

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2021-12

April 6, 2021

UNIVERSITY OF ALBERTA

Case File Numbers 003170 & 004575

Office URL: www.oipc.ab.ca

Summary: The Applicant (referred to as the Complainant¹) made an access to information request under the *Freedom of Information and Protection of Privacy Act* (the Act) to the University of Alberta (the Public Body). The Complainant also made a complaint that the Public Body collected, used, and disclosed her information in contravention of the Act. The two matters were joined into one inquiry since the records at issue regarding the access request are relevant to the collection, use, and disclosure issues. In order to avoid disclosing information that the Public Body is entitled to withhold in response to an access request, as required by section 59(3)(a) of the Act, the Adjudicator dealt only with access issues in this Order. A further order will follow once the scope of information that cannot be disclosed under section 59(3)(a) is known with finality.

In the access request, the Complainant, a former employee of the Public Body, sought records containing information related to her from four parts/programs of the Public Body.

¹ Typically, an individual making an access request is referred to as “Applicant” and an individual making a complaint about collection, use, and disclosure of their personal information is referred to as “Complainant”. This joint inquiry concerns both types of issues. In order to avoid confusion about whether it is the same individual raising both types of issues, I use the term “Complainant” throughout this Order, and the forthcoming one concerning collection, use, and disclosure of the Complainant’s personal information.

In response to the access request, the Public Body provided some records but withheld others, or portions of them, under sections 16(1), 17(1), 18(3), 20(1), 24(1), and 27(1) of the Act, as well as on the basis that information was non-responsive. It withheld information under section 27(1) on the basis that it is subject to solicitor-client privilege and case-by-case privilege.

During inquiry, the Public Body “reprocessed” its response to the access request, raising the application of sections 17(1), 20(1), 24(1), and 27(1) to some information for the first time.

The Adjudicator found that the Public Body had not established a basis for raising discretionary exceptions to disclosure at the inquiry stage, and therefore did not consider the new applications of sections 20(1), 24(1), and 27(1). Since section 17(1) is a mandatory exception to disclosure, the Adjudicator considered its application.

The Adjudicator found that the Public Body properly withheld information under section 16(1), as labour relations information.

The Adjudicator found that the Public Body improperly withheld some information under section 17(1), including the identity of a person who made a report about the Complainant to the Public Body’s Helping Individuals At Risk program.

The Adjudicator found that the Public Body improperly withheld some information under section 18(3). The Adjudicator found that employees of the Public Body exchanging information between each other are not providing information to the Public Body within the terms of section 18(3).

The Adjudicator found that the Public Body improperly withheld information under sections 20(1)(a) and (d). The Adjudicator found that activities carried out by the Public Body’s peace officers did not constitute “policing” as defined in section 1(h)(i) since the Public Body failed to establish that the activities took place under the authority of a statute. As such, there was no law enforcement matter as contemplated in section 20(1)(a) or law enforcement information as contemplated in section 20(1)(d). The Adjudicator further found that there was no reasonable expectation of harm to a law enforcement matter under section 20(1)(a) and that employees of the Public Body who exchange information between each other are not confidential sources of information within the terms of section 20(1)(d).

The Adjudicator found that the Public Body improperly withheld some information under sections 24(1)(a) and (b) consisting of statements of fact, information that identifies the people involved in decision-making, dates and times of meetings, contact information, and boilerplate language in e-mails.

The Adjudicator found that the Public Body improperly withheld some information under section 27(1)(a) on the basis that it was subject to solicitor-client privilege. The Adjudicator found that a general assertion of confidentiality was insufficient to meet the

standard to establish that records are subject to solicitor-client privilege set out in *Edmonton (City) Police Service v Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10.

The Adjudicator found that the Public Body improperly withheld information under section 27(1)(a) on the basis that it was subject to case-by-case privilege. The Adjudicator found that there is no relationship between the Public Body and its own employees when they carry out their employment duties, as contemplated by the Wigmore criteria; therefore, no case-by-case privilege could exist under the Wigmore criteria.

Regarding the Public Body's exercise of discretion to withhold information under sections 18(3) and 24(1), the Adjudicator found that the Public Body took into account irrelevant considerations, and failed to take into account relevant considerations. The Adjudicator found that concerns over the expectation of confidentiality on the part of Public Body employees were irrelevant and that the Complainant's private interest in obtaining the information was relevant.

The Adjudicator found that the Public Body improperly withheld responsive information as non-responsive. The Adjudicator found that the Public Body adopted an unreasonably narrow interpretation of the access request. The request for information "from" certain parts of the Public Body was not restricted to records located in those specific parts at any particular time. Rather, records "from" those places included records that originated there, or passed through there at some point.

The Adjudicator ordered the Public Body to disclose further information to the Complainant and to reconsider whether to disclose information that remains withheld under sections 18(3) and 24(1). The Adjudicator retained jurisdiction to review the Public Body's application of sections 18(3) and 24(1) after its reconsideration of them.

The Adjudicator ordered the Public Body to consider whether any mandatory exceptions to disclosure under the Act applied to information improperly withheld on the basis that it is subject to solicitor-client privilege, and to provide that information to the Complainant with redactions as required. The Adjudicator retained jurisdiction to review the application of mandatory exceptions to disclosure if the Complainant sought review of it.

Statutes Cited: AB: *Criminal Code*, RSC 1985, c. C-46, s. 2(b); *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(h), 1(h)(i), 1(n), 1(n)(i), 1(n)(iv), 1(n)(vi), 1(n)(vii), 1(n)(viii), 1(n)(ix), 1(r); 2(a), 2(c), 2(e); 16(1), 16(1)(a), 16(1)(b), 16(1)(c), 16(1)(c)(iv); 17(1), 17(2)(b), 17(4), 17(4)(a), 17(4)(d), 17(4)(g)(i) and (ii), 17(5), 17(5)(c), 17(5)(f), 17(5)(h), 17(5)(i); 18(3); 20(1), 20(1)(a), 20(1)(d); 24(1), 24(1)(a), 24(1)(b), 24(1)(b)(iii); 27(1), 27(1)(a), 27(1)(b), 27(1)(c); 33(b); 59(3)(a); 65(1); 69(1); 71(2); 72; *Gaming, Liquor and Cannabis Act*, RSA 2000, c G-1; *Peace Officer Act*, SA 2006, c P-3.5, ss. 5(1); 7(2)(a), 7(2)(e), 7(5); *Police Act*, RSA 2000, c P-17, ss. 1(j), 38(1); *Post-Secondary Learning Act*, SA 2003, c P-19.5.; *Provincial Offences Procedure Act*, RSA 2000 c P-34, s. 1(k)(iii), *Traffic Safety Act*, RSA 2000, c T-6;

Alberta Rules of Court, Alta Reg 124/2010, rule 5.8, *Alberta Rules of Court Amendment Regulation* (AR 36/2020), s. 6.

Authorities Cited: **AB:** Orders 96-003, 96-008, 99-010, 99-017, 96-020, 2000-003, 2000-019, 2000-027, 2000-029, 2000-032, 2001-008, F2003-005, F2004-003, F2004-022, F2005-009, F2005-030, F2006-002, F2006-006, F2006-011, F2006-012, F2007-008, F2008-031, F2009-007, F2009-026, F2009-046, F2009-047, F2010-011, F2012-24, F2013-42, F2013-51, , F2017-60, F2018-09, F2018-14, F2018-36, F2019-07, F2019-17, F2020-23, F2020-R-01, F2007-IR-005, P2006-002. **BC:** Order 02-01

Cases Cited: *Canadian Natural Resources Ltd. v ShawCor Ltd.*, 2014 ABCA 289; *Covenant Health v Alberta (Information and Privacy Commissioner)*, 2014 ABQB 562; *Edmonton (City) Police Service v Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10; *M. (A.) v Ryan*, [1997] 1 S.C.R. 157; *Lizotte v Aviva Insurance Company of Canada*, [2016] 2 S.C.R. 521, *Moysa v Alberta (Labour Relations Board)*, [1989] SCJ No 54, *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23; *R. v Gruenke* [1991] 3 SCR 263; *Slavutych v. Baker*, [1976] 1 S.C.R. 254; *Solosky v The Queen*, [1980] 1 S.C.R. 821.

I. BACKGROUND

Scope of this Order

[para 1] This inquiry addresses issues arising in two matters: files 003170 and 004575. File 003170 is complaint about collection, use, and disclosure of the Complainant's personal information. File 004575 is a review of the Public Body's response to an access to information request also made by the Complainant. Since the records at issue in the access request are relevant evidence to the collection, use, and disclosure complaint, the Information and Privacy Commissioner (the Commissioner) joined the matters and I, as her delegate, heard them both in the same inquiry.

[para 2] Some of the information in the records that is relevant to the complaint in file 003170 was withheld by the Public Body in its response to the access request in file 004575. Under section 59(3)(a) of the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act), I must take precautions to avoid disclosing such information in an inquiry.

(3) In conducting an investigation or inquiry under this Act and in a report under this Act, the Commissioner and anyone acting for or under the direction of the Commissioner must take every reasonable precaution to avoid disclosing and must not disclose

(a) any information the head of a public body would be required or authorized to refuse to disclose if it were contained in a record requested under section 7(1), or

[para 3] While, in this Order, I decide what information the Public Body is required or authorized to refuse to disclose, I am mindful that my decision may be subject to judicial review. If this Order is subsequently varied, the scope of information that the Public

Body is permitted to withhold may change. In order to ensure that in answering the issues related to collection, use, and disclosure I do not reveal any information that the Public Body is entitled to withhold in response to the access request, this Order will only address the access issues. Once reviews and appeals of this Order are exhausted, and the scope of information captured under section 59(3)(a) is known, a second order will follow addressing the collection, use, and disclosure issues.

Background

[para 4] The Complainant is now a former employee of the University of Alberta (the Public Body). While employed by the Public Body, the Complainant was a bargaining unit employee, in a union. On May 12, 2016, according to the Complainant, a labour relations officer at the union informed her that one of the Public Body's human resources consultants (the Human Resources Consultant) mentioned that the Complainant was diagnosed with a particular condition.

[para 5] The Complainant has not been diagnosed with the condition attributed to her. The Complainant provided a medical note from her physician for the past ten years confirming the same.

[para 6] In order to determine what information the Public Body had about her, on June 22, 2016, the Complainant made an access to information request under the Act. The access request sought the following information:

Personnel file from the Faculty of Science, personal file at the Helping Individuals at Risk Committee and any emails or other documents referencing or pertaining to me containing my first and/or last name [Complainant's full name] from the Faculty of Science, Helping Individuals at Risk Committee, Human Resources and the Office of Safe Disclosure and Human Rights. My employee ID is [Complainant's employee ID#].

[para 7] The Public Body replied to the access request on September 20, 2016. In reply to the access request, the Public Body informed the Complainant that there is no Helping Individuals at Risk (HIAR) Committee; rather HIAR is a program.

[para 8] The Public Body provided records in four releases. The first release was on September 20, 2016. In the first release, it provided the Complainant 96 pages of records from the Office of Safe Disclosure and Human Rights and from Human Resource Services. The Public Body did not provide records from HIAR in the first release, since it was still processing the HIAR records relevant to the access request. The Public Body withheld information from some of the provided records relying on sections 17, 24, and 27 of the Act.

[para 9] On September 30, 2016, in the second release, the Public Body provided another 465 pages of records to the Complainant.

[para 10] After the second release, the Complainant believed that some e-mails between three individuals from the Faculty of Science (the Faculty) were missing. The Public Body agreed to search for those e-mails further.

[para 11] The third release was on October 19, 2016. In the third release, the Public Body provided 55 pages of records after consulting with third parties about their potential release. The Public Body withheld some information contained in these records relying on sections 16, 17, 18, 20, 24, and 27 of the Act.

[para 12] The fourth release was on October 21, 2016. In the fourth release, the Public Body provided 76 pages of records. The Public Body provided some of these records after searching further for e-mails from three individuals at the Faculty. The Public Body also provided records from the hard copy of the Complainant's human resources file at the Faculty. The Public Body applied section 17 to withhold some information in these records.

[para 13] Throughout each release, the Public Body also withheld information as non-responsive.

[para 14] The Complainant believes that the Public Body has withheld information that it should not have.

[para 15] The access issues in file 004575 did not undergo mediation or investigation. Those steps were bypassed since file 003170 was already headed to inquiry when the matters were joined.

II. RECORDS AT ISSUE

[para 16] The records at issue are those that are subject to the access request in file 004575. The Public Body withheld information from those records relying on sections 16, 17, 18, 20, 24, 27, and as non-responsive. Each page on which redactions occurred is discussed in this Order and the accompanying **Appendix** and **Compendium**.

[para 17] The Public Body no longer withholds information on the following pages under the Act. Accordingly, I do not consider them in this Order.

Pages: 49-50, 86, 691-695, 703-705, 714-716, 718-719, 722, and 723-728.

III. ISSUES

[para 18] In the Notice of Inquiry that was sent to the parties, the first four issues (A through D) identified were related to the collection, use, and disclosure issues in file 003170. Since this Order does not address those issues, they are not included here. The remaining issues set out in the Notice of Inquiry that are the subject of this Inquiry are:

Issue E: Does section 17(1) of the Act (disclosure harmful to personal privacy) require the Public Body to sever the information it withheld from the Applicant under this provision?

Issue F: Did the Public Body properly apply section 18(3) of the Act (threat to an individual's safety or health) to the information it severed from the records under this provision?

Issue G: Did the Public Body properly apply section 20(1) of the Act (disclosure harmful to law enforcement) to the information it severed from the records under this provision?

Issue H: Did the Public Body properly apply section 24(1) of the Act (advice from officials) to the information it severed from the records under this provision?

Issue I: Did the Public Body properly apply section 27(1) of the Act (privileged information) to the information it severed from the records under this provision?

[para 19] The application of section 16 to information in the records and classification of information and records as non-responsive arose during this inquiry. Therefore, I also consider the following two issues:

Issue J: Does section 16(1) of the Act (disclosure harmful to business interests) apply to the information in the records?

Issue K: Did the Public Body correctly identify non-responsive records and information?

IV. DISCUSSION OF ISSUES

Preliminary Matter – *In Camera* Submissions

[para 20] The Adjudicator previously delegated to this inquiry agreed that the Public Body may make *in camera* submissions in its initial submission.

[para 21] The *in camera* submissions include an affidavit sworn by the Public Body's Information and Privacy Advisor. The affidavit attests to the reasons and circumstances surrounding the Public Body's decision to withhold information under sections 17, 24, and 27.

[para 22] The *in camera* submission also includes an affidavit sworn by a person whose identity has not been shared with the Complainant. I have reviewed the affidavit and know the identity of the person who swore it. The Public Body refers to this person as the "Reporter." I use the same term here.

[para 23] The Reporter's *in camera* affidavit attests to issues concerning collection, use, and disclosure of the Complainant's personal information, and contains statements relevant to determining whether the Public Body was required to withhold the Reporter's identity in response to the access request.

[para 24] I note that, apart from information that the Public Body believes it is entitled to withhold under the Act, the *in camera* submissions accepted by the previously assigned Adjudicator also contain argument relevant to the issues that do not contain any information I am required to protect.

[para 25] The above situation was discussed in Order F2009-007. In that Order, for the sake of expediency, the Adjudicator accepted *in camera* submissions that contained argument relevant to the issues at hand, which could be referred to in the Order, without revealing protected information. The Adjudicator adopted an approach where, when necessary to provide reasons, she referred to the arguments made *in camera*, without revealing protected information. (Order F2009-007 at para. 9.) I adopt the same approach throughout my reasons here.

[para 26] In response to the addition of **Issue J**, the Public Body provided, and I accepted, a subsequent *in camera* affidavit, sworn by the Complainant's previous manager. This *in camera* affidavit addresses and contains information that the Public Body is permitted to withhold under section 16(3) of the Act that I am to avoid disclosing in the course of this inquiry. As such, it has not been shared with the Complainant.

Preliminary Matter – Late Raising of Exceptions to Disclosure

[para 27] In the shared affidavit of the Information and Privacy Advisor contained in the Public Body's initial submission, the Public Body states that in preparation for this inquiry it reviewed and "reprocessed" the records that are responsive to the access request. As a result of "reprocessing" the Public Body has elected to disclose some records previously withheld, and to cease relying on certain sections of the Act to withhold other information.

[para 28] The Public Body determined that it is required to withhold information under section 17(1), that it previously only withheld under discretionary exceptions to disclosure in other sections of the Act. Since section 17(1) is a mandatory exception to disclosure, I will consider its application. As stated by the former Commissioner in Order 2001-008 at para. 13,

In Order 96-008, I considered the late raising of exceptions that were claimed by the public body in its written submission for the first time. I said that I would consider mandatory exceptions that were not raised until during the course of the inquiry. As I am responsible for the administration of the Act, I would consider a mandatory exception whether or not the parties raised the exception...

