 2017 Exhibited Index had been REDACTED, which are included in the Table *infra*, the Doc Counts for which are reproduced at para. 8 *supra* [Refer to the 2018 Interim Decision/Order, at para. 7.B.ii]. For the other Records at Issue where the Public Body has, on a balance of probabilities, failed to meet its burden of proof that it has properly relied on s. 27(1), the Order for each of these specific Records at Issue is "*Producible.*" I have made an Order for some of these Records at Issue that reads "*Producible [possible redactions]*", where it appears that the Record at Issue may contain some information protected by legal privilege but which record should be redacted so that the Public Body can provide access to the Applicant to the part of the information in the record not protected by legal privilege. The Findings and Order in the Table *infra* also address the answer to the second issue with respect to the application of s. 16 of the *FOIP Act* as discussed *supra*.

[para 50] The following Table contains a Findings and disposition for each of the specific Records at Issue that fall under the terms of the 2018 Interim Decision.

Findings for 2018 Interim Decision Records at Issue by Doc Count

Doc Count	Findings	Order for Case Files #F6420 and #F6843
2	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
3	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
5	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
7	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
<p>[NOTE: Additional Information provided for Doc Count 9, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]</p>		

Doc Count Findings		Order for Case Files #F6420 and #F6843
14	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 16, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
17	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
19	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
20	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
21	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count Findings		Order for Case Files #F6420 and #F6843
22	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed.	Producible
26	The 2017 Exhibited Index had information redacted. Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 27, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
28	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 29, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
30	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
31	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met.	Producible
35	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]

Doc Count Findings**Order for Case Files #F6420
and #F6843**

[NOTE: Additional Information provided for Doc Count 36, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]

37	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
40	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]

[NOTE: Additional Information provided for Doc Count 41, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]

42	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
43	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]

[NOTE: Additional Information provided for Doc Count 45, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]

46	The 2017 Exhibited Index had information redacted. Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met.	Producible [possible redactions]
----	--	----------------------------------

Doc Count Findings**Order for Case Files #F6420
and #F6843**

[NOTE: Additional Information provided for Doc Count 47, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]

48	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
49	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]

[NOTE: Additional Information provided for Doc Count 51, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]

53	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
63	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count	Findings	Order for Case Files #F6420 and #F6843
73	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 74, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
75	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
76	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 77, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
85	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
86	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
87	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count Findings		Order for Case Files #F6420 and #F6843
91	Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 93, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
94	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 95, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
96	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
98	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
100	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
[NOTE: Additional Information provided for Doc Count 101, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		

Doc Count Findings		Order for Case Files #F6420 and #F6843
102	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
106	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
108	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 109, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
111	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 112, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
115	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count	Findings	Order for Case Files #F6420 and #F6843
116	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 117, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
118	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
120	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
122	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 124, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
127	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
128	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count	Findings	Order for Case Files #F6420 and #F6843
129	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
130	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
131	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
132	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
136	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
138	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 139, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
141	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]

Doc Count Findings**Order for Case Files #F6420
and #F6843**

[NOTE: Additional Information provided for Doc Count 142, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]

143	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
144	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]

[NOTE: Additional Information provided for Doc Count 145, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]

150	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
152	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
153	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]

Doc Count Findings**Order for Case Files #F6420
and #F6843**

[NOTE: Additional Information provided for Doc Count 154, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]

156	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
158	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]

[NOTE: Additional Information provided for Doc Count 159, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]

160	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
161	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]

[NOTE: Additional Information provided for Doc Count 162, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]

Doc Count Findings		Order for Case Files #F6420 and #F6843
164	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 165, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
166	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
167	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 168, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
176	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 177, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		

Doc Count Findings		Order for Case Files #F6420 and #F6843
178	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 179, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
180	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
[NOTE: Additional Information provided for Doc Count 181, which is not a Record at Issue under the terms of the 2018 Interim Decision.]		
182	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 184, which is not a Record at Issue under the terms of the 2018 Interim Decision.]		
185	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count Findings		Order for Case Files #F6420 and #F6843
186	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
188	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 189, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
190	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
194	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 195, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		

Doc Count	Findings	Order for Case Files #F6420 and #F6843
196	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 197, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
198	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
200	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
201	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
202	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
203	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
204	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
205	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count Findings		Order for Case Files #F6420 and #F6843
206	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
207	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
210	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
211	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 212, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
223	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 224, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		

