

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER F2020-36

December 17, 2020

### SERVICE ALBERTA

Case File Number 008576

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Alberta Real Estate Association (AREA, or the Applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) to Service Alberta (the Public Body) for records relating to the Alberta Real Estate Association (AREA) or their senior leadership team.

The Public Body granted access to some records, withholding information under several exceptions in the Act. The Applicant requested an inquiry into the Public Body's application of sections 16 and 17.

The Adjudicator found that the information withheld under section 16(1) is not commercial information as argued by RECA and the Public Body; nor is it any other type of information listed under section 16(1)(a). The Adjudicator ordered this information to be provided to the Applicant.

The Adjudicator found that some information withheld by the Public Body under section 17(1) is information that cannot be withheld under that provision, including work-issued phone numbers and opinions or comments made by third parties in their representative capacity. The Adjudicator ordered this information to be provided to the Applicant.

The Adjudicator found that some information was properly withheld under section 17(1).

**Statutes Cited:** AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 16, 17, 71, 72, *Real Estate Act*, R.S.A. 2000, c. R-5, ss.5, 6

**Orders Cited:** 97-013, F2004-013, F2005-011, F2009-028, F2019-09

## **I. BACKGROUND**

[para 1] The Alberta Real Estate Association (AREA, or the Applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) to Service Alberta (the Public Body) for:

All records, including but not limited to emails and memos, pertaining to the Alberta Real Estate Association (AREA) or their senior leadership team. Requesting records from Assistant Deputy Minister's Office of Consumer and Registry Services Division, Consumer Services Programs Branch, and Consumer Programs Unit. Excluding duplicates. Timeframe: January 1, 2015 to May 31, 2017

[para 2] The Public Body granted access to some information, but decided to sever other information citing several exceptions to access, including sections 16 (disclosure harmful to business interests of a third party), and 17 (disclosure harmful to personal privacy).

[para 3] The Applicant requested review of the Public Body's application of sections 16 and 17 to information in the records.

[para 4] The Commissioner authorized a senior information and privacy manager to investigate and attempt to settle the matter. Following this process, the Public Body reconsidered its application of sections 16 and 17 to the records. On January 29, 2019 it granted partial access to the records, as it had before, and continued to rely on sections 16, 17, 20, 24, and 27 to withhold information from the Applicant.

[para 5] On February 1, 2019, the Applicant requested an inquiry in relation to the Public Body's application of sections 16 and 17.

[para 6] The Real Estate Council of Alberta (RECA) was invited to participate in the inquiry as an affected party. It agreed, and provided submissions on the application of section 16(1).

## **II. RECORDS AT ISSUE**

[para 7] The records at issue consist of the portions of the responsive records withheld under sections 16(1) and 17(1).

## **III. ISSUES**

[para 8] The issues as set out in the Notice of Inquiry dated July 28, 2020, are as follows:

1. Does section 16(1) of the Act (disclosure harmful to business interests of a third party) require the Public Body to sever information from the records?
2. Does section 17(1) of the Act (disclosure harmful to personal privacy) require the Public Body to sever information from the records?

#### **IV. DISCUSSION OF ISSUES**

[para 9] In many instances in the records, the Public Body withheld information under several exceptions. The Applicant has asked for a review only of the information withheld under sections 16(1) and 17(1). I will not review the application of sections 16(1) or 17(1) to information also withheld under other exceptions as the information will continue to be withheld from the Applicant under those other exceptions in any event. The discussions of the Public Body's application of sections 16(1) and 17(1) in this Order relate only to the information withheld under one or both of sections 16(1) and 17(1) but not also other exceptions.

##### **1. Does section 16(1) of the Act (disclosure harmful to business interests of a third party) require the Public Body to sever information from the records?**

[para 10] In their submissions, the Applicant, Public Body and RECA specifically addressed only the information withheld on pages 68 and 218-220 under section 16(1) (pages 218-220 are not at issue in this inquiry as they were also withheld under sections 20 and 24). The Applicant states in its initial submission (at page 2):

The pages that the Applicant is aware that they have been redacted or not provided are as follows:

- 68; and
- 218 – 220

[para 11] It is not clear why the Applicant is not aware that information on pages 68, 97, 98, 102, 1115 and 1116 was withheld under section 16(1); the records provided by the Public Body should have made this clear. If the records provided by the Public Body were not clear on this point, the Public Body's index of records provided with its initial submission would have clarified this point. While the Public Body's initial submission came after the Applicant's, the Applicant had an opportunity to make a rebuttal submission. It did so, but did not address any specific pages other than 68 and 218-220. That said, the Applicant is in a difficult position to make arguments on the application of an exception to information it cannot see.