[para 29] After reprocessing the response to the access request, the Public Body applied discretionary exceptions to disclosure under sections 18, 20, 24, and 27 of the

Act, to withhold information not previously withheld pursuant to those sections. The details are as follows:

b. The University no longer relies on the following records as being non-responsive, but now withholds all or portions of these records on the basis of section 17, and pursuant to the other FOIPP Act sections listed thereon (where applicable): Documents #64-66, 67, 68-70, 491, 529-532, 534, 547-551, 552-554, 701, 702.

c. The University no longer relies on section 17 with respect to Documents #87, 117, 127-128, 142-143, 150, 151, 201, 227, 251, 255, 285-288, 290-291, 585-587, 591, and 638, but continues to withhold portions of these documents pursuant to the other sections listed thereon.

d. With respect to Document #67, these records are now withheld on the basis of sections 18, 20 and 24, in addition to section 17 and 27.

e. With respect to Documents #71-73, these records are now withheld on the basis of sections 17, 18, 20 and 24, in addition to section 27.

f. With respect to Documents #91-92, these records are now withheld on the basis of section 24, in addition to sections 17 and 27.

g. With respect to Documents #116 and 228-229, the University no longer relies on sections 17 or 27, but continues to withhold portions of this document under section 18.

h. With respect to Documents #576-579, these records are now withheld on the basis of sections 18, 20, and 27, in addition to section 24.

[para 30] The former Commissioner considered late raising of the application of discretionary exceptions to disclosure in Order F2009-047 at para. 50,

Finally, I agree with the Applicant that it is improper for the Public Body to raise the possible application of sections 24(1)(a) and 24(1)(e) by merely mentioning them at this late stage. I specifically note the Public Body's statement in its rebuttal submission that, in responding to the Access Request, it advised the Applicant in its cover letter attaching the Responsive Records that it had applied section 24(1)(b) in refusing to disclose information. I accepted this review, and it proceeded to inquiry, on the basis of the Public Body's response to the Access Request as communicated to the Applicant. Furthermore, numerous orders of my Office have dealt with the criteria for the late raising of discretionary exceptions to disclosure. The burden is on the Public Body to meet those criteria, which it has not done. Accordingly, I find that the possible application of sections 24(1)(a) and 24(1)(e) is not properly before me; if I am mistaken in this regard, I find that the Public Body has not met its burden to prove that sections 24(1)(a) and 24(1)(e) apply, as mere assertions are inadequate.

[para 31] The Public Body has not provided any argument about why it should be permitted to apply any discretionary exceptions to disclosure at the inquiry stage of the review of the access request. I find that there is no basis to accept the application of them. I also note the following passage from my decision in Order F2020-023 at para. 16:

The Public Body's decisions under review in this case are those that it made in response to the access request, including whether to exercise discretion to withhold information under sections 27 and 24. As the one making the decision, it bears the responsibility to understand the discretion it has under the Act, and use the discretion properly within its legislated boundaries. This includes applying discretionary exceptions to disclosure only to information properly captured by them. While I recognize that given the complexity of privacy law under the Act, some discretion to allow a public body to vary its response to an access request is warranted, I must not go too far. My function is to *review* decisions made in response to an access request, not to invite a public body to make different decisions, after the fact.

[para 32] Considering that the Public Body proposes to apply multiple discretionary exceptions to disclosure to the various pieces of information, I find that should I accept them, I would be permitting the Public Body to make new decisions in response to the access request, rather than reviewing the decisions that it made. Doing so would exceed my review function in this inquiry.

[para 33] I note that the Public Body has already provided the reprocessed records to the Complainant. As such, there is no need to consider whether the Public Body initially properly withheld information later disclosed as a result of reprocessing. Even if it did, the Complainant has long since had that information.

[para 34] I now consider **Issues E through K**.

[para 35] For **Issues E, H, and K**, the substance of my reasons appears in the main body of this Order. For the sake of readability, the lengthy application of those reasons to specific pages is set out in the **Compendium** accompanying this Order. The details of what information I order disclosed to the Complainant, and what information remains withheld, also appears in the **Compendium**.

Issue E: Does section 17(1) of the Act (disclosure harmful to personal privacy) require the Public Body to sever the information it withheld from the Applicant under this provision?

[para 36] Information withheld under section 17(1) in the initial response to the access request appears on the following pages:

Pages: 77, 79, 80, 81, 82, 83, 84, 85, 88, 89, 90, 91, 92, 93, 110, 111, 120, 121, 123, 130, 131, 200, 202, 205, 206, 211, 212, 224-227, 228, 252-253, 293, 298, 305, 507, 510-511, 515, 518-521, 533, 564, 565-566, 572-573, 582, 593, 597-598, 599, 619-627, 633-634, 636, 639, 644, 645, 667, 707, 713, and 717.

[para 37] At inquiry, the Public Body also argued that section 17(1) requires it to withhold information from the following pages:

Pages: 64-66, 67, 68, 69, 70, 71-73, 491, 529-532, 534, 547-551, 552-554, 701, and 702.

[para 38] Since section 17(1) is a mandatory exception to disclosure, I will consider the application of it to the above pages, even though the Public Body only raised the issue of its application to these pages at inquiry.

[para 39] Section 17(1) requires a public body to withhold information only if that information is personal information. The Act defines “personal information” in section 1(n):

(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 40] Where the Public Body severed information under section 17(1), it relied on sections 17(4)(g)(i) and (ii).

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,

...

- (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 41] The Public Body also argued that sections 17(4)(a) and (d) apply to some of the records. Sections 17(4)(a) and (d) are below:

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

- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,*

...

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

[para 42] I do not see any reference to those sections in the Public Body's index of records and it does not appear that it withheld any information pursuant to these provisions. However, since section 17(1) is a mandatory provision, it applies even in cases where a Public Body has not withheld information pursuant to it (See Orders 96-008, 99-017, 2001-008). Accordingly, I have considered whether sections 17(4)(a) and (d) create a presumption that disclosure is an unreasonable invasion of a third party's personal privacy. I do not find section 17(4)(a) is applicable. I discuss instances where section 17(4)(d) is applicable in the enumerated considerations below.

[para 43] The Complainant argues that section 17(2)(b) likely applies to some of the withheld information. Section 17(2)(b) states,

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

...

- (b) there are compelling circumstances affecting anyone's health or safety and written notice of the disclosure is given to the third party,*

[para 44] The Complainant describes circumstances involving her former partner that she argues amount to compelling circumstances that affect her health and safety. In brief, the Police have spoken to her former partner on several occasions and the timing of the information received by HIAR, following one occasion where the Police spoke to her former partner, leads the Complainant to suspect that her former partner provided false

information about her to the Public Body. The Complainant is also generally concerned that anyone would contact the Public Body and provide false information about her.

[para 45] While not identifying the source of the information to the Complainant, the Public Body confirms that the source is not related to or associated with her former partner or any member of the former partner's family.

[para 46] After reviewing all of the Public Body's submissions and the records at issue, it is clear that the circumstances relating to the Complainant's former partner are not engaged in the present matter. As such, I find that section 17(2) does not apply, and I do not consider it further.

Burden of Proof

[para 47] Section 71(2) of the Act places the burden on the Complainant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy. Section 71(2) states,

(2) Despite subsection (1), if the record or part of the record that the applicant is refused access to contains personal information about a third party, 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.

[para 48] The Director of Adjudication set out the way in which the burden of proof applies in Order F2012-24. She stated at paras. 29 and 30,

In an inquiry, once a public body has demonstrated that the information it has withheld is personal information, and has explained how it discharged its duty under section 17(5) in relation to that information, then, by reference to section 71(2), the burden falls to the Applicant to show that it would not be an unreasonable invasion of personal privacy to disclose information about a third party. As noted, the Public Body says that "the Applicants submit that they have proven that the disclosure of the personal information would not be an unreasonable invasion of a third party's personal privacy", but that they cannot be said to have discharged their burden under section 71(2) when they have only stated the facts, without more.

However, as stated in former orders of this office, given that applicants may not have knowledge of what is contained in the records, they may not be in a position to make arguments about the contents of the records, or to state anything other than what they know about the facts. In such circumstances, it is appropriate for the decision-maker, who does know what the records contain, to independently examine all the possible relevant factors, regardless whether the factors that favour disclosure were or were not raised by the applicant. As well, if the facts support the presence of a factor that is relevant to the decision to be made within the terms of section 17(5), it does not matter that the Applicant did not specifically frame it as such a factor.

[para 49] I apply this approach in my reasons below.

Format of Section 17 Decision

[para 50] At times, pages and even one paragraph or one sentence of a page in the records contains the personal information of multiple third parties, each with a different role that invites varied considerations. At the same time, there are hundreds of pages of records to consider, and the considerations for each one often repeat. For ease of reference, I have set out and enumerated my considerations that are common to the records and the type of third party information at issue on a given page. Where a consideration applies to my decisions regarding redactions to a particular page given in the **Compendium**, I refer to that consideration by its assigned number.

Enumerated Considerations

1. Information Identifying the Reporter

[para 51] The information in the records at issue and the Reporter's *in camera* affidavit reveal that the Reporter was in a particular set of circumstances, different from others who made reports to the HIAR program. For that reason, I consider the application of section 17(1) to information that identifies the Reporter separately.

[para 52] I note that there is only one item of information at issue in this discussion: the answer to the question, "Who made the report about the Complainant to HIAR?"

[para 53] Even though the Public Body made many redactions under section 17(1) in order to protect the identity of the Reporter, little of the redacted information is itself the Reporter's personal information. Rather, nearly all of the information withheld in order to protect the identity of the Reporter is factual information about the circumstances under which the Reporter obtained the information about the Complainant and reported it to HIAR. It is the Public Body's position that revealing these factual details will reveal the Reporter's identity, which, it submits, is the Reporter's personal information, and therefore, the mandate to protect the Reporter's personal information under section 17(1) requires it to withhold this information.

[para 54] Considering the particular circumstances of this case, I agree with the premise of the Public Body's argument. The factual information reveals details that effectively eliminate anyone other than the Reporter as a possible source of the report to HIAR about the Complainant. Accordingly, revealing such details would effectively reveal the Reporter's identity, even if information directly identifying information about the Reporter, such as the Reporter's name, were not included in it.

[para 55] I note, however, that section 17(1) would not apply to the Reporter's identity, and consequently not to circumstantial information that could reveal the identity, in the event that the Reporter's identity is not personal information in this case. As discussed in enumerated consideration 2, whether or not a person does something as part of their employment with a public body plays a role in determining whether or not information about what the person did is their personal information. Information that identifies a

person who did something (in this case making a report to HIAR) as matter of their employment duties with the Public Body is not personal information, unless there is a personal dimension to the information. Accordingly, I must consider whether the Reporter is an employee of the Public Body, and, if so, whether the report was part of the Reporter's job duties.

Reasons in Appendix Provided only to the Public Body

[para 56] However, whether or not the Reporter is an employee of the Public Body is also information that could identify the Reporter, which I must take precautions against disclosing under section 59(3)(a). To that end, I have adopted the approach to the situation taken in Orders F2005-030 at para. 11 and F2017-60 at para. 17. My conclusion on this issue appears in the main body of this Order, but the full reasons for them – which mention whether or not the Reporter is an employee of the Public Body – appear in the **Appendix** to this Order, which is only provided to the Public Body. The balance of my reasons, which do not include information that could identify the Reporter, are below.

[para 57] The manner in which the HIAR program operates and its importance to the Public Body factored extensively into the Public Body's application of section 17(1) to information identifying the Reporter. They also heavily inform my decision on this issue. I have reviewed the entire terms of how the HIAR program operates, and set out key passages from the HIAR Policy and Procedure documents below.

The HIAR Program

[para 58] The HIAR Case Team Coordinator explained the purpose and mode of operation of the HIAR program in her shared affidavit. The program is designed to provide anyone an avenue to identify to the Public Body individuals who demonstrate "at-risk" behaviour. The HIAR program operates on a confidential basis. The information provided to it and the identities of those who provide the information are kept confidential. The rationale for confidentiality is that if individuals do not trust that reports to HIAR are kept confidential, fewer reports are likely to be made, and HIAR will not be able to conduct its work effectively.

[para 59] There are circumstances when HIAR will disclose information. As stated by the Case Team Coordinator:

The HIAR Program operates on a confidential basis, and only shares information outside of the HIAR Case Team on a "need to know" basis when individuals need to be informed to connect at-risk individuals with supports, further assessment needs to be conducted, or to protect the safety and well-being of the University Community.

[para 60] The HIAR Policy and Procedure documents illustrate the circumstances under which it will disclose information provided to it. The key provisions that explain its operations are below.

[para 61] The HIAR policy sets out its scope as follows:

Scope: Compliance with University procedure extends to all members of the University Community.

[para 62] While the HIAR program does not define “University Community”, other sections of its Policy and Procedure documents indicate that it includes employees of the Public Body and “anyone on campus.”

[para 63] The Purpose of the HIAR program is as follows:

Purpose

The purpose of this policy is to facilitate early identification of At Risk Behaviour and create a system designed to receive and consolidate reports of At Risk Behaviour. Consolidating reports of At Risk Behaviour will enable a team to identify situations in which seemingly isolated incidents are, in fact, connected so that the At Risk Behaviour can be properly assessed and the individual At Risk offered assistance when deemed appropriate. Doing so should result in a decreased risk of violence and at the same time reduce the likelihood of matters escalating.

This policy also offers an opportunity for concerned members of the University Community to report At Risk Behaviour.

[para 64] The HIAR policy defines “At Risk Behaviour” as,

A person’s words or conduct that, while not indicative of a clear immediate threat, give rise to reasonable apprehension that he or she may engage in conduct injurious to others or himself or herself in the future.

[para 65] Under this definition of “at risk behaviour”, a report of such behaviour necessarily contains the personal information of the person about whom the report is made. The essence of the report is that in the opinion of the one making the report, the person the report is about may engage in conduct injurious to others or himself or herself in the future. Under section 1(n)(viii), this information is the personal information of the person the opinion is about.

[para 66] The HIAR Policy document describes circumstances where information in a report made to it will be disclosed to other parts of the Public Body, or possibly to others outside of the Public Body.

Policy

1. The University will have an Individuals at Risk Case Team. Its mandate is to promote early identification of At Risk Behaviour, encourage reporting of such behaviour to the appropriate Support Unit or the Case Team Coordinator, receive and consolidate those reports, and, if help is not already being provided, refer the matter to the appropriate Support Unit.

...

4. When information gathered in the course of administration of this Policy is more appropriately addressed through the Protocol for Urgent Cases of Disruptive, Threatening or Violent Conduct, the information will be referred to the appropriate party as set out in the Protocol. The files under this policy and procedure will not be used in any other University process except the Protocol.

5. The Individuals at Risk Case Team shall protect the identity of the person making the report to the extent possible under government legislation, University policies, and collective agreements. The person or persons who originated the report and/or brought it the attention of the Individuals at Risk Case Team can waive that protection to the extent that it applies to them.

...

7. All individuals about whom a report is made will maintain the rights, privileges and protections afforded to them through the *Freedom of Information and Protection of Privacy (FOIPP) Act* and other applicable government legislation, University policies, and collective agreements.

...

Procedure

1. Any individual on campus who observes At Risk Behaviour should report that behaviour in accordance with this Procedure and the Reporting Protocols [see attached Info Doc] in order to ensure that the Individual At Risk is offered appropriate help.

...

4. If a Support Unit receives a report of At Risk Behaviour, it must advise the Case Team Coordinator as soon as possible. However, it is recognized that service providers working within the Support Units are subject to legal, professional and ethical standards relating to client confidentiality which this policy and procedure do not usurp. Service providers are to apply their best professional judgment and expertise to each situation and make decisions about reporting and disclosure that balance their responsibilities under this policy and procedure with their professional obligations.

5. The Case Team Coordinator will receive reports, seek further information or clarification as needed, determine whether there might be a relationship between seemingly unrelated incidents, and gather the Individuals at Risk Case Team, as appropriate. Every effort will be made to work with the Support Unit(s) from which the report(s) originated.

...

7. The Individuals at Risk Case Team will provide or facilitate coordinated assessment of available information and appropriate responses and appropriate follow up where Individuals at Risk are identified.

8. The Individuals at Risk Case Team will refer cases of At Risk Behaviour that it deems to require intervention to the appropriate Support Unit(s).

9. The Individuals at Risk Case Team will, subject to protection of privacy considerations, follow up with the person who brought the concern to them to provide information on the steps that have been taken.