Doc Count	Findings	Order for Case Files #F6420 and #F6843
227	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
230	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
231	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
232	The 2017 Exhibited Index had information redacted. Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. The evidence in the Additional Information Column makes reference to a list of lawyers' names (no business interests) with no further detail and, therefore, it is probable there is no information protected by legal privilege.	Producible
233	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
234	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count	Findings	Order for Case Files #F6420 and #F6843
235	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
236	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
238	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
239	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
243	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
244	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
246	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
247	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count	Findings	Order for Case Files #F6420 and #F6843
248	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
249	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
250	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
255	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
256	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
259	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
260	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
261	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count	Findings	Order for Case Files #F6420 and #F6843
263	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
264	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
265	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
266	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
267	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
268	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
269	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
270	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
271	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count	Findings	Order for Case Files #F6420 and #F6843
272	The 2017 Exhibited Index had information redacted. Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that because the evidence in the Additional Information Column refers to the CFA or draft CFA, it is probable that Doc Count 272 will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
273	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed.	Producible
[NOTE: The Public Body provided Additional Information for Doc Count 274 because in the 2018 Decision/Order it was included in para. 7.B.i in error. The Public Body had already released this record, as noted in para. 9 <i>supra</i> . Despite the fact the record had been released, the Public Body provided Additional Information. It appears from the Additional Information provided for Doc Count 274 may be evidence the Public Body intended to populate the Additional Information Column for Doc Count 273. Regardless, there is insufficient evidence to prove legal privilege for Doc Count 273 and therefore the Finding <i>supra</i> .]		
275	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
276	Additional Information provided by the Public Body to correct its errors in the 2017 Exhibited Index in which it had failed to specify any exceptions including s. 27(1)(a) and failed to populate the Privilege Column. The Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Linked sufficiently to a Record at Issue [Doc Count 275].	Properly withheld as privileged
277	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
279	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count Findings		Order for Case Files #F6420 and #F6843
280	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
285	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
[NOTE: Additional Information provided for Doc Count 286, which is not a Record at Issue under the terms of the 2018 Interim Decision.]		
287	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Attached to a Record at Issue [Doc Count 286] for which the Public Body had already met its burden of proof.	Properly withheld as privileged
[NOTE: Additional Information provided for Doc Count 288, which is not a Record at Issue under the terms of the 2018 Interim Decision.]		
289	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Linked sufficiently to a Record at Issue [Doc Count 288] for which Public Body had already met its burden of proof under s. 27(1)(a) in the 2018 Interim Decision/Order, at para. 7.A.	Properly withheld as privileged
[NOTE: Additional Information provided for Doc Count 290, which is not a Record at Issue under the terms of the 2018 Interim Decision.]		
291	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Attached to a Record at Issue [Doc Count 290] for which Public Body had already met its burden of proof.	Properly withheld as privileged
[NOTE: Additional Information provided for Doc Count 295, which is not a Record at Issue under the terms of the 2018 Interim Decision.]		
297	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count Findings		Order for Case Files #F6420 and #F6843
298	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
302	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
305	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Contents of lawyer's invoice may reveal legally privileged information.	Properly withheld as privileged
308	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Contents of lawyer's invoice may reveal legally privileged information.	Properly withheld as privileged
311	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
[NOTE: Additional Information provided for Doc Count 312, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
314	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
317	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 318, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		

Doc Count	Findings	Order for Case Files #F6420 and #F6843
319	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 320, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
322	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
323	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
324	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 325, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
326	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
327	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed.	Producible

Doc Count Findings		Order for Case Files #F6420 and #F6843
328	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
[NOTE: Additional Information provided for Doc Count 333, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
334	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Contents of lawyer's invoice may reveal legally privileged information.	Properly withheld as privileged
338	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 339, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
340	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
342	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Linked sufficiently to a Record at Issue [Doc Count 341] for which Public Body had already met its burden of proof under s. 27(1)(a) in the 2018 Interim Decision/Order, at para. 7.A.	Properly withheld as privileged
343	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Contents of lawyer's invoice may reveal legally privileged information.	Properly withheld as privileged

Doc Count	Findings	Order for Case Files #F6420 and #F6843
346	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
347	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
349	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
351	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
353	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 354, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		

Doc Count	Findings	Order for Case Files #F6420 and #F6843
356	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
359	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
360	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
362	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 363, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
364	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count Findings		Order for Case Files #F6420 and #F6843
365	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 366, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
367	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
368	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 369, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
370	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
[NOTE: Additional Information provided for Doc Count 371, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
372	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count Findings		Order for Case Files #F6420 and #F6843
373	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 374, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
375	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
379	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
380	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
383	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 384, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
[NOTE: Additional Information provided for Doc Count 385, which is not a Record at Issue under the terms of the 2018 Interim Decision. The 2018 Interim Decision/Order already confirmed the Public Body had met its burden of proof with respect to s. 27(1)(a) for Doc Count 385. It is acknowledged, however, this is the one instance where the Additional Information provided for a record not at issue [Doc Count 385] did assist in making a Finding with respect to Records at Issue for Doc Counts 386-389 inclusive.]		