[para 12] RECA narrowed its submissions to pages 68 and 218-220, stating that because these were the only pages specified by the Applicant in its submissions, RECA assumed they were the only records at issue in the inquiry. I informed RECA that per the Notice of Inquiry, all records withheld under sections 16 and/or 17 alone (and not also sections 20, 24 and/or 27) were at issue in the inquiry. As the party with the burden of

showing that section 16(1) applies to the information withheld under that provision, and because RECA seemed to have misunderstood what information was at issue, it was given an opportunity to address the information withheld in other records at issue. It declined.

[para 13] I will review the information withheld under section 16(1) on pages 68, 97, 98, 102, 1115 and 1116. To the extent that the submissions can be applied to information other than that on page 68, I will do so.

[para 14] Section 16 of the Act reads, in part, as follows:

*16(1) The head of a public body must refuse to disclose to an applicant information*

*(a) that would reveal*

*(i) trade secrets of a third party, or*

*(ii) commercial, financial, labour relations, scientific or technical information of a third party,*

*(b) that is supplied, explicitly or implicitly, in confidence, and*

*(c) the disclosure of which could reasonably be expected to*

*(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,*

*(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,*

*(iii) result in undue financial loss or gain to any person or organization,*  
*or*

...

[para 15] As this inquiry involves information about a third party, the burden of proof set out in section 71(3) of the Act applies. It reads as follows:

*71(3) If the inquiry relates to a decision to give an applicant access to all or part of a record containing information about a third party,*

*(a) in the case of personal information, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy, and*

*(b) in any other case, it is up to the third party to prove that the applicant has no right of access to the record or part of the record.*

[para 16] Section 16(1) does not apply to personal information, so RECA has the burden, under section 71(3)(b), of establishing that the Applicant has no right of access to the records by virtue of section 16(1).

[para 17] For section 16(1) to apply to information, the requirements set out in all three paragraphs of that section must be met.

- Would disclosure of the information reveal trade secrets of a third party or commercial, financial, labour relations, scientific or technical information of a third party under section 16(1)(a)?
- Was the information supplied, explicitly or implicitly, in confidence under section 16(1)(b)?
- Could disclosure of the information reasonably be expected to bring about one of the outcomes set out in section 16(1)(c)? (Order F2004-013 at para. 10; Order F2005-011 at para. 9)

[para 18] In order to withhold information under section 16(1), each subsection (1)(a), (b) and (c) must be met.

#### Section 16(1)(a)

[para 19] Past Order of this Office have defined “commercial information” as information belonging to a third party about its buying, selling or exchange of merchandise or services. “Financial information” is information belonging to a third party about its monetary resources and use and distribution of its monetary resources (Order F2009-028).

[para 20] The Public Body and RECA argue that the information withheld under section 16(1) consists of RECA’s commercial information.

[para 21] The Public Body describes the records at issue as follows (initial submission at page 3):

The records at issue consist of an email exchange between the Executive Director of RECA and Service Alberta and emails about a RECA investigation that was initiated by RECA pursuant to the Real Estate Act, which includes email correspondence between RECA investigators and their director.

[para 22] I have reviewed the records and searched for information about a particular investigation. It is unclear what investigation the Public Body is referring to. There are several references to investigations in general, such as the number of investigations conducted in a year, or the investigatory powers of RECA under its legislation. There is also a reference to a complaint. From the information in the records and submissions, I do not agree with the Public Body’s characterization of the information withheld under section 16(1) (and/or 17(1)) as being about an investigation.

[para 23] RECA argues (initial submission at page 5, citations omitted):

The definition of commercial information extends beyond information directly concerning the sale, purchase or exchange of goods or services. Commercial information has been found to include business information about third party associations, past

history, references, and insurance policies. The Commissioner has also previously recognized that commercial information includes information about how a third party proposes to organize its work.

The term "commercial" information can apply to both profit-making enterprises and non-profit organizations and has equal application to both large and small enterprises.

[para 24] Regarding this last point, I agree that whether an organization is a for-profit, or non-profit organization is not determinative of the matter. A non-profit organization can have 'commercial information' within the terms of section 16(1)(a).