[para 67] “Support Unit” is defined in the HIAR policy as,

A unit or department at the University that, as part of its regular duties, provides assistance to students or staff. Examples include a faculty or department, Human Resource Services (e.g. Health Promotion and Worklife services) and University Student Services (e.g. Student Counselling Services or Residence Services).

[para 68] The “Protocol” referred to in paragraph 4 of the HIAR Policy’s policy section, above, contemplates further disclosure of information received by HIAR.

[para 69] The full title of “the Protocol” is, Protocol for Urgent Cases of Disruptive, Threatening or Violent Conduct. In the Public Body’s submissions, it is referred to as “Protocol 91.” I use the same term throughout the rest of this Order.

[para 70] When Protocol 91 is engaged, information given in a report of disruptive, threatening, or violent conduct may find its way to many offices and people, including,

- Campus Security Services
- The Office of the Provost and Vice-President Academic
- Other University administrators consulted as needed
- “Appropriate Authorities” where the behaviour occurs outside of University property
- The members of a Protocol 91 case management team
- Experts and authorities who must be involved in the case management team’s decisions
- Individual Victims or units targeted by the behavior
- Depending on who committed the behavior, the Dean or a delegate of the Faculty of Graduate Studies and Research, the Vice President (Research), a member of the Academic Staff Administration in the Office of the Provost and Vice President (Academic), the Vice President (Finance and Administration)
- The Office of Human Rights, Student OmbudService, or Student Advisor
- The Academic Staff Association or Non-Academic Staff Association as appropriate.

[para 71] Protocol 91 also describes which people are members of the “University Community”:

Members of the University community include, among others: students, academic and non-academic staff, sessional staff, fellows, post-doctoral fellows, emeriti, visiting academics, and volunteer staff.

[para 72] For the reasons given in the **Appendix** to this Order, I find that the Public Body was not required under section 17(1) to withhold information that reveals the identity of the Reporter.

2. Information recording an act carried out as part of employment with the Public Body

[para 73] Previous orders have held that information about an individual's business or employment-related activities are not personal information.

[para 74] The distinction between information about an individual and information related to an individual in the context of business activities was discussed in Order F2010-011, at para. 16,

Information about a business or company, or about an individual's business-related activities, on the other hand, normally has no personal dimension (Order F2008-028 at para. 55). Likewise, an opinion merely about a business or company is not an opinion about the individual who owns it or works there, within the meaning of section 1(n)(viii). On rare occasions, there may be circumstances that give a personal dimension to an individual's business-related activities, or cause information about his or her business to simultaneously be information about him or her, so as to render the information "personal information" under section 1(n). For instance, there may be allegations of impropriety or wrongdoing, or disclosure of the information may have an adverse effect on the individual (Order F2006-030 at paras.12, 13 and 16; Order F2008-020 at para. 28). However, I see no such circumstances in this case.

[para 75] In Order F2009-026, the Adjudicator reviewed how previous orders considered records that identify the employees of public bodies who carry out the work of the Public Body. The Adjudicator concluded at para. 11,

If information is about employees of a public body acting in a representative capacity the information is not personal information, as the employee is acting as an agent of a public body. As noted above, the definition of "third party" under the Act excludes a public body. In Order 99-032, the former Commissioner noted:

The Act applies to public bodies. However, public bodies are comprised of members, employees or officers, who act on behalf of public bodies. A public body can act only through those persons,

In other words, the actions of employees acting as employees are the actions of a public body. Consequently, information about an employee acting on behalf of a public body is not information to which section 17 applies, as it is not the personal information of a third party. If, however, there is information of a personal character about an employee of a public body, then the provisions of section 17 may apply to the information. I must therefore consider whether the information about employees in the records at issue is about them acting on behalf of the Public Body, or is information conveying something personal about the employees.

[para 76] In light of the foregoing, where withheld information records only what an individual did while acting as an employee, section 17(1) does not require this information to be withheld.

[para 77] The Public Body withheld a significant amount of information that it should have disclosed to the Complainant as information about performing a job duty, including the following:

- Information identifying employees who made a report to HIAR about the Complainant,
- Information identifying individuals involved in addressing the HIAR report and other issues concerning the Complainant,
- Information identifying those who collected information about the Complainant and passed it on,
- Information identifying those who recorded (in writing) or took notes about their conversations with the Complainant and passed them on; and,
- Information identifying those who expressed a view or opinion about the Complainant in the course of their job duties.

[para 78] Regarding the last bullet above, under sections 1(n)(viii) and (ix) of the Act anyone else's opinions and views about the Complainant, are the Complainant's personal information. The identity of an individual holding the view or opinion may also be that individual's personal information (See Order F2006-006 at paras. 114-116). The Public Body argues that section 17(1) requires this information to be withheld.

[para 79] However, where, as is the case here, an opinion is offered as part of a job duty, it is not the personal information of the person holding the opinion unless some particular circumstance gives it a personal dimension. For example, a personal relationship between the holder of the opinion and the person it is about. (See Order F2009-026 at paras. 14 to 17). Accordingly, section 17(1) does not require the Public Body to withhold the identity of those expressing an opinion about the Complainant, when doing so is part of their job duties.

3. Third Party Personal Information Provided by the Complainant

[para 80] Some of the records contain third party personal information that the Complainant provided to the Public Body. Included in this category is third party personal information that consists of the Complainant's views or opinions about someone else, including allegations made by the Complainant against someone else, as well as details of their professional and personal lives known to the Complainant, and communicated to the Public Body's employees by the Complainant.

[para 81] On various pages, the names of the third parties appear along with the other personal information described above. Since a name is personal information under section 1(n)(i), where the name of a third party is present together with other personal information, it raises a presumption against disclosure under section 17(4)(g)(i).

[para 82] For information consisting of the Complainant's allegations against other employees of the Public Body, a presumption against disclosure arises under section 17(4)(d) as a matter of employment history. In Order F2003-005, the concept of "employment history" was explained at para. 73:

In my view the term "employment history" describes a complete or partial chronology of a person's working life such as might appear in a resume or personnel file. Particular incidents that occur in a workplace may become the subject of entries in a personnel file, and such entries may properly be viewed as part of employment history. However, the mere fact there is a written reference to or account of a workplace event does not make such a document part of the employment history of those involved. Many workplace incidents of which there is some written record will not be important enough to merit an entry in a personnel file. Similarly it would not make sense to regard documents recording complaints or investigations into complaints as part of a person's employment history unless the complaints were substantiated and a record of some related disciplinary action were entered in a personnel file.

[para 83] The Complainant's allegations became the subject of a formal complaint under the applicable collective bargaining agreement, and would undoubtedly form part of the personnel file of the individual against whom the allegations were made.

[para 84] However, I find that section 17(5)(i) weighs in favour of disclosure heavily enough to rebut the above presumptions against disclosure under section 17(4). The consideration in section 17(5)(i) is,

(i) the personal information was originally provided by the applicant.

[para 85] Absent some large, pressing concern, I cannot see how releasing a record of the Complainant's own thoughts, beliefs, knowledge of or allegations against a third party back to the Complainant is an unreasonable invasion of a third party's personal privacy. The Public Body would not have such information in the first place, but for the Complainant.

[para 86] The same considerations under section 17(5)(i) also weigh in favour of disclosure where there is no presumption against disclosure under section 17(4).

4. Other Third Party Personal Information

[para 87] Information in this category consists of personal information about individuals who are not the Public Body's employees. It also includes information about Public Body employees that is their personal information, as opposed to information about performing a job duty. Examples of this information include,

- Information about other individuals who were reported to HIAR,
- Details of the personal lives of the Public Body's employees,
- Employment history information other than allegations made by the Complainant; and,
- Personal information listed in section 1(n) of the Act.

[para 88] Where names or other personal information is present along with the above information, a presumption against disclosure arises under section 17(4)(g)(i) and (ii). I find that no factors under section 17(5) rebut that presumption.

[para 89] With respect to information about other individuals who were reported to HIAR, whether or not there is a presumption against disclosure, sections 17(5)(f) and (h) weigh in favour of withholding it in any case. Those sections state,

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(f) the personal information has been supplied in confidence,

...

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and

[para 90] The personal information in these records is, largely, information provided by individuals other than those which the information is about. It generally consists of descriptions of events and circumstances that capture people at difficult or low points in their lives. This information is not provided with other information that places it in the broader context of the whole person, and their general experiences and accomplishments. It may fairly be said that it provides a snapshot of people at their worst. It is also a snapshot that the individual the information is about had no hand in crafting, and therefore has had no chance to rebut, or provide their own explanation or context. Therefore, it seems likely disclosure would unfairly damage the reputation of these third parties.

[para 91] In the context of the HIAR program, the information was likely supplied in confidence by those who provided it, as contemplated by section 17(5)(f).

[para 92] None of the factors listed in section 17(5) that weigh in favour of disclosure apply to this information.

[para 93] I find that section 17(1) requires the Public Body to withhold this information.

5. Information simultaneously severed under sections 17(1) and on the basis that it is subject to solicitor-client privilege under section 27(1)(a)

[para 94] On these pages, the Public Body asserts that withheld personal information under section 17(1), but did not provide the records to me for review on the basis that they are subject to solicitor-client privilege under section 27(1)(a). Since I am unable to review the information, I cannot conclude that section 17(1) requires the Public Body to withhold the information.

Information Previously Withheld under Section 17(1)

[para 95] As part of reprocessing the access request, the Public Body ceased relying on section 17(1) to withhold some information previously withheld under it. Since section 17(1) is a mandatory exception to disclosure, I have reviewed the Public Body's decision to cease relying on section 17(1) to withhold information. My analysis on a page-by-page basis is included in the **Compendium** accompanying this Order. I find that section 17(1) does not require any of the information previously withheld by the Public Body under it, to be withheld.

Conclusions on the Application of Section 17(1)

[para 96] The application of the enumerated reasons above are set out in the **Compendium** attached to this Order, as are directions about what information should be disclosed to the Complainant, and what information is to remain withheld under section 17(1).

Issue F: Did the Public Body properly apply section 18(3) of the Act (threat to an individual's safety or health) to the information it severed from the records under this provision?

[para 97] Section 18(3) reads as follows:

(3) The head of a public body may refuse to disclose to an applicant information in a record that reveals the identity of an individual who has provided information to the public body in confidence about a threat to an individual's safety or mental or physical health.

[para 98] The application of section 18(3) is limited by its specification that it only applies to the identity of an individual who provided information *to* a public body. In my view, the section is properly understood to protect the identity of those who, being unaffiliated with a public body, provide information to it. The section would also apply to employees of a public body who share with it information that they possess *independently* of their employment with the public body; for example, information about a threat, acquired through personal acquaintances in an individual's private life. Section 18(3) does not protect the identity of employees who receive such information in the course of their employment duties with a public body and then forward to it other employees of the same public body. Once information is received in the course of

employment duties, it has been provided to a public body; forwarding it to another employee is not considered providing it to the public body anew. Thus, section 18(3) does not shield the identities of employees forwarding information this way. I find that the Public Body improperly withheld the identity of such employees under section 18(3) on the following pages:

Pages: 64, 67, 69, 71-73, 77, 81, 82-85, 87, 89, 93, 116, 120-121, 123, 128, 130-131, 142-143, 150, 151, 200-202, 211, 224-227, 228, 251, 252, 253, 255, 285-288, 290-291, 491, 510-511, 515, 518-521, 552, 553, 564-566, 572-573, 576-579, 585, 591, 593, 619-627, 633-634, 636, 638-639, and 644-645.

[para 99] On pp. 70, 88, 90, and 117 information withheld under section 18(3) was also withheld on the basis that it is subject to solicitor-client privilege under section 27(1)(a) and was not disclosed to me. As I am unable to review the information, I cannot conclude that section 18(3) has been properly applied to it. The Public Body has failed to establish that section 18(3) properly applies to this information.

[para 100] I find that information withheld under section 18(3) on pp. 533 and 534 is properly captured under that section. These pages indicate that an employee of the Public Body initially obtained information about a threat to a person's safety or mental health outside of the context of their employment duties, and only later forwarded that information to someone else at the Public Body as part of their employment duties.

Exercise of discretion

[para 101] Since section 18(3) is a discretionary exception to disclosure, the Public Body must demonstrate that it properly exercised such discretion. Since only information on pp. 533 and 534 is captured under section 18(3), these considerations are limited to the Public Body's exercise of discretion to withhold information from those pages.

[para 102] In its submissions, the Public Body cites *Covenant Health v Alberta (Information and Privacy Commissioner)*, 2014 ABQB 562 (*Covenant*) in support of its assertion that it properly exercised its discretion under section 24(1). While the Public Body did not make the argument specifically with respect to section 18(3), I address the matter of deference here, since my findings with regard to deference apply throughout this Order.

[para 103] The Public Body cited para. 149 of *Covenant* for the principle that, "deference will be given to a Public Body's decision to withhold information pursuant to section 24 so long as the Public Body acts in good faith and demonstrates an understanding of the issues at stake." This is not what the decision in *Covenant* stated at para. 149, reproduced below:

Section 24 of the *Freedom of Information Act* unequivocally states that the head of a public body may decide to disclose advice developed for a public body or the deliberations of a public body. A determination that information is advice or part of deliberations does not preclude disclosure. *Ontario v. Criminal Lawyers' Association*, 2010 SCC 23 (CanLII),

[2010] 1 S.C.R. 815, 838. In exercising a sections 24 discretion the head of a public body must consider relevant legal principles and facts. *Ontario v. Criminal Lawyers' Association*, [2010] 1 S.C.R. 815, 840-41 & 845-47.

[para 104] Something similar to what the Public Body states in its submission was stated at para. 152 of *Covenant*:

The Freedom of Information Act does not require the delegate of the head of a public body making a s. 24 discretion decision to provide a comprehensive account of her reasoning processes. An officer meets legislative expectations if she considers relevant legal principles and facts before making her decision. The Act's goals are met if the head of a public body acts in good faith, demonstrates a solid grasp of the interests at stake and the relevant facts and makes a reasonable decision. The final decision, according to the Act, must be made by the public body. The adjudicator is not the ultimate decision maker.

[para 105] Notably, there is no mention of deference in either passage. *Covenant* sets out the standard a Public Body must meet when exercising discretion, but does not suggest that a Public Body's assertion that it has exercised discretion properly warrants deference on review at inquiry.

[para 106] The question of deference to a public body's exercise of discretion was recently considered in *Edmonton (City) Police Service v Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10 (*EPS*). In that the decision, the Court considered deference in the context of discretion under sections 27(1)(b) and (c), and deference in respect of a public body's weighing of considerations under section 17(5). Justice Renke stated at para. 408

These premises, though, do not entail that the Adjudicator could only be a "rubber stamp" for EPS's claimed reliance on ss. 27(1)(b) and (c). The Adjudicator does not owe "deference" in the sense that an Adjudicator must accept an invocation of ss. 27(1)(b) and (c), without more. EPS had the burden of proving that its exercise of discretion was reasonable and the Adjudicator had the task of assessing whether EPS exercised its discretion reasonably.

[para 107] Justice Renke continued at para. 421,

...The Adjudicator was right that the burden of showing the appropriate exercise of discretion lies on the public body. It is obligated to show that it has properly refrained from disclosure. Its reasons are subject to review by the IPC. The public body's exercise of discretion must be established; the exercise of discretion is not presumptively valid. The public body must establish proper non-disclosure. The IPC does not have the burden of showing improper non-disclosure.

[para 108] I note the following words from Justice Renke at paras. 573 to 574,

EPS contended that the Adjudicator had "shown no deference to the manner in which the EPS weighed the factors in s. 17:" EPS Brief at para 218; para 51(f).

As discussed above respecting ss. 27(1)(b) and (c) (part VIII.B.3), EPS was "not entitled to deference in their interpretation of exemptions:" *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para 58.

[para 109] I find that the above passages from *EPS* settle the matter of deference to a public body's exercise of discretion. I must review the Public Body's exercise of discretion, and it bears the burden to demonstrate, on the balance of probabilities, that it properly refrained from disclosure. The Public Body is not aided in discharging its burden by any deference to its decision.

[para 110] The proper exercise of discretion was considered in *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, (*Ontario Public Safety and Security*). Numerous orders of this office have confirmed that the reasoning therein is applicable to the exercise of discretion under the Act. The following factors were identified as relevant to the question of whether or not a public body has properly exercised its discretion:

- the decision was made in bad faith
- the decision was made for an improper purpose
- the decision took into account irrelevant considerations
- the decision failed to take into account relevant considerations

[para 111] In the present case, the Public Body states that it took into account all relevant factors mentioned in its initial submissions, including its *in camera* submission, when deciding to withhold information under section 18(3). Many of those factors were specific to the exercise of discretion under their particular sections, and are not relevant here. Upon review of the factors listed in the Public Body's initial submission, it appears that the common thread running through them is notion that its employees would have a general expectation that when they were receiving or forwarding information that is possibly subject to an exception to disclosure, their activities, and identities as those who carried them out, would be kept confidential. I find this factor was a consideration of the Public Body's exercise of discretion under section 18(3).