Doc Count Findings		Order for Case Files #F6420 and #F6843
386	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Linked sufficiently to a Record at Issue [Doc Count 385] for which the Public Body had already met its burden of proof under s. 27(1)(a) in the 2018 Interim Decision/Order, at para. 7.A.	Properly withheld as privileged
387	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Linked sufficiently to a Record at Issue [Doc Count 385] for which the Public Body had already met its burden of proof under s. 27(1)(a) in the 2018 Interim Decision/Order, at para. 7.A.	Properly withheld as privileged
388	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Linked sufficiently to a Record at Issue [Doc Count 385] for which the Public Body had already met its burden of proof under s. 27(1)(a) in the 2018 Interim Decision/Order, at para. 7.A.	Properly withheld as privileged
389	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Linked sufficiently to a Record at Issue [Doc Count 385] for which the Public Body had already met its burden of proof under s. 27(1)(a) in the 2018 Interim Decision/Order, at para. 7.A.	Properly withheld as privileged
[NOTE: Additional Information provided for Doc Count 390, which is not a Record at Issue under the terms of the 2018 Interim Decision. The 2018 Interim Decision/Order already confirmed the Public Body had met its burden of proof for this record.]		
391	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count	Findings	Order for Case Files #F6420 and #F6843
394	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 395, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
396	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 397, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
399	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
400	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
401	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed.	Producible
403	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count	Findings	Order for Case Files #F6420 and #F6843
406	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
407	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
408	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed.	Producible
409	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
411	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 412, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
413	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count	Findings	Order for Case Files #F6420 and #F6843
414	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
417	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed.	Producible
420	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
422	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
423	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
424	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]
[NOTE: Additional Information provided for Doc Count 425, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
426	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 claimed but burden of proof not met. I find, however, that it is probable that this Record at Issue, which Document Title refers to the CFA, draft CFA and/or retainer will contain some information that is protected by legal privilege and, therefore, must be redacted prior to the Public Body providing access to the Applicant of the remaining information not protected by legal privilege.	Producible [possible redactions]

Doc Count Findings**Order for Case Files #F6420
and #F6843**

[NOTE: Additional Information provided for Doc Count 427, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]

428	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
429	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
430	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
434	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
457	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
459	No Additional Information provided by the Public Body but based on Additional Information for Doc Count 457 to which Doc Count 459 is linked sufficiently, both of which are Records at Issue under the terms of 2018 Interim Decision, the Public Body has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
474	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
475	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count	Findings	Order for Case Files #F6420 and #F6843
476	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
479	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
480	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
496	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
497	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
498	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
506	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
522	The 2017 Exhibited Index had information redacted. Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
[NOTE: Additional Information provided for Doc Count 535, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		
543	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count	Findings	Order for Case Files #F6420 and #F6843
544	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
545	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
548	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
550	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
[NOTE: Additional Information provided for Doc Count 553, which is not a Record at Issue under the terms of the 2018 Interim Decision. The 2018 Interim Decision/Order already confirmed the Public Body had met its burden of proof.]		
554	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
555	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
556	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
560	No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege. Section 16 not claimed.	Producible
[NOTE: Additional Information provided for Doc Count 561, which is not a Record at Issue under the terms of the 2018 Interim Decision, the Public Body acknowledging its error in populating the Privilege Column.]		

Doc Count	Findings	Order for Case Files #F6420 and #F6843
562	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
567	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
568	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
569	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
570	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
571	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
572	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
573	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
575	Additional Information provided by the Public Body to correct its errors in the 2017 Exhibited Index in which it had failed to specify any exceptions including s. 27(1)(a) and failed to populate the Privilege Column and provided information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

Doc Count Findings		Order for Case Files #F6420 and #F6843
576	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
[NOTE: Additional Information provided for Doc Counts 567-576 means the Public Body had met its burden of proof. By doing so, the Public Body corrected a gap in the Doc Count in the 2018 Interim Decision, at para. 7.B.i.]		
581	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
591	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
597	No Additional Information provided by the Public Body but based on Additional Information for Doc Count 598 to which Doc Count 597 is linked sufficiently, both of which are Records at Issue under the terms of 2018 Interim Decision, the Public Body has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
598	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged
605	Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege.	Properly withheld as privileged