[para 25] RECA cites Order 97-013 in support of its argument that commercial information includes information about associations, past history, references, and insurance. While this was stated by former Commissioner Clark, he did not clarify what he meant by these terms. Possibly information that could be described in these terms may be commercial information, but it will depend on the particular information in each case. Terms like "associations" and "past history" are far too broad to be considered commercial information without additional context.

[para 26] The Public Body has described the information withheld on page 68 as follows (initial submission, at page 3):

The Public Body submits that the records withheld on page 68 consist of an email exchange between the Executive Director of RECA and Service Alberta. The email includes reference to the transfer of responsibilities of real estate licensing education from AREA to RECA.

[para 27] Regarding the same information, RECA states the following (initial submission at page 7):

The email includes reference to the transfer of responsibilities of real estate licensing education from AREA to RECA. Therefore, this information constitutes commercial information as it reveals RECA's third party associations and involves the purchase and sale of goods from AREA.

[para 28] RECA further states (initial submission, at pages 7-8):

This information would harm the ability for RECA (through their Executive Director, or any other representative of RECA) to continue to have candid discussions with Service Alberta to help resolve issues that have arisen with respect to the regulation of industry members and grievances that may have arisen with other associations/third parties. It is in the public interest that these issues can be resolved between the professional regulator and Service Alberta, and a direct confidential channel of communication be maintained.

RECA is the independent regulating authority created under the *Alberta Real Estate Act* to set, regulate and enforce standards for real estate brokers, mortgage brokers, and property managers and protect consumers in Alberta. Service Alberta is the responsible minister for the *Real Estate Act*. To fulfill its mandate of protecting the public interest

and setting standards for industry professionals, RECA has over the years maintained open dialogue with the Government of Alberta, and in particular Service Alberta, to candidly discuss issues affecting the real estate industry.

These communications, led by the Executive Director of RECA and its council members, included discussions on the organization and governance of RECA education standards of industry professionals, and legislative changes to strengthen RECA's ability to carry out its regulatory role. Because of this, it is in the public interest that this open channel of communication be continued.

There are times where there are disagreements over certain issues, and RECA is required to provide responses to issues raised, or initiate further discussions with Service Alberta in a candid and confidential manner. The communications in the identified record are examples of such instances.

[para 29] RECA then goes on to discuss the value of full and frank discussions between it and the Public Body. These arguments appear to have been made with respect to the potential harm from disclosure of the information at issue; however, they are also relevant to the discussion of section 16(1)(a).

[para 30] The information withheld on pages 67-68 consists of an email from a RECA employee to the Public Body. The information withheld on page 68 discusses the creation and completion of a document that RECA provided a public link to. It also discusses a concern that another body raised with the Public Body, and RECA's intent to reply (with no detail as to the specific content of the reply). RECA is correct that the withheld information references a potential transfer of responsibility from AREA to RECA. The Public Body characterized it both as a "transfer of responsibilities of real estate licensing education from AREA to RECA" (initial submission at page 3) and as "involv[ing] the purchase and sale of goods from AREA" (initial submission at page 4).

[para 31] There is nothing in the records that indicates any purchase or sale of any kind. The 'transfer' discussed refers to a transfer of a responsibility. If a new responsibility is transferred to RECA, it is done by the Public Body, which is responsible for the administration of the *Real Estate Act*, R.S.A. 2000, c. R-5 (REA). In other words, as a creature of statute, RECA has only the authority granted to it in the REA. It cannot 'purchase' additional authority from another body.

[para 32] If, after the transfer of responsibility, RECA were to purchase educational materials etc. from AREA, information about such a purchase could include financial or commercial information within the terms of section 16(1)(a). However, the information in the records does not indicate this, nor does it identify any other particular product, good, or service that it purchased or intends to purchase from AREA. The information on page 68 merely references the transfer of responsibility; it does not provide any additional detail that could be characterized as 'commercial', such as conditions of the proposed sale, the offer price, etc. Even if the manner in which the educational program was organized or administered could be commercial information, page 68 also does not contain any such detail.

[para 33] The ‘concern’ raised by a third party, and RECA’s intent to respond to it referenced on page 68 also cannot be characterized as RECA’s commercial information. Even if the *content* of RECA’s intended response could be characterized as commercial information, the information on page 68 does not reveal any such content.