[para 112] The Public Body also states throughout its submissions that it considered "the objectives and purposes of the Act, including the Applicant's right of access." The Public Body did not elaborate further on these considerations.

[para 113] With regard to the specific application of section 18(3) the Public Body stated that the following two factors were "extremely significant" to its conclusion that the interests in favour of withholding information outweighed interests in favour of disclosing:

- i. the individuals provided information to the University with the understanding and expectation that their identities and the content of the information that they provided would be held in confidence; and

ii. the importance of the HIAR Program cannot be overstated. Individuals' lives potentially depend on its effectiveness. If individuals do not trust that their reports to the HIAR Program will be kept confidential, they will be less likely to make reports and the HIAR Program will be less likely to be effective.

[para 114] I find that the Public Body has taken into account irrelevant factors with regard to these two pages, and that it failed to take into account relevant factors.

[para 115] Regarding irrelevant factors, concerns about the HIAR program are not engaged since the information on pp. 533 and 534 does not relate to the program.

[para 116] The confidentiality considerations taken into account by the Public Body are also irrelevant. Similar factors were considered with regard to the exercise of discretion under section 24(1)(b) in Order F2018-36. The factors considered in that Order, set out at para. 227, were,

- a) The impact the disclosure would reasonably be expected to have on the EPS' ability to carry out similar decision-making processes in the future;
- b) That the sworn and non-sworn members of the EPS had a reasonable expectation that their advice, analyses and recommendations could be provided freely within the EPS and would be kept confidential;
- c) That the sworn and non-sworn members of the EPS had a reasonable expectation that consultations and deliberations could take place freely within the EPS and would be kept confidential; and
- d) The objectives and purposes of the Act, including the Applicant's right of access.

[para 117] The confidentiality considerations listed in factors b) and c) above, are similar to the confidentiality considerations relied on by the Public Body here. The Adjudicator in Order F2018-36 said of such considerations at para. 232,

While I do not disagree that points "a" and "d" considered by the Public Body may be considered in an appropriate exercise of discretion, "b" and "c" are irrelevant to the determination of whether the public interest is best served by withholding or disclosing the records. Records that are subject to the FOIP Act are *public* records – records over which the Public Body has custody or control as a result of performing its public functions. The Public Body manages these records for the benefit of the public. If it decides to withhold records from an applicant, it must find that doing so benefits the public interest, rather than the private interests of its representatives, such as their personal expectations. While the Court referred to consideration of "private interests" in *Ontario (Public Security)*, the Court is referring to the private interests of requestors, citizens, and affected third parties. Employees that create (or are referred to) in public records in their role as representatives of a public body, do not have private interests in such records. Any expectation of such employees is irrelevant in deciding whether it is in the public interest to disclose records or not.

[para 118] I find the same considerations in the above passage are relevant here. Simply put, the Public Body's employees have no privacy interest in pp. 533 and 534.

[para 119] Regarding the failure to consider relevant factors, I find that the Public Body failed to consider the Complainant's private interests in obtaining the records she requested.

[para 120] It is evident from the Complainant's submissions, and a review of all of the responsive records, that at the time of the access request, the Public Body and the Complainant were working to address numerous issues in their employment relationship. Further, it is evident that the Complainant was concerned that the Public Body not only had incorrect personal information about her, but that such information was also disseminated to unknown employees of the Public Body, and may affect her in the future. She states, in her initial submission,

To conclude, the disclosure of the inaccurate information by [the Human Resources Consultant] at the University of Alberta was deeply upsetting and became part of my decision to resign my position at the University of Alberta. I remain very concerned that this inaccurate information is being retained, how it might be used in the future and how my life might be affected by the damage that has been done to my reputation. The lack of information that has been provided by the University of Alberta has made this very difficult situation even more difficult to cope with, understand and move on from.

The wording of the Complainant's access request, which focuses on documents that reference or are about her, reflects these concerns.

[para 121] The information on pp. 533 and 534 directly engages the Complainant's private interest. It provides a small part of the greater answer to the question of who knew what about the Complainant, when, and how did they know it? As such, it was incumbent on the Public Body to consider this interest with regard to these pages. I see no evidence that it did.

[para 122] Accordingly, since the Public Body considered irrelevant factors, and failed to consider relevant factors in exercising discretion under section 18(3), I find that it exercised its discretion improperly.

Issue G: Did the Public Body properly apply section 20(1) of the Act (disclosure harmful to law enforcement) to the information it severed from the records under this provision?

[para 123] Information withheld under section 20(1) appears on the following pages:

Pages: 64, 69-70, 90, 108-111, 113, 115, 117, 120-121, 123, 125-126, 127-128, 129, 132, 133, 136, 150, 151, 200-202, 203, 219-223, 224-227, 249, 250, 251, 252, 253, 254, 255, 274, 278, 285-288, 289, 290-291, 292-293, 304, 305-306, 308, 311, 491, 510-511, 515, 518-521, 523-526, 537-538, 542, 552-553, 564, 565-566, 572-573, 585, 590, 591, 593, 619-631, 633-634, 636, 638-639, 644-647, 649, and 650-652

[para 124] The Public Body withheld information from all records listed above on the basis of section 20(1)(a). Other information was also severed on the basis of section 20(1)(d). Both sections are below:

20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm a law enforcement matter,

...

(d) reveal the identity of a confidential source of law enforcement information,

[para 125] Both sections only apply if there is some aspect of “law enforcement” at work. “Law enforcement” is defined at section 1(h) of the *Act*, as follows:

(h) “law enforcement” means

(i) policing, including criminal intelligence operations,

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

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

[para 126] The Public Body’s position is that the activities carried out under the HIAR program, and those carried out by University Protective Services are considered “policing” under section 1(h)(i). One of the purposes of the HIAR program is to promote safety on campus and prevent possible future acts of violence. University Protective Services plays a role in the HIAR program, particularly when Protocol 91 is engaged. Further, University Protective Services employs 28 peace officers, appointed under the *Peace Officer Act*, SA 2006 c P-3.5 (the *Peace Officer Act*).

[para 127] Regarding the Complainant, specifically, the Public Body notes that a Peace Officer performed the Threat Assessment about the Complainant. The Public Body cites Orders 2000-027 and F2006-002 in support of its conclusion that performing a threat assessment constitutes policing and is a law enforcement matter.

[para 128] Based on the above, the Public Body concludes that the activities of the HIAR program and University Protective Services constitute “policing” and are law enforcement matters under section 20(1)(a). Similarly, it believes that information related to policing under the HIAR program and University Protective Services is law enforcement information under section 20(1)(d).

[para 129] I disagree with the Public Body. I find that none of the activities of the HIAR program, or those actions taken by University Protective Services, including those of its peace officers, is captured by the term “policing” as it is found in section 1(h)(i) of the Act.

[para 130] The term “policing” was described in Order 2000-027. The former Commissioner stated, at para. 16, ‘the term “policing” should be defined as those activities carried out, under the authority of a statute, regarding the maintenance of public order, detection, and prevention of crime, or the enforcement of law.’ The requisite statutory authority is absent in this case.

[para 131] The Public Body is a university, and operates under the *Post-Secondary Learning Act*, SA 2003, c P-19.5. Upon my review, that act does not appear to provide any mandate to maintain public order, detection, and prevention of crime, or the enforcement of law. The Public Body has not described any statute that authorizes the activities of the HIAR program or University Protective Services.

[para 132] I have considered that peace officers are appointed under the *Peace Officer Act*. However, that act does not imbue the Public Body with statutory authority to do anything other than employ peace officers with the permission of the Minister, pursuant to section 5(1) of the *Peace Officer Act*:

5(1) No person shall employ or engage the services of a person as a peace officer unless that person is an authorized employer.

[para 133] I also consider whether the Public Body had the requisite statutory authority by virtue of the terms of appointment of its peace officers.

[para 134] The role of a peace officer is described in sections 7(5) of the *Peace Officer Act*, 1(j) of the *Police Act*, RSA 2000, c P-17 (the *Police Act*), and 2(c) of the *Criminal Code*, RSC 1985, c. C-46, as a “...person employed for the preservation and maintenance of the public peace.”

[para 135] However, the powers of peace officers are carried with them individually, and are limited by the terms of their appointment as described in section 7(5) of the *Peace Officer Act*. Section 7(5) of the *Peace Officer Act* is below:

7(5) Subject to the terms of the appointment, a person appointed as a peace officer under this Act is a person appointed for the purposes of preserving and maintaining the public peace.

[para 136] The limitation section 7(5) places on a peace officer’s authority is clearly set out in the Government of Alberta’s Peace Officer Program Policy and Procedures Manual (the Peace Officer Manual), submitted in the affidavit of the Public Body’s Threat Assessor. It reads,

It is extremely important to note that a peace officer's authority is limited by the first part of Section 7(5) which limits their status as peace officers to the performance of duties specified on their appointment. Any action taken that is not specifically covered by the peace officer appointment would be as a private citizen.

[para 137] While the Public Body did not provide, nor could I locate, any particular legal authority entrenching that interpretation in law, considering the wording of section 7(5) of the *Peace Officer Act*, it appears correct. A person is only preserving and maintaining the public peace as a peace officer, so far as their appointment allows; otherwise, they are doing so of their own accord, as a private citizen. This interpretation of section 7(5) is also in accord with section 7(2)(a) of *Peace Officer Act* which states that the terms of appointment of a peace officer must include,

(a) *the authority, responsibility and duties of the peace officer,*

[para 138] Since the terms of appointment must specify the extent of a peace officer's authority, responsibility and duties, it stands to reason that anything done outside of that authority, responsibility and duty, is not done in the role of a peace officer.

[para 139] The example Peace Officer Appointment included at Appendix H of the Peace Officer Manual reflects the understanding that a peace officer's authority is limited to the terms of their appointment. Section 1.1 of Article 1 of the example Appointment states:

1.1 Subject to section 1.2, the person appointed under this document has the authority, while employed by the <<Authorized Employer Name>> and while acting within the scope of his/her employment, to enforce the following legislation and all regulations thereunder, and service court documents relating to:

[List of Legislation]

[brackets mine]

[para 140] Section 1.2 of Article 1 restricts the scope of the authority granted under section 1.1.

[para 141] I note that the above interpretation of the limits of a peace officer's authority under section 7(5) of the *Peace Officer Act*, is also in harmony with the definition of "peace officer" in section 1(k)(iii) of the *Provincial Offences Procedure Act*, RSA 2000 c P-34. That section states that a person is a peace officer, only while exercising their duties:

(k) *"peace officer" means*

(iii) *a peace officer appointed under the Peace Officer Act, while the peace officer is in the exercise or discharge of the peace officer's powers or duties,*

[para 142] The matter of whether a peace officer's actions amount to policing was considered in Investigation Report F2007-IR-005. The matter under investigation was whether a public body could collect personal information under section 33(b) of the Act:

33 No personal information may be collected by or for a public body unless

(b) that information is collected for the purposes of law enforcement, or

[para 143] When considering whether personal information collected for the purposes of a threat assessment by a peace officer was considered to be collected for the purposes of law enforcement, the then FOIP Director for the Office of the Information and Privacy Commissioner stated at paras. 68 to 69,

The EUB said the Security Team Leader is a Peace Officer appointed under section 7 of the Peace Officer Act, S.A. 2006, c. P-3.5. The EUB states the appointment authorizes the Security Team Leader to enforce the following legislation and all regulations thereunder, and serve court documents relating to:

- *Crown Property Regulations;
- *The Petty Trespass Act;
- *The Provincial Offences Procedure Act; and
- *The Trespass to Premises Act.

In my view, personal information collected for the purpose of enforcing the legislation and regulations listed in the Security Team Leader's Peace Officer appointment may be authorized under section 33(b) of the FOIP Act. However, there is no evidence before me that this was the case at Rimbey. In addition, the EUB's Supplemental Submission makes no arguments that the personal information was collected at Rimbey so that the Security Team Leader could enforce the legislation and regulations listed under the Security Team Leader's Peace Officer appointment.

[para 144] I agree with the above passage of the former FOIP Director. While information collected for the purposes of enforcing legislation might be considered to be collection for the purposes of law enforcement, absent evidence that it was collected for those purposes, it is not seen to be. In my view, a similar line of reasoning applies in this case: activities not undertaken with a view to enforcing legislation, or under the authority of a statute, are not law enforcement matters, and information gathered to further those activities is not law enforcement information.

[para 145] In this case, the Public Body has not introduced evidence of what actions its peace officers, including the Threat Assessor, are authorized to perform, or what statutes they may enforce, pursuant to their appointments. I cannot see that its Peace Officers were operating under any particular statutory authority when conducting their activities in respect of the Complainant. It appears that the requisite statutory authority is absent.

[para 146] In reaching the above conclusion, I have considered that the Public Body describes University Protective Services as a “Community Peace Officer Agency” operating under the *Peace Officer Act*.

[para 147] While the *Peace Officer Act* does not explicitly refer to “Community Peace Officers”, the term is mentioned in the Peace Officer Manual. While the Public Body only submitted a portion of the Peace Officer Manual, as part of my investigative role as the Commissioner’s Delegate, I located a full copy of the Peace Officer Manual on-line at:

<https://open.alberta.ca/publications/public-security-peace-officer-program-policy-and-procedures-manual>

[para 148] The Peace Officer Manual at the above website contains pages identical to those in the affidavit of the Public Body’s Threat Assessor, and indicates that it was last updated in 2012, and not since. I am satisfied that it is the same manual that is mentioned in the affidavit of the Public Body’s Threat Assessor.

[para 149] On p. 56, the Peace Officer Manual states that “Community Peace Officer” is a designated title which may be assigned to a Peace Officer, pursuant to section 7(2)(e) of the *Peace Officer Act*:

(2) *The appointment of a peace officer must include the following terms:*

(e) *the title the peace officer is authorized to use,*

[para 150] Pages 12 through 16 of the Peace Officer Manual describe the role, authority, and training requirements of Community Peace Officers. There are two levels of Community Peace Officer, each with different authority.

[para 151] Level 1 Community Peace Officers have the following authority:

6.1 Community Peace Officer - Level 1

Employed by municipalities and counties in Alberta to fulfill a range of roles including enforcement of provincial statutes. A Level 1 Community Peace Officer enforces moving violations under the *Traffic Safety Act* and/or elements of the *Gaming and Liquor Act*. Agencies responsible for providing a safe and secure environment for public and/or private property are included in this category if they are armed with baton and/or OC spray and have requested peace officer authority beyond the ability to enforce non-moving traffic offences. Examples of this category are transit security agencies operated by a municipality, some post-secondary institutions, and a county and/or municipal patrol service.

[para 152] Level 1 Community Peace Officers may also have enhanced authority upon completion of further training.

[para 153] Level 2 Community Peace Officers have less authority than their Level 1 counterparts.

6.6 Community Peace Officer - Level 2

Fulfill a range of roles that are administrative in nature or have a narrow focus. Authority at this level does not include moving violations under the *Traffic Safety Act* (except for Automated Traffic Enforcement operators) or any elements of the *Gaming and Liquor Act*.

Examples are exhibit custodians for police services, RCMP detachment clerks, parking enforcement officers, automated traffic enforcement operators, and animal control specialists.

[para 154] The Peace Officer Manual makes no mention of the prospect of enhanced authority for Level 2 Community Peace Officers.

[para 155] Considering the scope of authority granted to Community Peace Officers at either level, I cannot see that any of the actions taken by Public Body's Peace Officers, with regard to the Complainant, were done pursuant to the authority of any statute. None of the evidence before me suggests that any action took place under either the *Traffic Safety Act*, RSA 2000, c T-6, or the *Gaming and Liquor Act* (now the *Gaming, Liquor and Cannabis Act*, RSA 2000, c G-1). There is no evidence that any peace officer had any further authority under any other statute. In the absence of the requisite statutory authority, the Public Body cannot be said to have been "policing" under Act.

[para 156] Regarding Orders 2000-027 and F2006-002 where conducting a threat assessment was found to be policing and law enforcement, respectively, I note that in both Orders the Public Body was a police service as defined by the *Police Act*.

[para 157] In Order 2000-027, where the definition of "policing" was considered, authority to conduct the threat assessment was found under the *Police Act* at para. 17.