[para 51] The challenges in making a determination about whether exceptions apply to specific Records at Issue in the absence of having those records available to review are self-evident. For those Records at Issue where the Public Body has met its burden, I have made an Order that the Record has been “*Properly withheld as privileged.*” For some of the Records at Issue where the Public Body has failed to meet its burden because it did not provide any or submitted insufficient “*Additional Information*”, I have made an Order that the Record is “*Producible.*” But for the some of the subject Records at Issue where the Public Body has not met its burden of proof, I have made an Order that the Record is “*Producible [possible redactions].*” This is for two reasons: first, the Order for the applicable Records at Issue is “*Producible [possible redactions]*” because the evidence was not sufficiently clear, convincing and cogent for the Public Body to meet its burden of proof for legal privilege, which had it done so, would have meant an Order confirming the Public Body’s decision to withhold the Records at Issue in their entirety. The insufficiency of the evidence has been measured, in part, because the sparse evidence submitted is unsworn and thus given less weight than had it been submitted with a supporting Affidavit of

Records; second, to avoid an ill-advised decision to order the Public Body to give access to the Applicant of potentially legally privileged information that may be contained within a Record at Issue [Refer to *Alberta (Municipal Affairs) v. Alberta (Information and Privacy Commissioner)*, 2019 ABQB 436]. Instead, when it complies with the Order, the Public Body will reconsider its decisions and provide access in part, appropriately redacting any information protected by legal privilege, in accordance with s. 72(2)(b) of the *FOIP Act*, while at the same time maximizing the information to which it provides access to the Applicant in accordance with s. 2(a) of the *FOIP Act*.

[para 52] In this Inquiry, I have considered all of the evidence and authorities submitted by the Public Body and the Applicant. This is a stand-alone Inquiry, which I have adjudicated, under the terms of my delegation from the OIPC Commissioner, in order to decide all questions of fact (reasonableness) and law (correctness) arising in this Inquiry, and, thereafter, to make the Order *infra*. The scope of the adjudication is based on the Applicant's two access to information requests, the specific responsive Records at Issue identified by the Public Body in the 2018 Revised Index (and other indexes submitted over the course of the Inquiry) and the issues arising therefrom. No submissions or evidence from any other inquiries regarding other access to information requests related to a similar subject matter have been taken into account, as to do so would, in my opinion, be inappropriate.

VI. ORDER

[para 53] I make the following Order pursuant to s. 72 of the *FOIP Act*, which reads, in part, as follows:

72(1) On completing an inquiry under section 69, the Commissioner must dispose of the issues by making an order under this section.

(2) If the inquiry relates to a decision to give or to refuse to give access to all or part of a record, the Commissioner may, by order, do the following:

(a) require the head to give the applicant access to all or part of the record, if the Commissioner determines that the head is not authorized or required to refuse access;

(b) either confirm the decision of the head or require the head to reconsider it, if the Commissioner determines that the head is authorized to refuse access;

(c) require the head to refuse access to all or part of the record, if the Commissioner determines that the head is required to refuse access.

...
(4) The Commissioner may specify any terms or conditions in an order made under this section.

[para 54] For the Records at Issue where I have made a Finding that the "*Additional Information provided by the Public Body means it has met its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege*", pursuant to s. 72(2)(b) of the *FOIP Act*, I confirm the decision of the Public Body to refuse the Applicant access to the Records at Issue described as "*Properly withheld as privileged*" in the Table at para. 50 *supra*.

[para 55] For the Records at Issue where I have made a Finding that "*No Additional Information provided by the Public Body to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege*" or "*Insufficient information provided by the Public Body in the Additional Information to meet its burden of proof to establish it has properly relied on s. 27(1)(a) with respect to its claim of legal privilege*", I order the Public Body to give the Applicant access to the Records at Issue listed in the Table at para. 50 *supra*, pursuant to s. 72(2)(a) of the *FOIP Act*, described as "*Producible*", in their entirety, or, in accordance with s. 72(2)(b) of the *FOIP Act*, described as "*Producible [possible redactions]*", in part.

[para 56] I further order the Public Body to notify me and the Applicant, in writing, within 50 days of being given a copy of the Order, that it has complied with it.

S. Dulcie McCallum, LL.B.
External Adjudicator