[para 34] The information withheld on pages 97-98 consists of two emails from a RECA employee to the Public Body. The first reveals appointments to RECA, which is publicly available information. The second email also reveals appointments, cites portions of the REA, and discusses the timing of new appointments, and RECA’s views on the effects of recent, proposed or upcoming changes to RECA. RECA also made a recommendation for legislative amendment. Lastly, the email offers an opportunity to discuss the topics.

[para 35] The information on page 102 relates reveals an individual who had been appointed to RECA. As stated, this is publicly available information.

[para 36] The information withheld on pages 1115-1116 consists of an email from a RECA employee to the Public Body. It reveals information provided by the Applicant to RECA, and discussions between the Applicant and RECA. It discusses matters relating to how appointments are made to RECA, which were part of a prior meeting with RECA and Public Body. The email discusses the recent appointments (which is publicly available information) and the overall experience level of RECA council. It reveals who RECA intends to speak with about concerns it has on general matters. It also reveals the author’s advice to the others within RECA on a matter relating to the Applicant’s concerns.

[para 37] The information provided by the Applicant to RECA relates to the Applicant’s views on how RECA administers particular rules or standards. The information on pages 1115-1116 reveals the subject matter of the comments and a brief description of the first steps taken by RECA to address the concerns.

[para 38] RECA is a regulatory body, created under the REA. The preamble in the REA state that RECA is intended to provide regulation of the real estate industry. The purpose of the Board of RECA are found in section 5 of the REA:

*5 The purposes of the Board are*

- (a) to set the strategic direction and ensure the effective operation of the Council;*
- (b) to protect against, investigate, detect and suppress fraud as it relates to the business of licensees and to protect consumers;*
- (c) to provide, or support the provision of, services and other things that facilitate the business of licensees, as provided for in the regulations;*
- (d) to administer this Act as provided in this Act, the regulations, the bylaws and the rules.*

[para 39] That the Applicant raised concerns to RECA about RECA's rules or standards, and the way that RECA administers those rules or standards, is not commercial information of RECA. Neither are the planned steps RECA intends to take to address those comments.

[para 40] I have considered whether RECA's proposed steps are akin to a business' commercial strategies such that it could be considered commercial information. Part of RECA's mandate is to administer rules for the real estate industry; responding to concerns about that administration relates to that mandate. In other words, the manner in which it plans to respond to concerns relates to how RECA performs its regulatory functions. It is not commercial information the way that a bid proposal or marketing strategy might be. The information does not relate to anything RECA might do in a commercial capacity.

[para 41] The fact that RECA is a regulatory body created by statute does not mean it cannot have commercial information. For example, RECA may contract for goods or services and information relating to such contracts might be commercial information. But the information in the records at issue relates only to RECA's regulatory duties under the REA, and cannot be characterized as commercial information.

[para 42] How appointments are made to RECA are set out in legislation; the composition of the Council is set out in section 6 of the REA, which states that the Council is to consist of 12 members:

- one appointed by the Minister (of Service Alberta),
- one appointed by the Alberta Mortgage Brokers' Association (AMBA),
- six appointed by the Alberta Real Estate Association (AREA),
- two appointed by the AMBA and AREA appointed members, and
- two appointed by the member appointed by the Minister, as well as the AMBA and AREA appointed members.

[para 43] The process for appointments therefore cannot be characterized as commercial information of RECA that could lead to harm if disclosed.

[para 44] On page 1116, the email reveals direction provided by the Public Body to RECA regarding how the skills of prospective appointees should be assessed or compared. This is also not RECA's commercial information.

[para 45] Regarding the names of appointees, they are publicly available. Their respective terms are also publicly available information. Therefore, the names of appointees and information about their terms cannot be characterized as commercial information of RECA that could lead to harm if disclosed.

[para 46] Comments or concerns raised by RECA to the Public Body about proposed legislative changes and/or changes to RECA's mandate are not RECA's commercial information. This information is better characterized as advice from RECA to the Public

Body. Other discretionary provisions of the FOIP Act permit a public body to withhold information that reveals advice to officials, specifically section 24. As the Public Body has not applied that provision to the information at issue in this inquiry, I have not considered whether it would actually apply to the information at issue here. Presumably the Public Body had reasons for applying that provision to some of the information in the records but not the information at issue in this inquiry.