[para 158] Order F2006-002 was not concerned the application of section 20 of the Act. In Order F2006-002, the issue was whether the public body (the Edmonton Police Service) had collected personal information used to conduct a threat assessment pursuant to section 33(b). In the course of deciding that Edmonton Police Service had authority under section 33(b), the former Commissioner stated, at para. 28,

It seems to me that if a member of the EPS (or anyone else) "fears for their safety" and expresses that to a peace/police officer, section 33(b) of the Act is engaged, as the matter involves "policing" and therefore law enforcement. Regardless of whether the officer refers the matter to a more appropriate authority, that officer is allowed to collect personal information because "fears for safety" and threats are generally law enforcement matters. It must be assumed so.

[para 159] I do not read the above passage as support for the proposition that any time someone expresses fear to a peace officer, it is automatically a matter of "policing." Primarily, in F2006-002 there was no doubt that the Public Body was operating under the

authority of the *Police Act*. The former Commissioner was not addressing the question of whether, or under what circumstances, if any, a peace officer employed outside of a police service could be considered to be policing. Given the specific and limited authority provided to a peace officer under section 7(5) of the *Peace Officer Act*, no general conclusion about when, if ever, a peace officer is policing can be made.

[para 160] Further, it is unlikely that the former Commissioner was speaking about a peace officer appointed under the *Peace Officer Act* at all. Section 38(1) of the *Police Act* states that every police officer is also a peace officer. The reverse is not the case under either the *Police Act* or the *Peace Officer Act*. Since the former Commissioner was considering the actions of a police service under the *Police Act* in F2006-002, there is no reason to believe that he was considering peace officers under the *Peace Officer Act*, when he made the above comment. Indeed, at para. 7 of F2006-002, the former Commissioner notes that the person to whom the threat was reported was the Superintendent in charge of the Special Investigations Division of the Edmonton Police Service and the threat assessment was carried out by an EPS member.

[para 161] I also observe that the argument that because the Police may conduct a threat assessment as a matter of “policing” under the Act, anyone else conducting a threat assessment must also be considered to be “policing” under Act, misconstrues the ambit of “policing” as it has been defined. “Policing” is not determined by any particular *type* of action. It is determined by whether the action is done under the authority of a statute, with regard to the maintenance of public order, detection, and prevention of crime, or the enforcement of law.

[para 162] Though not expressly argued by the Public Body, I have considered whether it was engaged in law enforcement in the form of a police, security, or administrative investigation, as described in section 1(h)(ii) of the Act:

(h) “law enforcement” means

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

[para 163] Leaving aside the question of whether the Public Body was engaged in an investigation for the purposes of section 1(h)(ii), I cannot see that there was the prospect of any penalty or sanction being imposed as those terms have defined in other orders. (See for example Orders 2000-019, F2004-022, and F2013-51.) I find that the Public Body was not engaged in law enforcement under section 1(h)(ii).

[para 164] Accordingly, I do not find that the Public Body was carrying out law enforcement activities or dealing with law enforcement information under sections, 20(1)(a) and (d). As such, the Public Body improperly withheld information under these sections.

Further considerations in respect of section 20(1)(a)

[para 165] Even if a law enforcement matter is at issue, before information can be withheld under section 20(1)(a), a public body must prove that there is a reasonable expectation of harm to that matter.

[para 166] The test to determine whether there is a reasonable expectation of harm to a law enforcement matter laid out in Order 96-003, was summarized in Order F2005-009 at para. 32:

- Order 96-003 established that section 20(1)(a) requires that a reasonable expectation of harm to a law enforcement matter must exist. To demonstrate a reasonable expectation of harm, the public body must satisfy the following factors:
 - There must be a clear cause and effect relationship between the disclosure and harm alleged;
 - The harm that would be caused by the disclosure constitutes “damage” or “detriment” to the matter and not simply hindrance or minimal interference; and
 - The likelihood of harm must be genuine and conceivable.

[para 167] Other Orders have established that in order to apply section 20(1)(a) properly, a public body must identify a specific law enforcement matter that will be harmed, and not simply claim that law enforcement will be harmed in general. (See Orders 96-003 at p. 6, F2006-012 at para. 25, and F2008-031 at para. 48.)

[para 168] In the present case, the Public Body admits that even at the time when its submissions were made, any law enforcement matter concerning the Complainant had ended. The Public Body’s assertion that disclosure would still cause harm rests on harm to future law enforcement activities:

The cause and effect relationship between the primary harm referred to above and the disclosure of the information currently withheld pursuant to section 20(1)(a) is clear. If the information is disclosed, the identities of the individuals who provided information to University Protective Services as well as the content of the information that they provided will no longer be confidential. Each of those individuals may then think twice about providing information to University Protective Services in the future as a result. Additionally, to the extent that others learn that confidentiality was lost, they may also hesitate to provide information to University Protective Services going forward.

[para 169] I find that the Public Body has failed to meet the first part of the harm test.

[para 170] Further, the Public Body’s argument that harm may result in the future (since people may be less likely to provide information if they know it may be disclosed) relates to law enforcement in general, and not to a specific law enforcement matter. Even this assertion of harm rests on conjecture or mere assumptions as to what individuals may do in the future if information is disclosed.

[para 171] Accordingly, I find that the Public Body has not applied section 20(1)(a) properly to any of the information withheld under it.

Further considerations in respect of section 20(1)(d)

[para 172] Even if law enforcement information is at issue, under section 20(1)(d), a public body must also demonstrate that the information was provided by a confidential source.

[para 173] The former Commissioner discussed what constitutes a confidential source in Order 99-010. He found at para. 37 that those providing information as part of their employment duties were not confidential sources:

I find that both the individual named in Records CI-10, AA-70, AA-473, LS-34, LS-48, and the Private Investigator referred to in the other Records (see page 4 of Order) are not “sources”. Both are collecting information on behalf of the WCB from a variety of sources as part of their job duties. They are not supplying information *to* a public body because they form part of the public body whether as an employee or as an independent contractor.

[para 174] Upon reviewing the information withheld under section 20(1)(d), all of the information about the Complainant was provided by individuals as part of their employment duties. Since there are no confidential sources, this information cannot be withheld under section 20(1)(d).

[para 175] I find that the Public Body has not properly applied section 20(1)(d) to any of the information withheld under it.

[para 176] In light of the above, the Public Body improperly withheld information withheld under section 20(1), every time it did.

Issue H: Did the Public Body properly apply section 24(1) of the Act (advice from officials) to the information it severed from the records under this provision?

[para 177] Information withheld under section 24(1) appears on the following pages:

Pages: 3-10, 15, 16, 17, 64, 69-70, 88, 89, 90, 93, 108-109, 110-111, 113, 114, 115, 117, 120-121, 123, 125-126, 127-128, 129, 132, 133, 136, 142, 150, 151, 166-168, 170, 171, 173, 176, 189-199, 200-202, 203, 212, 213-218, 219-223, 224-227, 249, 250, 251, 252, 253, 254, 255, 274, 278, 285-288, 289, 290-291, 292, 293, 304, 305-306, 308, 311, 462, 465, 468, 472-473, 491, 510, 511, 512, 515, 516-521, 523-526, 529-532, 533-534, 537-538, 542, 552-553, 555-556, 559, 562-563, 564-566, 567-570, 572-573, 574-575, 576-579, 580-582, 585, 588, 590, 591, 593, 597-598, 599, 619-631, 633-634, 636, 638-639, 644-647, 649, and 650-652.

[para 178] Each time the Public Body withheld information under section 24(1), it did so under sections 24(1)(a) and (b):

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

(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council,

(b) consultations or deliberations involving

(i) officers or employees of a public body,

(ii) a member of the Executive Council, or

(iii) the staff of a member of the Executive Council,

[para 179] The shared affidavit of the Information and Privacy Advisor speaks about each document where information was withheld under these sections. However, there is no clarification about what specific information constitutes advice, proposals, recommendations, analyses or policies under section 24(1)(a) or consultations or deliberations under section 24(1)(b). The Public Body describes the application of section 24(1) in a general manner. For example, it describes withheld information on p. 588 as notes from a meeting that reference, “deliberations, consultations, advice, and recommendations discussed during the meeting.” Which part of the notes contains deliberations, consultations, advice, or recommendations is not set out. Further, the description that notes, or any other document, “references” consultations, deliberations, advice, or recommendations creates ambiguity. Merely referencing an occasion where deliberations took place does not reveal the substance of the deliberations. The same is true for advice, consultations, and recommendations.

[para 180] Much of the information withheld under section 24(1) was also withheld under other sections of the Act. Frequently, withheld information consists of a block of text to which the Public Body appears to have applied numerous exceptions generally. Seldom is the application of each section specific to a particular piece of information. The result is that the precise application of section 24(1) is unclear. Accordingly, only when withheld information falls clearly into one of the categories listed in sections 24(1)(a) and (b) on its face, am I able to conclude that information falls within those sections. Where it is unclear that information fits into category, I find that the Public Body failed to meet the burden of proof of establishing that it properly withheld information under section 24(1).

[para 181] The scope of information captured under sections 24(1)(a) and (b) was recently summarized in Order F2019-17 at paras. 161-166,

In previous orders, the former Commissioner has stated that the advice, proposals, recommendations, analyses or policy options under section 24(1)(a) should:

1. be sought or expected, or be part of the responsibility of a person by virtue of that person’s position,

2. be directed toward taking an action,
3. be made to someone who can take or implement the action. (See Order 96-006, at p.9)

In Order F2013-13, the adjudicator stated that the third arm of the above test should be restated as “created for the benefit of someone who can take or implement the action” (at paragraph 123).

In Order F2012-06, the adjudicator stated, citing former Commissioner Clark’s interpretation of “consultations and deliberations”, that

It is not enough that records record discussions or communications between employees of a public body; rather, a consultation takes place only when the individuals listed in section 24(1)(b) are asked for their views regarding a potential course of action, and a deliberation occurs when those individuals discuss a decision that they are responsible for, and are in the process of, making. (At para. 115)

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

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

Further, sections 24(1)(a) and (b) apply only to the records (or parts thereof) that reveal substantive information about which advice was sought or consultations or deliberations were being held. Information such as the names of individuals involved in the advice or consultations, or dates, and information that reveals only the fact that advice is being sought or consultations held on a particular topic (and not the *substance* of the advice or consultations) cannot generally be withheld under section 24(1) (see Order F2004-026, at para. 71).

Bare recitation of facts or summaries of information also cannot be withheld under sections 24(1)(a) or (b) unless the facts are interwoven with the advice, proposal, recommendations etc. such that they cannot be separated (Order 2007-013 at para. 108, Decision F2014-D-01 at para. 48). As well, neither section 24(1)(a) nor (b) apply to a decision itself (Order 96-012, at paras. 31 and 37).

[para 182] I agree with the scope of sections 24(1)(a) and (b) set out in Order F2019-17.

[para 183] Regarding statements of fact, I agree with the discussion in Order F2019-07 at paras. 106-108:

I find that the information outlined in red at the end of the document is analysis and is subject to section 24(1)(a). I also find the information appearing in a gray box in the middle of record 727 is analysis within the terms of section 24(1)(a) and the text appearing before the red box on record 727 is analysis. However, I find that the remaining information in records 726 – 727 consists of statements of background facts and is not subject to section 24(1).

In Order F2017-65, the Director of Adjudication said:

In Order 96-006, on which the Public Body relies in its submissions, former Commissioner Clark noted:

In passing, I want to note that the equivalent section of the British Columbia Act (section 13) specifically states that “factual material” (among other things) cannot be withheld as “advice and recommendations”. As I stated, I fully appreciate that our section differs significantly from that of our neighbours. However, I cannot accept that the bare recitation of facts, without anything further, constitutes either “advice etc” under [section 24(1)(a)] or “consultations or deliberations” under [section 24(1)(b)].

In some circumstances, factual information can be conveyed that makes it clear a decision is called for, and what is recounted about the facts provides background for a decision that is to be made. Such a case involves more than merely “a bare recitation of facts”. Rather, what is recounted about particular events or the way in which they are presented may be said to constitute part of the ‘consultations or deliberations’ a decision maker uses to develop a decision. This may be so whether the decision maker specifically requests the information, or it is provided unsolicited having regard to the responsibilities of both the provider and receiver.

In Order F2017-65, the Director of Adjudication acknowledged that sometimes factual information may be arranged or presented in such a way as to necessitate a particular decision. In such cases, factual information may be considered subject to section 24(1)(a) or (b), depending on the circumstances. However, the background information appearing on record 726 and continuing until the information I have found to be subject to section 24(1) appears only intended to explain what had happened until that point. As a result, I conclude it is not subject to a provision of section 24(1).

[para 184] I have considered whether recitations of facts consist of information captured under sections 24(1)(a) or (b), or whether they are only explaining what has happened up until a point in time. Where I find the latter is this case, my decision is that the information is not captured under sections 24(1)(a) or (b).

[para 185] Much of the withheld information falls outside of the scope of sections 24(1)(a) or (b) for the reasons given in Order F2019-17. Much of it consists of summaries or statements of fact, or is not part of the substantive information that sections 24(1)(a)

and (b) are meant to protect. This information consists of boilerplate language in e-mails, contact information, names, dates, or references to the fact that advice was sought, or plans to consult, deliberate, or seek advice, not including substantive information about the consultations, deliberations, or advice. Some of the withheld information consists of decisions made, or consists merely of exchanges or forwarding of information between two people with no substantive information involved. Information not captured under sections 24(1)(a) or (b) for each reason is described in the **Compendium** attached to this Order.

[para 186] Some of the information withheld under section 24(1) was also withheld under section 27(1)(a) on the basis that it is subject to solicitor-client privilege, and was not provided to me for review. Since I cannot review those records, I am unable to conclude that the information in them falls under sections 24(1)(a) or (b). I find that the Public Body has not met the burden of establishing that it properly applied sections 24(1)(a) or (b) to these records. These records are listed in the **Compendium** as well.

Exercise of Discretion

[para 187] My earlier findings regarding deference to discretion in the discussion of **Issue F** apply here as well, as does the proper approach to the exercise of discretion set out in *Ontario Public Safety and Security*, referred to at para. 110 of this Order.

[para 188] The considerations taken into account by the Information and Privacy Advisor when exercising discretion under section 24(1) in response to the access request are set out in her shared affidavit:

30. In exercising my discretion pursuant to sections 24(1)(a) and (b) of the FOIPP Act, and in confirming the decision to withhold information in the Responsive Records, I confirm that the University considered the nature of these portions of the Responsive Records, the purposes of the section, as well as the following:

- a. The impact the disclosure would reasonably be expected to have on the University's ability to carry out similar decision-making processes in the future;
- b. That the University representatives involved had a reasonable expectation that their advice, analyses, recommendations, consultations and deliberations could be conducted freely within the University and would be kept confidential;
- c. That the release of the information could make consulting with officials less candid, open and comprehensive in the future if it is understood that such information would be made publicly available;
- d. The objectives and purposes of the FOIPP Act, including the Applicant's right of access.

[para 189] In its submission, the Public Body asserts, and I agree, that the purpose of sections 24(1)(a) and (b), in general, is to protect a public body's decision-making process. That said, I find that the Public Body considered irrelevant factors, and failed to consider relevant factors in exercising its discretion under this section.

[para 190] As discussed under **Issue F**, the expectation of confidentiality on the part of Public Body employees involved with this information (as referenced in b. above) is irrelevant.

[para 191] Regarding a failure to consider relevant interests, the Public Body again failed to consider the Complainant's private interest in much of the information withheld. Some of the information is of similar significance to that already discussed in **Issue F**. Other information engages the Complainant's interest in a different manner. By seeing aspects of the decision-making process that related to her employment, the Complainant gains insight into how information about her affected her reputation. The Complainant has a private interest in this information as well.

[para 192] Accordingly, since the Public Body has considered irrelevant factors, and failed to consider relevant ones, I find that the Public Body failed to properly exercise its discretion to apply section 24(1).

Issue I: Did the Public Body properly apply section 27(1) of the Act (privileged information) to the information it severed from the records under this provision?

[para 193] The Public Body withheld information under sections 27(1)(a), (b), and (c). It argues that each section applies to information that is subject to solicitor-client privilege or common law privilege. It stated in its shared initial submission,

129. The University applied sections 27(1)(a), (b) and (c) to the Responsive Records containing:

- i. Communications which originated in circumstances of "common law" privilege, in other words where the communications were expected to be held in confidence, where such confidence is essential to the satisfactory maintenance of the relationship, and where such confidentiality should be protected;
- ii. Solicitor-client privileged communications between University administrators, employees and in-house University legal counsel (the "University Lawyers"), including communications between University administrators/employees regarding the seeking/provision of legal advice from University Lawyers.