[para 47] Lastly, the information withheld under section 16(1) reveals an assessment of a RECA employee, of the overall experience of the individuals appointed to the Council. It is possible that in some cases, having obtained particular specialized expertise could be commercial information of an organization. However, in this case, RECA's website announces appointments such that the overall experience of the appointees is already publicly available. The employee's view on that overall experience is not publicly available, but it is also not commercial information of RECA.

[para 48] For the reasons provide above, none of the information at issue in this inquiry can be characterized as commercial information within the terms of section 16(1)(a), as claimed by the Public Body and RECA.

[para 49] Section 16(1) can also apply to financial, labour relations, scientific or technical information of a third party, or trade secrets of a third party. Neither RECA nor the Public Body have argued that the withheld information can be so characterized, and from the records before me I do not see how any of the information could be so characterized.

[para 50] As I have found that none of the information at issue is commercial information of RECA, I find that section 16(1) cannot apply, and I do not need to consider the application of sections 16(1)(b) or (c).

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

[para 51] Section 17 states in part:

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

...

[para 52] Section 17 is a mandatory exception: if the information falls within the scope of the exception, it must be withheld.

[para 53] Under section 17, if a record contains personal information of a third party, section 71(2) states that it is then up to the applicant to prove that the disclosure would not be an unreasonable invasion of a third party's personal privacy.

[para 54] The submissions of all parties are vague on the issue of section 17(1). The only submission that refers to the application of this provision to specific information is the Public Body's submission, which talks about the personal information about an individual who was the subject of an investigation. I have already noted that it is not clear from the records what investigation the Public Body is referring to, though the records do contain a reference to a complaint made by an individual. In other words, the Public Body has applied section 17(1) to information that does not appear to relate to an investigation or an individual being investigated. I will discuss the Public Body's submission where relevant.

[para 55] Section 1(n) defines personal information under the Act:

*1 In this Act,*

...

*(n) "personal information" means recorded information about an identifiable individual, including*

*(i) the individual's name, home or business address or home or business telephone number,*

*(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*

*(iii) the individual's age, sex, marital status or family status,*

*(iv) an identifying number, symbol or other particular assigned to the individual,*

*(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*

*(vi) information about the individual's health and health care history, including information about a physical or mental disability,*

*(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*

*(viii) anyone else's opinions about the individual, and*

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

[para 56] Many past Orders of this Office state that the disclosure of the names, contact information and other information about public body employees, that relates only to the employees acting in their professional capacities is not an unreasonable invasion of personal privacy under section 17(1) (see Orders 2001-013 at paras. 89-90, F2003-002 at para. 62, F2008-028 at para. 53) unless that information has a personal dimension in the circumstances. In other words, in the absence of a personal dimension, information cannot be withheld under section 17(1).

*Contact information of public body employees*

[para 57] Where section 17(1) was applied to business contact information (such as work phone numbers of public body employees or business employees), it is not information to which section 17(1) can apply unless there is a personal dimension. In approximately 42 pages of the records, the Public Body withheld the cell phone number of public body employees under section 17(1). In many cases, these numbers appear in the signature line of the employee in emails. In a few cases, the number appears in the body of an email but is identical to the number appearing in a signature line elsewhere in the records.

[para 58] Past Orders address the application of section 17(1) to business contact information of public body employees, including cell phone numbers assigned to an employee for work purposes (see Orders 2001-013 at para. 89, F2003-002 at para. 62, F2008-028 at paras. 53-54, F2017-28 at para. 27).

[para 59] Order F2019-09 discusses the application of section 17(1) to cell phone numbers assigned to public body employees for their work (see especially paragraphs 20-28). That Order concludes (at paras. 26 and 28):

Employer-issued cell phone numbers (or landline numbers, for that matter) could reveal personal information about an employee if that number was associated with other personal information of the employee. For example, phone logs that reveal personal calls made by the employee to a medical specialist may constitute personal information. However, it is not the number that is personal information; the personal information is the fact that the individual contacted that medical specialist. In some circumstances, the employer-issued phone number might not be severable from the personal information, in which case it could reveal personal information as well.

...

I prefer the analysis from Order F2018-36 and the Ontario orders: the fact that an employee may use an employer-issued cell phone to make a personal call, or that the employee may carry the cell phone with them, does not alter the character of the work-issued cell phone *number* such that it has a personal dimension. Employees may also use landlines to make personal calls, or employer-issued email addresses to send personal emails; the occasional personal use of a work-issued phone or email address does not make the phone number (or email address) the personal information of the employee.

[para 60] The Public Body has not addressed this application of section 17(1) in its submissions. It has not given me any reason to expect that the cell phone numbers provided for business contact purposes are not numbers assigned to the employee by a public body. It has not provided any reason to expect that these numbers have a personal dimension. As the records themselves indicate these numbers are business contact information of public body employees, I find that section 17(1) cannot apply to this information wherever it appears in the records, subject to the two exceptions.

[para 61] The two exceptions to the above finding occur on pages 225 and 669. On page 225 a public body employee's phone number appears in the body of the fourth (or second-last) email. While it appears in a work context, the number does not match the

numbers listed in that employee's email signature line found elsewhere in the records. It is reasonably likely that this number is the employee's personal number.

[para 62] On page 669, a public body employee offered his personal email address and a phone number for contact purposes. The number does not match the numbers in his email signature line found elsewhere in the records. Again, it seems reasonably likely that the number is a personal number.

[para 63] The fact that public body employees offer to be reached via a personal number or email in a particular situation does not make that number or email business contact information. In the cases described above, it seems clear that the personal contact information was not being offered for long-term or ongoing business contact purposes. I find that section 17(1) can apply to this information; this finding is consistent with past Orders (see Orders F2020-03 at para. 42, F2020-16 at para. 23).

*Remaining information withheld under section 17(1)*

[para 64] The remaining information withheld under section 17(1) is information about third parties other than public body employees. In some instances, the withheld information consists of comments made in emails by third parties to public body employees, where the third parties appear to be acting in their professional capacities. The emails are from work email accounts and appear to relate to the individuals' work duties. For the reasons already discussed in this Order at paragraph 56, such information cannot be withheld under section 17(1) unless there is a personal dimension to that information.

[para 65] Neither the Public Body nor RECA provided any reason to expect that the information relating to individuals acting in their work capacities has a personal dimension such that section 17(1) can apply. As such, I have reviewed each record and determined from the record itself whether there is a personal dimension such that section 17(1) can apply.

- Pages 67, 98, 716, 1115, and 1116 consist of emails from an individual acting in his professional capacity for an organization. The content of the emails relate to his position, and are sent from a work-related email address. While the individual has offered their views on matters, there is no indication that these are personal views. Section 17(1) cannot apply except where the individual's views are about the performance of another third party (found in the third full paragraph on page 1116). This information is personal information about the other third party, to which section 17(1) applies.
- Page 97 contains two sentences withheld under section 17(1). The first contains personal information of a third party; the second contains the author's view of that third party's chances for success in a venture. The latter sentence is also the personal information of the third party, as it is an opinion about them. Section 17(1) applies.

- Pages 116-117 contain an email from an individual using a work email address and including their work signature line. However it is explicitly said in the email that the individual is providing the email in their personal capacity and not in their professional role. The Public Body has withheld the entire email under section 17(1); I am satisfied that section 17(1) applies to most of the information. The author may be identifiable from many statements made in the email, such that the entire body of the email must be withheld. However, the date, to/cc, and subject line of the email do not identify the author so section 17(1) does not apply.
- Page 210 – the name withheld under section 17(1) appears to be the name of an individual acting in their work capacity. This information appears on page 251 as well. Section 17(1) cannot apply.
- Page 210 – the second item of information refers to an individual’s accreditation history. It is not related solely to that person’s work duties and has a personal dimension such that section 17(1) can apply. This information appears in two instances on page 251 as well.
- Pages 224, 681, 984, 1713 – the withheld information on these pages relates to the work schedule of a public body employee. This has a personal dimension such that section 17(1) applies.
- Pages 296-301, 303 contain the information of an individual who had made a complaint on a particular matter. I agree that the information relating to this individual is their personal information. However, the Public Body withheld more information than was necessary – the Public Body ought to have withheld only the information that identifies this individual and provided the remainder to the Applicant. The emails from the bottom of page 296 to page 301 were withheld in their entirety. Having reviewed these records, it is my view that the information can be made non-identifiable by severing the individual’s name, and their neighbourhood of residence. (While a general neighbourhood would usually not identify a particular individual, in the context of the records as a whole, someone may be able to identify the individual by this information in this case.) Section 17(1) applies only to the individual’s name, contact information and neighbourhood of residence (including the name of the MLA of the respective constituency).
- Pages 344, 388 relates to the individual discussed above, and could reasonably identify them such that section 17(1) applies.
- Page 359 - relates to the individual discussed above. Only their name and contact information can identify them; section 17(1) applies only to that information.
- Page 374 – the Public Body withheld this page in its entirety under section 17(1) and as non-responsive. The information on this page is a personal exchange

between individuals and is properly characterized as both non-responsive and information to which section 17(1) applies.