[para 194] I note that the *in camera* affidavit of the Information and Privacy Advisor states the Public Body's position differently. In the *in camera* affidavit, the Information and Privacy Advisor states that records withheld pursuant to common law privilege were withheld under section 27(1)(a), and records withheld pursuant to solicitor-client privilege were withheld under sections 27(1)(a), (b), and (c). The sworn statement of the Information and Privacy Advisor is preferable to the unsworn statements made in the Public Body's shared submission. Not only is the information sworn, but the Information and Privacy Advisor swears in her shared affidavit and *in camera* affidavit that she has personal knowledge of the manner in which section 27(1)(a) was applied to responsive

records. Accordingly, I do not consider the application of sections 27(1)(b) and (c) to information withheld on the basis common law privilege.

[para 195] Exceptions to disclosure for information subject to solicitor-client privilege is captured under section 27(1)(a), and not 27(1)(b) or (c). Section 27(1)(a) states,

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

(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege,

[para 196] An interpretation of section 27(1) that permits reliance on sections 27(1)(a), (b), and (c) simultaneously was rejected in *Edmonton (City) Police Service v Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10 (*EPS*). Justice Renke stated the following at paras. 393 to 398:

The Adjudicator's interpretation was not limited to recognizing the increasing scope of the exceptions. According to the Adjudicator, ss. 27(1)(a)-(c) not only expand the bases for non-disclosure, but each paragraph deals with discrete types of information, at least as regards solicitor-client privilege. The Adjudicator wrote as follows in F2013-13 at para 252:

Although section 27(1)(b) may apply in some instances to records that are subject to privilege, it does not follow that section 27(1)(b) applies to all records that are subject to solicitor-client privilege or is intended to do so. Determining whether section 27(1)(b) applies does not involve consideration of whether information is subject to privilege, but involves inquiring whether a person listed in subclauses 27(1)(b) (i-iii) prepared the record, and whether the record was prepared for the purpose of providing legal services. Section 27(1)(b) is clearly not intended to protect privileged information, as that is the purpose of section 27(1)(a) ...

Paragraphs 27(1)(a), (b), and (c) are adjacent but separate compartments, designed to hold different types of information. The Adjudicator relied on Order F2015-31 at paras 73-75 (see F2017-57 at para 110 and F2017-58 at paras 161, 180, 186):

In my view, where the "legal services" or the "advice or other services" that are being provided by a public body's lawyer consist of legal advice, sections 27(1)(b) and 27(1)(c) are not intended to apply to the legal advice itself, nor to the communications made for the purposes of giving it, or the communications subsequently discussing it. Rather, these provisions are meant to cover other kinds of information, having some relationship to that advice, that needs to be freely prepared or exchanged.

In other words, the parts of records that seek, provide or discuss legal advice, and thereby reveal it, themselves constitute the legal advice/service; they cannot sensibly be said to be 'information in relation to a matter involving the provision of legal services (or advice or other services)' within the terms of the latter two provisions. To say, for example, that legal advice prepared by a lawyer relates to a matter

involving the provision (as a service) of that legal advice by that lawyer is to say something grammatically and logically incoherent ...

As well, if the converse were true, if it were the case, for instance, that section 27(1)(b) covered legal advice, or information that reveals legal advice, as one kind of information prepared by a public body or a public body's lawyer in relation to a matter involving the provision of legal services, the protection of solicitor-client privilege for public bodies under section 27(1) (a) would be largely redundant.

EPS contended that the Adjudicator misinterpreted ss. 27(1)(b) and (c). EPS advanced a sort of "matryoshka" or "nesting dolls" interpretation. Information could be covered by solicitor-client privilege under s. 27(1)(a) but also fall under paras (b) or (c) or all three: EPS Brief at paras 169, 179, 181, 189, 203; IPC Brief at para 106.

In my opinion, EPS's interpretation is incorrect. It would mean that a legal opinion (the "information") was "in relation to a matter involving the provision of" a legal opinion (the legal services were to provide a legal opinion).

Further, a virtue of the Adjudicator's interpretation is that it gives a job to each statutory provision, aligning with Professor Sullivan's articulation of the "presumption against tautology" in *The Construction of Statutes* at §8.23:

§8.23 Governing principle. It is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain. Every word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose ... [footnote omitted]

The Adjudicator's interpretation avoids the prospect of solicitor/client privilege doctrine, particularly regarding the continuum of communications, expanding from s. 27(1)(a) and obviating the need for paras (b) and (c), at least respecting communications tied to the provision of legal services.

The IPC also argued, correctly in my view, that the Adjudicator's interpretative approach was consistent with the "presumption of orderly and economical arrangement," which Professor Sullivan described in *The Construction of Statutes* as follows at §8.21:

§8.21 Presumption of orderly and economical arrangement. It is presumed that in preparing the material that is to be enacted into law the legislature seeks an orderly and economical arrangement. Each provision expresses a distinct idea. Related concepts and provisions are grouped together in a meaningful way. The sequencing of words, phrases, clauses and larger units reflects a rational plan.

The Adjudicator's interpretation does not unduly narrow the protection of information arising from the solicitor-client relationship. Paragraph (a) imports solicitor-client privilege doctrine. Any information that should be protected by solicitor-client privilege outside FOIPPA will be protected by s. 27(1)(a) under FOIPPA.

While the Adjudicator's interpretation of the relationship of ss. 27(1)(a)-(c) may not be the only possible interpretation, I do not find that it is an unreasonable interpretation.

[para 197] While the Public Body made passing remarks about how sections 27(1)(b) or (c) operate, it is evident that it premises its argument that it properly withheld any information under them on the notion that the information is subject to solicitor-client privilege. As such, it did not provide these records to me for review. Neither did the Public Body make submissions that describe how any of the information withheld under sections 27(1)(b) or (c) was properly withheld under them. Accordingly, I find that the Public Body has not met the burden of proof to establish that it properly withheld information under them.

[para 198] I will now consider the Public Body's application of section 27(1)(a) to the records at issue, beginning with information withheld on the basis that it is subject to solicitor-client privilege.

Information withheld as subject to solicitor-client privilege

[para 199] The Public Body withheld information from the following pages on the basis that it is subject to solicitor-client privilege:

Pages: 3-10, 67, 70, 88, 90, 94-95, 96-97, 98-99, 117, 144, 145, 146-147, 149, 155, 158, 161-165, 169, 170, 172, 173, 189-199, 213-218, 555-556, and 560-563.

[para 200] In its submissions, the Public Body asserts that solicitor-client privilege applies to pp. 186 to 188 and 557 to 559. Those pages, however, were provided to the Complainant and to me to review. Since they have been released, I do not consider the application of section 27(1)(a) to these pages.

[para 201] I note that the Public Body did not describe how pp. 98 and 99 are subject to solicitor-client privilege. Since there is no description, the standard set in *EPS* (discussed below) has not been met with regard to these records.

[para 202] In the time since the Public Body's initial submissions, the *EPS* decision was released. In light of the restatement of the law surrounding solicitor-client privileged information in *EPS*, I afforded the Public Body the opportunity to update its submissions on this topic. It added some further explanation and argument, while continuing to rely primarily on its earlier material.

[para 203] Justice Renke set out the approach to determining whether information is properly withheld under section 27(1)(a) as matter of solicitor-client privilege in *EPS*. Justice Renke concluded that in order to establish that the privilege is properly applied, a public body must meet the standard that applies to withholding solicitor-client privileged records in civil litigation, as set out in *Canadian Natural Resources Ltd. v ShawCor Ltd.*, 2014 ABCA 289. (*ShawCor*). *EPS*, at para. 74. The following passages from *ShawCor* were highlighted in *EPS* at paras 97 and 98.

At para 36 of *CNRL v ShawCor*, the Court of Appeal wrote that rules 5.6, 5.7, and 5.8

[36] ... [impose] on a party the obligation to number and briefly describe each record that is relevant and material, including those it claims are privileged. In accordance with Schedule 2 of Form 26, those latter records should be set out in separate categories as contemplated therein. A party is entitled to bundle privileged records providing that the bundled record otherwise meets the requirements of Rule 5.7. For records that a party claims are privileged, the party must, in accordance with Rule 5.8, identify the particular grounds of the objection to production for each record in order to assist other parties in assessing the validity of the claimed privilege. That means the party must state the actual privilege being relied upon with respect to that record and describe the record in a way that, without revealing information that is privileged, indicates how the record fits within the claimed privilege. These requirements apply equally to a bundled record over which a party claims privilege ... [emphasis added]

At para 42, the Court of Appeal wrote that

[42] ... Identifying "the grounds" for claiming privilege in relation to each record obliges a party to do two things. First, it must state the actual privilege being relied upon with respect to a particular record (e.g. litigation privilege). Second, it must provide a sufficient description about that record to assist other parties in assessing the validity of the claimed privilege. An objection does not exist in a factual vacuum. It is tied to a specific record. 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. [emphasis added]

And at para 72 the Court of Appeal wrote that

[72] In summary, records where privilege is asserted must now be dealt with individually. Each record must be numbered in a convenient order and briefly described, short of disclosing privileged information. Records may be bundled where privilege is being asserted providing that the bundled record otherwise meets the requirements of Rule 5.7. In accordance with Rule 5.8, a party must also identify the grounds for claiming privilege with respect to each record in order to assist other parties in assessing the validity of the claim. This latter requirement means that, for each record, a party must state the particular privilege being asserted and describe the record in a way, again without revealing information that is privileged, that indicates how the record fits within the claimed privilege. The description of all relevant and material records over which privilege is claimed should be set out in Schedule 2 of Form 26 in the separate categories contemplated therein. [emphasis added]

At para 56, the Court of Appeal emphasized that "that the obligation to provide sufficient information to indicate how a record fits within the claimed privilege does not require a degree of particularity that would itself defeat the privilege." See also *Alberta v Suncor Inc*, 2017 ABCA 221 at paras 46-47.

CNRL v ShawCor, then, sets the standard to be met not only for claiming solicitor-client privilege in civil litigation, but in inquiries before the IPC.

[para 204] In the time between the decision in *ShawCor* and the present, the civil procedure rules referred to in the passages from *ShawCor*, above, were amended. Previously, the standard for describing records in a civil proceeding was set out in rule 5.8 of *Alberta Rules of Court*, Alta Reg 124/2010 (the *Rules of Court*):

5.8 Each record in an affidavit of records that a party objects to produce must be numbered in a convenient order, and the affidavit must identify the grounds for the objection in respect of each record.

[para 205] The standard for describing records was amended in section 6 of the *Alberta Rules of Court Amendment Regulation* (AR 36/2020). Rule 5.8 of the *Rules of Court* now states:

5.8(1) Subject to subrules (3) to (5), for each producible record that a party objects to produce, the affidavit of records must

(a) number the record in a convenient order, and

(b) describe the grounds for the objection to produce the record.

(2) For the purposes of this rule, the description in the affidavit of records of any record the party objects to produce and the grounds for the objection must be sufficient to enable a court reviewing the records to confirm that each record is disclosed in the affidavit without undermining or proving the privilege that is claimed in respect of the records.

[para 206] Despite the change to rule 5.8, I believe that standard set in *ShawCor* remains applicable to my review of how the Public Body applied solicitor-client privilege to the records at issue.

[para 207] The substance of the previous standard in rule 5.8 is still contained in rule 5.8(1)(b). It is also arguable that the standard was raised in the transition from 5.8 to 5.8(1)(b). Whereas rule 5.8 only required identification of the grounds for objection, rule 5.8(1)(b) requires a description of the grounds for the objection.

[para 208] In *EPS*, Justice Renke described the criteria for recognizing solicitor-client privilege at para. 66:

The criteria for recognizing solicitor-client privilege were confirmed by Justice Major in *Pritchard v Ontario (Human Rights Commission)*, 2004 SCC 31 at para 15:

15 Dickson J. outlined the required criteria to establish solicitor-client privilege in *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 S.C.R. 821, at p. 837, as: “(i) a communication between solicitor and client; (ii) which entails the seeking or giving of legal advice; and (iii) which is intended to be confidential by the parties”. Though at one time restricted to communications exchanged in the course of

litigation, the privilege has been extended to cover any consultation for legal advice, whether litigious or not

[para 209] At para. 103 of *EPS*, Justice Renke summed up how considering the description of a record relates to determining whether a public body has established, on the balance of probabilities, that an exception to disclosure under section 27(1)(a) applies.

The clear direction from the Supreme Court is that compliance with provincial civil litigation standards for solicitor-client privilege claims suffices to support the exception from disclosure under FOIPPA. The IPC's statutory mandate must be interpreted in light of the Supreme Court's directions. The IPC has an obligation to review and a public body has an obligation to prove the exception on the balance of probabilities. But if the public body claims solicitor-client privilege in accordance with provincial civil litigation standards, the exception is thereby established on the balance of probabilities. It is likely that the privilege is made out, in the absence of evidence to the contrary. As the Supreme Court put this point in *Blood Tribe (SCC)* at para 16,

[16] It is undisputed that the employer in this case properly asserted by affidavit its solicitor-client privilege. At that stage there was "a presumption of fact, albeit a rebuttable one, to the effect that all communications between client and lawyer and the information they shared would be considered prima facie confidential in nature" (*Foster Wheeler*, at para. 42). There was no cross-examination on the employer's affidavit. There was no basis in fact put forward by the Privacy Commissioner to show that the privilege was not properly claimed. [emphasis added]

[para 210] My understanding, then, in light of *EPS*, *ShawCor*, and rule 5.8, is that I am to consider whether the description of a record enables me to recognize that the elements of solicitor-client privilege set out in *Solosky* are present. At that point, the Public Body will have satisfied the *ShawCor* standard and established a rebuttable presumption that the records are subject to solicitor-client privilege. Absent evidence to rebut the presumption, I must find that the records were properly withheld under section 27(1)(a). Where the standard is not met, in the absence of other evidence that would establish that the records are subject to solicitor-client privilege, I must find that the records were not properly withheld under section 27(1)(a).

[para 211] When applying the *ShawCor* standard, I also consider the following passage from *ShawCor*, quoted at para. 97 in *EPS*, which appear in this Order at para. 203:

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.

[para 212] The circumstances at work when the *ShawCor* standard is applied in a review of a public body's response to an access request under the Act differ significantly from its application in Court. Unlike the Court, the Information and Privacy Commissioner is unable to compel production of records over which solicitor-client privilege is claimed. Unless a public body voluntarily discloses the records to me, I cannot review them.

[para 213] The Public Body, which carries the burden at inquiry of establishing that it properly applied section 27(1)(a), relies on its descriptions to uphold its application of section 27(1)(a) in response to the access request. Unless I see some basis to doubt the accuracy of a description, I have no basis to conclude that it is inaccurate or that it represents anything other than a fitting description of how the Public Body classified records as solicitor-client privileged in response to an access request; whether or not it meets the *ShawCor* standard. In the event that the *ShawCor* standard is not met, unlike the Court, I have no recourse to review the records to determine whether they speak for themselves sufficiently to establish that solicitor-client privilege applies, in spite of a description that fails to establish the same.

[para 214] Justice Renke discussed these circumstances in *EPS* at paras. 104 to 107:

Does this approach mean that the IPC must simply accept a public body's claims of privilege? Is the IPC left with just "trust me" or with "taking the word" of public bodies? Does this approach involve a sort of improper delegation of the IPC's authority to public bodies or their counsel?

In part, the response is that the IPC is not left with just "trust me." The IPC has the detail respecting a privilege claim that would suffice for a court. If the *CNRL v ShawCor* standards are not followed, the IPC (like a court) would be justified in demanding more information. And again, if there is evidence that the privilege claim is not founded, the IPC could require further information.

In part, the response is that the IPC's posture respecting solicitor-client privilege should be appropriately balanced. The IPC is not only an "access to information" Commissioner but a "privacy" Commissioner. FOIPPA serves not only "freedom of information" but "protection of privacy" purposes, as the title of the Act suggests and the text of the Act dictates. Chief Justice McLachlin and Justice Abella began *Ontario Public Safety and Security* with the following reminder:

[1] Access to information in the hands of public institutions can increase transparency in government, contribute to an informed public, and enhance an open and democratic society. Some information in the hands of those institutions is, however, entitled to protection in order to prevent the impairment of those very principles and promote good governance. [emphasis added]

The IPC claimed that “[t]he importance of FOIPP to maintaining democracy cannot be overstated. Access to information under government control is meant to facilitate democracy” IPC Brief at para 67. The importance of *FOIPPA* can, in fact, be overstated. Justice Côté wrote in *University of Calgary* at para 26 that, in contrast, “[t]he importance of solicitor-client privilege to our justice system cannot be overstated.”

[para 215] In light of these circumstances, when information withheld under section 27(1)(a) on the basis that it is subject to solicitor-client privilege is reviewed, more than the “brief description” of a record, as mentioned in *ShawCor*, may be required from a public body. The description should be sufficiently clear and detailed to ensure that I am able to determine whether the three criteria from *Solosky* are present with regard to a

record, and that I am not left to merely “take the word” of the Public Body that any of those criteria apply to a given record. Where records are not provided for review, the *ShawCor* standard is the reasoned balancing point between fulfilling the Complainant’s access rights and protecting the privacy of solicitor-client privileged records, and has already taken into account the disparate importance assigned to each purpose. I have no room to derogate from the standard in service of either of them.