- Page 407 – relays a comment made by an individual, apparently – based on the records – in their work capacity. There is no indication of a personal dimension such as would make section 17(1) apply.
- Page 798 – the information is about a third party individual but that individual is not named and there is no apparent identifying information in the withheld portion of the record, other than a number that possibly identifies the file. Section 17(1) cannot apply, except to that number.
- Page 904 names an individual with very little additional information; however, the context of the record gives it a personal dimension such that section 17(1) applies.
- Page 920 – in the first email, the first two paragraphs relate to personal information of several different individuals, to which section 17(1) applies. In the remaining four paragraphs, the personal information can be severed by removing names and pronouns. Section 17(1) does not apply to the remainder.
- Page 921 – the names of two individuals withheld on this page are referred to in their professional or work capacities. Section 17(1) does not apply to their names.
- The same sentence was withheld on pages 942, 947, 955, 959, 983, 999 and 1004, and consists of personal information of a third party individual. Section 17(1) applies.
- Page 1909 consists of an email from an individual. The email address of that individual appears to be a personal address. The individual appears to be acting in their professional capacity. The context of the email shows that the individual participated in a consultation with public body employees and other third party individuals acting in their professional capacities. Further, information on page 1930 refers to that individual participating in the consultation in their role with a particular organization. While the individual is providing their view on a matter, it appears to be offered in their professional capacity; there is no indication before me that this information has a personal dimension. Section 17(1) applies only to the individual’s email address, as it appears to be a personal one. It cannot apply to the remainder of the information.

#### *Applicable factors under section 17*

[para 66] I have found that only some of the information withheld by the Public Body under section 17(1) is personal information to which that section applies. As noted above, the Public Body’s submissions addressed the application of section 17(1) only with respect to information identifying the name of an individual who is subject to an

investigation. The Public Body did not indicate the specific factors set out in section 17 it considered in deciding whether disclosure would be an unreasonable invasion of privacy, other than to say that disclosure could cause harm to the named individual's reputation (presumably referring to section 17(5)(h)).

[para 67] The Applicant's submissions are focused on the application of section 16(1). The Applicant's only arguments regarding the Public Body's application of section 17(1) are that information about the Applicant cannot be withheld under that provision. From my review of the records, no personal information relating to the Applicant has been withheld under that provision.

[para 68] Section 17(4) lists circumstances in which disclosure of personal information is presumed to be an unreasonable invasion of privacy. Section 17(4)(g) applies to all of the information which I have found has a personal dimension, and section 17(4)(d) applies to a few items. These provisions state:

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

...

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

...

*(d) the personal information relates to employment or educational history,*

...

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

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

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

[para 69] Section 17(5) lists factors to consider when determining whether disclosure is an unreasonable invasion of personal privacy; this list is not exhaustive. The only argument made by any party regarding the factors under section 17(5) is the Public Body's reference to reputational harm to one individual named in the records. From my review of the withheld information and the sparse submissions from the parties, no other factors appear to apply.

[para 70] Accordingly, there is at least one presumption against disclosure for each item of information that I have found to have a personal dimension, and no apparent factors in favour of disclosure.

[para 71] I find that the Public Body properly withheld the personal information to which section 17(1) applies, as set out in paragraph 65 of this Order.

## **V. ORDER**

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

[para 73] For clarity, none of the following applies to information withheld under sections 16(1) or 17(1) if that information was also withheld under sections 20, 24 and/or 27.

[para 74] I find that section 16(1) does not apply to the information withheld under that provision. I order the Public Body to disclose it to the Applicant, subject to the application of section 17(1) as set out below.

[para 75] I find that section 17(1) applies to some of the information withheld under that provision, per paragraph 65 of this Order. With respect to the information to which section 17(1) cannot apply, no other provision applies to that information and I order the Public Body to disclose it to the Applicant.

[para 76] I further order the Public Body to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

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Amanda Swanek  
Adjudicator