[para 216] I now consider the Public Body’s submission on this matter.

[para 217] The Public Body made its initial submissions on this issue *in camera*. Schedule 1 to the *in camera* affidavit of the Public Body’s Information and Privacy Advisor individually addresses each document where information was withheld as subject to solicitor-client privilege. Many of the records were also described in other parts of the Public Body’s submissions, in the course of addressing its basis for withholding the same information under other sections of the Act. For each page, I have considered the total descriptions available to me.²

[para 218] In response to the opportunity to provide further submissions in light of the *EPS* decision, the Public Body provided a further, general description of the records to which it applied solicitor-client privilege:

...without waiving the University’s privilege, the records can be described or summarized as follows:

- i. emails from University employees or administrators to in-house University Legal Counsel in which information is provided to in-house University Legal Counsel in order to provide factual background for the advice;
- ii. emails from in-house University Legal Counsel in which legal advice is provided;
- iii. emails between University employees or administrators in which the advice of in-house University Legal Counsel is reproduced and discussed; and
- iv. notes to file which disclose the information that was provided to in-house University Legal Counsel in order to provide factual background for legal advice, the legal advice or discussion of the legal advice.

[para 219] I do not find that the above general description of the records assists the Public Body in meeting the *ShawCor* standard applicable when determining whether the records are properly described as being subject to solicitor-client privilege. As set out in the passage from para. 72 of *ShawCor* (quoted in *EPS*) above, documents must be described individually, or properly bundled. The broad description of the types of documents, and lack of specificity about which documents fit each description, falls short

² Normally, and in future cases, the description of a record should be located in the affidavit describing records subject to solicitor-client privilege as required by *ShawCor*, and Rule 5.8. However, owing to the restatement of the law in *EPS* in the time between when the Public Body’s earlier submissions were received, and issuance of this Order, descriptions of records are understandably fragmented.

of that requirement. I continue below to consider the individual descriptions in the *in camera* affidavit of the Information and Privacy Advisor, and elsewhere in the Public Body's submissions.

[para 220] The individual descriptions in Schedule 1 of the Information and Privacy Advisor's *in camera* affidavit all reference communication with legal counsel which entail seeking or receiving legal advice. Based upon those descriptions, the records that do not directly involve seeking and obtaining legal advice appear to fall upon a continuum of communication related to those purposes, sufficient to bring them within that ambit as described in Order F2006-011 at para. 10, and as elaborated at paras. 70 to 72 in *EPS*.

[para 221] However, none of the individual descriptions of documents identified as solicitor-client privileged mentions whether they were intended to be kept confidential. The only assertion of confidentiality comes from the shared affidavit of the Information and Privacy Advisor. The Information and Privacy Advisor states,

These records consist of confidential communications between University employees and administrators, and in-house University Legal Counsel. The communications disclose facts in relation to which confidential legal advice was sought, and provide factual background for the advice...The records reference the giving and seeking of legal advice and were intended to be confidential by the parties.

[para 222] I have considered whether the general statement that the records withheld as solicitor-client privileged are confidential meets the standard for a description set out in *ShawCor*.

[para 223] In light of the central importance of the *ShawCor* standard to performing my review function here, I find that the general assertion of confidentiality fails to meet the *ShawCor* standard.

[para 224] The standard set in *ShawCor* requires a description of how a solicitor-client privilege applies to *each* record, or properly bundled records, not how any of the criteria from *Solosky* may apply to records generally. Further, my review function requires that I consider each instance of the application of section 27(1)(a) on its own. This approach has not only been taken in numerous orders of this Office but also in the Office of the Information and Privacy Commissioner in British Columbia. The point is stated at para. 64 of Order 02-01 from that office:

In Order 01-10, I considered a claim of legal professional privilege by the University of Victoria with respect to a variety of records relating to the work of in-house and external legal counsel to the University and several of its staff. Although the University of Victoria does not have the same functions or duties as the Law Society, the affairs and operations of a university present complications of their own. Order 01-10 is an example of how the common law principles of solicitor privilege must be applied by examining each record with an awareness of the particular relationships and obligations involved. I took a similar approach to that analysis in relation to the College in Order 00-08 and I propose to do the same here with respect to the Law Society.

[para 225] By describing whether each of the three requirements of solicitor-client privilege described in *Solosky* are present with respect to an individual document, a public body demonstrates that when responding to an access request, it turned its mind to the substantive questions about whether the privilege applies. An individual description of a document thus provides a basis for me to conclude that Public Body properly regarded the document as “subject to” solicitor-client privilege, as required by section 27(1)(a) when responding to an access request. Regarding confidentiality, the standard from *Solosky* is that the parties to the communication intended it be confidential.

[para 226] The Information and Privacy Advisor did not state how, or on what basis, she determined that each party intended their communications to be confidential. Neither are all of the parties to each record identified. I can glean from the general statement of confidentiality that the Information and Privacy Advisor regarded these types of communications as confidential when responding to the access request, but I have not been told whether confidentiality is a fitting description of any particular information withheld.

[para 227] I have also considered whether the records described by the Public Body can be assumed to be confidential on the basis that they were communications that reference obtaining or seeking legal advice from legal counsel, in particular circumstances. Numerous orders of this office have applied such an assumption. In some cases the presumption was applied after the Adjudicator was able to review the records. See, for example, Order F2004-003 at para. 30,

With regard to the criterion of confidentiality, there is no express mention of confidentiality in most of the communications. However, it is implicit in the circumstances under and purposes for which the legal advice was being sought or given in this case that the communications were intended to be confidential. To be useful, legal advice about what action to take in one’s dealings with someone who is or may in future be on the other side of a legal dispute, relative to the subject matter of the existing or potential dispute, must necessarily be sought and given in a confidential manner.

[para 228] The same principle was applied in Order F2007-008 at para. 14,

I also accept that the communications were intended to be confidential. This is indicated by express statements of an intention of confidentiality on many of the records. As well, I agree with the Public Body that confidentiality in this case is implicit from the nature of the documents themselves. In Order F2004-003, Adjudicator Bell said (at para 30):

... it is implicit in the circumstances under and purposes for which the legal advice was being sought or given in this case that the communications were intended to be confidential.

[para 229] In Order F2013-42, the Adjudicator did not have the benefit of reviewing information or records withheld pursuant to solicitor-client privilege, but found that a presumption of confidentiality could apply based upon a description of records, an expectation that communications with legal counsel would be kept confidential, and the presence of a confidentiality disclaimer on the some of the records. In Order F2013-42,

the Adjudicator described the information contained in the Public Body's descriptions at para. 15:

The Public Body argues that the information that was severed from the responsive records was subject to solicitor-client privilege. The Public Body opted to use this Office's Solicitor-Client Privilege Adjudication Protocol (the Protocol), so I have not been provided with unredacted versions of the responsive records, only with copies of the Solicitor-Client Privilege Adjudication Protocol record form which asks for details of the records such as:

- Who the client is and if they are a party to this inquiry;
- If the record involves giving or seeking legal advice between the client and lawyer;
- The date of the record;
- The type of record;
- The author of the record;
- To whom the record is addressed;
- If the record was copied to anyone;
- If there were attachments;
- How long the record is
- If copies of the record were forwarded

[para 230] With regard to confidentiality, the Adjudicator stated, at paras. 25 and 26,

Confidentiality can be express or implied given the nature of the records. The Public Body argued that the confidentiality was both express (the disclaimer at the bottom of the in-house General Counsel's e-mail) and implied (because employees of the Public Body expected that communications with in-house General Counsel would be kept confidential).

I find have found above that legal advice was sought or given by in-house General Counsel. Therefore, I find that the expectation of confidentiality relative to the records at issue was implicit (Order F2004-003 at para 30).

[para 231] I also note that in Order F2013-42, the Adjudicator was considering whether the records were substantially subject to solicitor-client privilege, according to the test in *Solosky*. The Adjudicator was not considering the *ShawCor* standard and the adequacy of a public body's descriptions in light of it. As described, the standard requires description of individual or properly bundled documents.

[para 232] A presumption of confidentiality was found more recently in Order F2020-R-01 at para. 29. There, the Adjudicator stated at paras. 27 to 29,

In its initial submission to the reconsideration, the Public Body states (at para. 11):

pages 182-187 consist of two separate letters from JSG; the first letter is to the Public Body with proposed approaches regarding arbitration; the second is to opposing counsel providing information and alternatives to opposing counsel's clients.

In Order F2017-54, the adjudicator described these pages in a slightly different way (at para. 25, emphasis mine):

Records 180 – 181 are comprised of a letter from one member of the Executive Council to another member of the Executive Council. Records 182 – 185 consist of a legal opinion written by a lawyer for Alberta Justice and Solicitor General and addressed to the Public Body, and records 186 – 187 consist of a draft letter to be sent by legal counsel to parties in litigation. The legal opinion and the draft letter are attachments to the correspondence appearing on records 180 – 181.

I agree with the above characterization. Pages 182-185 clearly consist of correspondence between counsel and client, the purpose of which is to provide legal advice on a matter. The confidential nature of such advice can be presumed, and there is nothing in the records or otherwise before me that would rebut the presumption of confidence.

[para 233] The Adjudicator in Order F2020-R-01 had the benefit of being able to review the information described as solicitor-client privileged, as well as descriptions that identified the parties to each record in question.

[para 234] There are three records for which I find that the evidence supports a finding of confidentiality, even if it is not mentioned in an individual description of the record in the Information and Privacy Advisor's *in camera* affidavit.

[para 235] The Public Body withheld little information on the basis of solicitor-client privilege from pages 172, 173, and 561; the balance of the records were disclosed to the Complainant and me. Each page is an e-mail and contains language expressly stating that it was sent in confidence. As was found in Order F2013-42, I find that the expression of confidence, in conjunction with the description of the record, is sufficient to establish that these pages are subject to solicitor-client privilege.

[para 236] Regarding the remainder of the records, the circumstances here differ from those in the above orders. Though not strictly necessary to finding confidentiality, I am not aided by being able to review the records themselves. Further, the descriptions I have been provided do not indicate who all of the parties to each record are.

[para 237] The parties are described in general terms in the shared affidavit of the Information and Privacy Advisor as "University employees and administrators, and in-house University Legal Counsel." Where records are described as e-mails, I have no description of who all of the recipients are. Some records indicate that an e-mail was sent to in-house Legal Counsel, but not whether they were copied elsewhere. Other descriptions indicate that in-house Legal Counsel sent an e-mail, but to whom is not mentioned. Still other records are described not as communications, but as a "note to file"; however, to what file, or whose file, is not specified, nor is who may have access to the file, or who prepared the note.

[para 238] In light of the above, I find that the Public Body's individual descriptions of the records in this case do not enable me to conclude that the information withheld was

intended to be confidential, or provide a sufficient evidentiary basis to support a presumption of confidentiality. If I were to infer confidentiality, I would be doing so for each party, to each record at issue, where, on a record-by-record basis, they are numerous and unidentified. Faced with such uncertain and undefined circumstances, I have no basis upon which to ground a presumption of confidentiality for any particular record or for them as a whole. I would be derogating from the *ShawCor* standard as I have found it applies in the circumstances of this case if I assumed confidentiality for any of them. In short, more than the brief description of each record given by the Public Body was required.

[para 239] This is not to state that information stating the identities of parties to a communication or the scope of its distribution will always be required to meet the *ShawCor* standard. My findings here go to the point that in the absence of such information, I cannot presume confidentiality in this case.

Exercise of Discretion

[para 240] Unlike other discretionary exceptions to disclosure, when information is withheld on the basis that it is subject to solicitor-client privilege, there is no further inquiry into whether a public body properly exercised its discretion to do so. (*EPS* at para. 74) Accordingly, I do not consider the Public Body's exercise of discretion to withhold information on pp. 172, 173, and 561 on that basis.

Conclusion on information withheld on the basis that it is subject to solicitor-client privilege

[para 241] Based on the forgoing discussion, I find that the Public Body has established that information withheld from pages 172, 173, and 561 is properly withheld under section 27(1)(a) on the basis that it is subject to solicitor-client privilege. The Public Body has failed to establish that the other information withheld under section 27(1)(a) on that basis has been properly withheld.

Information withheld as subject to case-by-case privilege

[para 242] In its submissions, the Public Body refers to this privilege as "common law privilege." However, the term "common law privilege" can refer to other types of privilege that are not at issue here. What the Public Body appears to be asserting is case-by-case privilege. The distinction between common-law privilege and case-by-case privilege was elucidated in *R. v. Gruenke*, [1991] 3 SCR 263 (*Gruenke*) at para. 26:

Before delving into an analysis of the issues raised by this appeal, I think it is important to clarify the terminology being used in this case. The parties have tended to distinguish between two categories: a "blanket", *prima facie*, common law, or "class" privilege on the one hand, and a "case-by-case" privilege on the other. The first four terms are used to refer to a privilege which was recognized at common law and one for which there is a *prima facie* presumption of inadmissibility (once it has been established that the relationship fits within the class) unless the party urging admission can show why the communications should not be privileged (i.e.,

why they should be admitted into evidence as an exception to the general rule). Such communications are excluded not because the evidence is not relevant, but rather because, there are overriding policy reasons to exclude this relevant evidence. Solicitor-client communications appear to fall within this first category (see: *Geffen v. Goodman Estate*, 1991 CanLII 69 (SCC), [1991] 2 S.C.R. 353 and *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 S.C.R. 821). The term "case-by-case" privilege is used to refer to communications for which there is a *prima facie* assumption that they are not privileged (i.e., are admissible). The case-by-case analysis has generally involved an application of the "Wigmore test" (see above), which is a set of criteria for determining whether communications should be privileged (and therefore not admitted) in particular cases. In other words, the case-by-case analysis requires that the policy reasons for excluding otherwise relevant evidence be weighed in each particular case.

[para 243] The Public Body argues that privilege arises upon application of the "Wigmore test", and so I refer to the privilege that it is asserting as case-by-case privilege rather than common law privilege.

[para 244] The Public Body withheld information from the following pages on the basis that it is subject to case-by-case privilege:

Pages: 15, 16, 17, 64, 67, 69, 71-73, 74-76, 77, 78-80, 81, 82-85, 87, 89, 91-92, 93, 100-101, 108-109, 110-111, 114, 115, 119-124, 128, 130-131, 142-143, 150, 151, 200-202, 211, 224-227, 251, 252, 253, 255, 285-288, 290-291, 313-314, 318-320, 321, 391-393, 433, 450, 462, 465, 468, 472-473, 491, 510, 511, 515, 518-521, 533, 534, 552-553, 564-566, 572-573, 585, 591, 593, 597-598, 599, 619-31, 632-637, 638-639, and 644-645.

[para 245] In support of its position that case-by-case privilege applies to certain information, the Public Body relies on Order 96-020. In Order 96-020 the former Commissioner held that information could be withheld under section 26(1)(a) [now section 27(1)(a)], on a case-by case-basis, when the four Wigmore criteria are met. The former Commissioner relied on the decision of the Supreme Court of Canada in *Slavutych v. Baker Slavutych v. Baker*, [1976] 1 S.C.R. 254 (*Slavutych*) for his conclusion. The Wigmore criteria were set out in *Slavutych* at p. 260:

- (1) The communications must originate in a confidence that they will not be disclosed.
- (2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.
- (3) The relation must be one which in the opinion of the community ought to be sedulously fostered.
- (4) The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.

[para 246] In the context of an access request, the former Commissioner applied a modified fourth criterion. In Order 96-020, he stated at para. 107:

As to Wigmore's fourth criterion, it must be kept in mind that a request for access to a record and an inquiry under the *Freedom of Information and Protection of Privacy Act* is not litigation. Consequently, under Wigmore's fourth criterion, the balance I need to strike is that the injury to the relationship from the disclosure of the information must be greater than an applicant's right of access to the information under section 6(1) of the Act. That right itself is subject to the exceptions under the Act. The purpose for which an applicant wants access to information is not a relevant consideration under the Act.

[para 247] The Adjudicator previously assigned to this inquiry asked the parties for comments on the impact of Order F2018-14 on this matter. In Order F2018-14, the Adjudicator considered the possible application of public interest privilege to information that was the subject of an access request. The public body's argument with respect to public interest privilege was stated at para. 20:

The Public Body argues that "public interest privilege" applies to the information withheld on pages 23-32 of the records. It states (at para. 133 of its initial submission):

Public interest privilege applies if the public interest in maintaining the confidentiality of certain information outweighs the public interest in disclosing the information for the administration of justice.

[para 248] After finding that the public body in Order F2018-14 had not established that the privilege applied, the Adjudicator stated the following at paras. 25 to 26:

I am also of the view that the Legislature has codified the balance between the public interest in disclosure and the public interest in withholding information in the custody and control of public bodies, by enacting the FOIP Act. The FOIP Act is based on a balance between the public interest in disclosure versus the public interest in confidentiality of information. Section 2(a) of the Act states:

2 The purposes of this Act are

(a) to allow any person a right of access to the records in the custody or under the control of a public body subject to limited and specific exceptions as set out in this Act,

The Legislature created an access-to-information scheme in which the default position is to disclose public body information, subject to the limited exceptions laid out in the Act. If an exception to disclosure does not apply, then the default position must apply. In other words, the balancing between the public interest in disclosure versus confidentiality has already been undertaken by the Legislature in enacting the FOIP Act; therefore, substituting my own case-by-case balance, without authority to do so, would thwart the intention of the Legislature.

[para 249] The Public Body provided comments about the above passage; the Complainant did not.

[para 250] In its comments on Order F2018-14, the Public Body agreed, as do I, with the Adjudicator in Order F2018-14, that the Act codifies the balance between the public interest in disclosure and the public interest in withholding information.

[para 251] The Public Body disagrees with Order F2018-14 that it would not be appropriate for the Adjudicator to carry out their own balancing of interests, such as those that the Wigmore test requires. The Public Body notes, and I agree, that the words “any type of legal privilege” include case-by-case privilege.

[para 252] While the phrase “any type of legal privilege” includes a case-by-case privilege, information can only be withheld under section 27(1)(a) when information is “subject to” the privilege. Whether or not information is subject to a privilege in response to an access request requires consideration of operation of the privilege being asserted. Each privilege has its own parameters, which may be met in the context of an access request or not. The wording of section 27(1)(a) does not expand or contract the manner in which a legal privilege operates. Accordingly, I consider how case-by-case privilege operates and whether any information is subject to it in this case.

[para 253] The first question raised when a case-by-case privilege is asserted in response to an access request, is whether the privilege exists with regard to a particular relationship in a given case. This point has been made by the Supreme Court of Canada in numerous cases.

[para 254] The Supreme Court stated, in *Moysa v Alberta (Labour Relations Board)*, [1989] SCJ No 54 at para. 12:

The appellant argued that the four criteria cited by Wigmore and referred to with approval by Spence J. in *Slavutych v. Baker*, supra, at p. 260, provide a guide for the operation of a privilege against the disclosure of communications. The Board examined this submission and held that the injury resulting from disclosure was not greater than the benefit and that the evidence was relevant, proper, and necessary to administer the Labour Relations Act. As well, the Board held that an element of confidence was not part of the continuing relationship between the appellant and the managers at the Hudson Bay Company store in St. Albert. Accordingly, the appellant failed to satisfy several of the necessary criteria propounded by Wigmore. Therefore, even if a qualified form of privilege exists, the appellant's claim on the facts of this case must fail. The Board did not err in dismissing the claim of privilege on this ground. [underlining mine]

[para 255] The matter was mentioned twice in *M. (A.) v. Ryan*, [1997] 1 SCR 157 (*Ryan*); first at para. 16:

Where the person objecting to production is a party to the action and privilege is raised, there is no need for a supplementary discretion under Rule 26(11), since in considering whether privilege exists on a case-by-case basis, the judge must take into account the interest of the person being asked to disclose. [underlining mine]

Then, again at para. 31:

These criteria, applied to the case at bar, demonstrate a compelling interest in protecting the communications at issue from disclosure. More, however, is required to establish privilege. For privilege to exist, it must be shown that the benefit that inures from privilege, however great it may seem, in fact outweighs the interest in the correct disposal of the litigation. [underlining mine]

[para 256] More recently, the Supreme Court reiterated the point in *Lizotte v. Aviva Insurance Company of Canada*, [2016] 2 S.C.R. 521 at para. 32.

[para 257] In Order 96-020, the former Commissioner understood that the Wigmore test create a privilege where there was none before. He stated at para. 102:

In the alternative, I will now consider whether a case-by-case privilege exists under the Wigmore criteria...

[para 258] In Order P2006-002, the Adjudicator reiterated the point at para. 12:

A “class privilege” is a privilege already recognized by the common law for a certain types of information. Solicitor-client privilege is an example of a “class privilege” recognized by the common law for solicitor-client communications. A “case-by-case privilege” refers to communications for which there is usually a prima facie assumption that they are not privileged. However, a privilege is found by a decision-maker to exist for information in that particular case. [underlining mine]

[para 259] Once a case-by-case privilege is found to exist, then the question of whether information withheld on the basis that it is subject to the privilege, arises. Determining whether any information is “subject to” the privilege is the exercise of reviewing the withheld information to see if it falls within the parameters of the case-by-case privilege; i.e. is it a confidential communication that took place within the relationship identified as one that ought to be sedulously fostered?

[para 260] The question of the existence of a case-by-case privilege sets consideration of it under section 27(1)(a) apart from consideration of permanently recognized privileges. For example, when information is withheld under section 27(1)(a) on the basis that it is subject to solicitor-client privilege, there is no question about the parameters of solicitor-client privilege. The only work for a public body to do in responding to an access request is to determine whether the withheld information is subject to solicitor-client privilege by considering whether it falls within its already established parameters.

[para 261] In respect of the need to establish that a case-by-case privilege exists before information can be determined to be subject to it, I asked the parties a series of questions regarding the nature of case-by-case privilege. The Public Body provided answers, but the Complainant did not. The Public Body asserted that many questions did not need to be answered in this inquiry, an assertion with which, in the end, I agree. There is one question, which the Public Body did answer, that warrants some discussion here:

Does the Respondent have the legal authority to determine whether the privilege exists and applies to its own records in response to an access request? If so, under what statute, or from what other source, is the authority derived?

[para 262] As noted above a case-by-case privilege is found by a decision-maker to exist. When responding to an access request, a public body is the first order decision-maker. As the decision-maker, the question arises as to whether a public body has the authority to determine that a case-by-case privilege exists in a given case. It is settled law that a public body created by statute only has the powers clearly granted to it by legislation.

[para 263] In response to my question, the Public Body argued that it had authority under the Act to determine that the privilege exists. It did not point to any specific section of the Act, however it seems to me that the Public Body must be relying on section 27(1)(a) for such authority. No other section of the Act seems to apply to consideration of the Public Body's authority.

[para 264] There is no question that section 27(1)(a) permits a public body to withhold information that is "subject to" a legal privilege. That authority is clearly present within its wording. It is not clear to me that the section empowers a public body to create a privilege for information to become subject to, under the Wigmore criteria. I consider that in Order 96-020, the Former Commissioner found that he had authority to consider the matter under his power to determine all questions of fact and law in section 69(1) of the Act, but there is no similar grant of power to a public body.

[para 265] I further consider the comments of the Adjudicator in Order F2018-14 regarding the codification of interests embodied by the Act. It seems to me that having balanced interests in disclosure versus privacy already in the Act, it is a strange result that section 27(1)(a) would, by providing authority to a public body to determine the existence of a case-by-case privilege and withhold information subject to it, effectively leave the balancing of interests - as the fourth Wigmore criterion requires - in the hands of any public body faced with an access request. It is similarly strange, and in my view highly unlikely, that any public body would be placed in the role of arbiter of whether "the community" holds the opinion that a particular relationship ought to be sedulously fostered.

[para 266] I am also cognizant that, as noted by the Public Body, numerous orders of this office, in addition to Order 96-020, have considered the application of the Wigmore criteria under section 27(1)(a) without concern for a public body's authority. See, for example, Orders 2000-019, 2000-029, and 2000-032.

[para 267] However, I do not need to resolve the issue of the Public Body's authority in this inquiry. Upon review of the information withheld on the basis that it is subject to a case-by-case privilege, it is evident that the Public Body had no basis to assert that the Wigmore criteria could support the creation of a privilege to begin with.

[para 268] The Wigmore criteria concern the possibility of privilege arising in the context of a particular relationship. Without a relationship at stake, the criteria are irrelevant to the question of whether there exists a privilege in regard to any communication.

[para 269] In the present case, the Public Body did not posit such a relationship. In its submissions on case-by-case privilege, it describes its view that the HIAR program is of central importance to it and highlights its belief that confidentiality is important to the program, but the fact remains that the program is part of the Public Body itself. It is not another entity with which the Public Body has a relationship. I also observe that, with regard to the third Wigmore criterion, the Public Body asserts that it is the confidentiality of communications that should be fostered, rather than any relationship the foundation of which rests on confidentiality.

[para 270] The Public Body did reference the event where the Reporter provided information to HIAR in its submission on this section. For the same reasons give in discussion under **Issue E**, my reasons relating to the Reporter under this issue are provided to the Public Body in the **Appendix**. For the reasons in the **Appendix**, I find that no information concerning the Reporter is subject to case-by-case privilege. Such information should not have been withheld under section 27(1)(a).

[para 271] Though not expressly argued by the Public Body, I have also considered whether its relationship to its own employees as private individuals is engaged here. I find that it is not. I note that, at one point, the Public Body references an employment “relationship” between itself and the Complainant; however, it has not withheld communications between itself and the Complainant on the grounds of case-by-case privilege. Rather, it has withheld communications between its other employees. Further, since she is party to her own communications with the Public Body, records of such communications could not be subject to any case-by-case privilege vis-à-vis the Complainant.

[para 272] In its shared initial submission, the Public Body summarizes the information withheld on this basis as follows:

139. The remainder of the records [those not withheld as a matter of solicitor-client privilege] withheld pursuant to common law privilege under section 27 can broadly speaking be categorized generally as relating to two types of communications: (1) communications arising out of or dealing with the HIAR Program; and (2) communications regarding the management of [the Complainant’s] employment relationship with the University.

140. The issues raised with respect to the confidentiality of discussions regarding the application of section 24 of the FQIPP Act to the Responsive Records are also relevant to the inquiry under section 27.

141. These records contain the substance of information exchanged between University

representatives that was intended to be part of confidential communications, discussions, deliberations, and the development of recommendations regarding several issues that had arisen in [the Complainant's] employment relationship with the University, including: issues that arose from the Article 18 Complaint filed by [the Complainant] against her supervisor, her Use/Disclosure Complaint, her Access Request, the behaviours that she had exhibited in the workplace that had given rise to concerns, and the report made that [the Complainant] may pose a risk of harm to herself or other members of the University community, thus resulting in a HIAR Case Team assessment process. As noted above, the discussions involved individuals who are employed in Human Resources, the HIAR Case Team, the Office of Safe Disclosure and Human Rights, University Protective Services, the Organizational Health and Effectiveness Unit, and/or with the Faculty which employed [the Complainant].

[brackets mine]

[para 273] After reviewing the withheld information, I agree with the above description. The records are those of Public Body employees, (University representatives to use the Public Body's term), engaged in the issues associated with, and management of, the Complainant's employment. It is evident that when these employees made the communications that the Public Body withheld, they were acting in their employment roles, or at the behest of the Public Body, as employees. The whole handling of the issues related to the Complainant's employment was simply the Public Body carrying on its own activities. The Public Body is the only entity engaged; there is no one else to with whom to have a relationship.

[para 274] What the Public Body has essentially argued is that because a certain coterie of its employees engage in activities of the Public Body, the details of which it wishes to remain confidential, a case-by-case privilege can be found to exist under the Wigmore criteria. The Wigmore criteria contemplate no such thing, and as a result, the Public Body had no basis to assert a privilege arising from them in response to the access request, or withhold any information on the basis that it was subject to such a privilege.

[para 275] Accordingly, I find that the Public Body has improperly withheld information under section 27(1)(a) on the basis that it is subject to a case-by-case privilege.

Issue J: Does section 16(1) of the Act (disclosure harmful to business interests) apply to the information in the records?

[para 276] The Public Body applied section 16 to three pages of records: 597, 598, and 599. The Public Body asserts that it is required to withhold information on these pages under section 16(1)(c)(iv). In the Public Body's letter to the Complainant providing records from the third release in response to the access request, it quotes section 16(1)(c)(iv) as follows:

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

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

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

[para 277] However, section 16(1)(c)(iv) does not operate on its own. It operates in conjunction with the rest of section 16(1). Section 16(1) reads 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

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

[underlining mine]

[para 278] The use of the conjunctive term “and” at the end of section 16(1)(b) indicates that section 16(1) requires information to be withheld only when the terms of sections 16(1)(a), (b), and (c), are all met.

[para 279] The first requirement of section 16(1) is that the information at hand must be third party information, as specified by section 16(1)(a). “Third party” is defined in section 1(r):

(r) “third party” means a person, a group of persons or an organization other than an applicant or a public body;

[para 280] In its *in camera* submission³, the Public Body argues that one of its employees is a third party for the purposes of section 16(1)(a). It relies on Order 2000-003 to support its position. In that Order, former Commissioner Clark found that an individual employee could be a third party for the purposes of section 16(1)(a). At the time of that Order, section 16(1)(a)(ii) was numbered 15(1)(a)(ii). He stated, at paras. 105 and 106:

Based on the definition of “third party”, the University cannot be a third party because it is a public body. Therefore, there cannot be labour relations information of the University for the purposes of section 15(1)(a)(ii).

However, the individual management employee who was employed by the University is not a public body and can therefore be a third party for the purposes of section 15(1)(a)(ii), even though that individual was represented by the University in the grievances. The Record contains and would reveal labour relations information of the individual management employee against whom grievances were filed.

[para 281] The withheld information in the records relates to the process of resolving a complaint brought under the collective bargaining agreement that governed the relationship between the Complainant and the Public Body. The information is labour relations information, as that term has been defined. See Order 2000-003 at paras. 96 to 103. The requirement under section 16(1)(a) is met.

[para 282] I find that the requirement in section 16(1)(b) is also met. The records contain information that was supplied by the third party employee, relating to resolution of the complaint under the collective bargaining agreement. The collective bargaining agreement specifies, “All persons involved a complaint will respect the confidentiality of the complaint and information exchanged through the complaint process.”

[para 283] The Public Body’s *in camera* submission on this issue includes an affidavit sworn by the employee who supplied the information. The employee swears that they provided the information in confidence, and that it was meant to be revealed only if the dispute resolution process discussed in the information came to fruition. The employee was concerned that if the information were to be revealed outside of that process, it would create a negative inference, in the minds of others, relevant to the complaint. I am satisfied that the information was supplied in confidence.

[para 284] With respect to the requirement under section 16(1)(c), the Public Body states that the circumstances satisfy section 16(1)(c)(iv). The employee supplied the information to the Human Resources Consultant, who passed it to the Labour Relations Officer. Since disclosing this information to the Complainant will reveal it, I find that section 16(1)(c)(iv) is met.

[para 285] I find that the Public Body correctly applied section 16(1) to the information in the records. Section 16(1) requires it to be withheld.

³ See my discussion of the handling of *in camera* information at paras. 20 to 26 of this Order.

Issue K: Did the Public Body correctly identify non-responsive records?

[para 286] After reviewing the records and the Public Body's affidavit of records, I have determined that the Public Body redacted information from the following pages on the basis that it is non-responsive:

Pages: 102, 104, 105, 107, 274, 275, 480-486, 492-499, 619, 624-627, 649, and 717.

[para 287] The Public Body also initially withheld information as non-responsive on the following pages but no longer withholds information from them on that basis.

Pages: 64-66, 67, 68-70, 491, 529-532, 534, 547-551, 552-554, 701, and 702.

[para 288] The Public Body's rationale for classifying information as non-responsive was that it was either not about the Complainant, or that it fell outside of the parameters of the access request. Regarding the latter, in the shared affidavit of the Information and Privacy Advisor, she states that while the access request was broad, it only sought personal information, and it specified certain places in which to search for records: the Faculty of Science, HIAR program, Human Resources, and the Office of Safe Disclosure and Human Rights. The Public Body notes that records from any other of its programs, including records from University Protective Service and the Protocol 91 team, fall outside of the parameters of the access request. For example, in the shared affidavit of the Information and Privacy Advisor, she states,

a. Documents #102-107 are documents that were located as part of the search for responsive records, but that were not part of the University's "Faculty of Science, the Helping Individuals at Risk Committee, Human Resources and the Office of Safe Disclosure and Human Rights" files. Rather, they were located in a Protocol 91 file, which is an entirely separate group/process, and is described further in the Affidavit of [the HIAR Case Team Coordinator]. Accordingly, Documents #102-107 are thus non-responsive to the Access Request;

[para 289] The Public Body's interpretation of the Complainant's access request narrows the scope of information from what the words of request plainly indicate that the Complainant was seeking. The access request was worded as follows:

Personnel file from the Faculty of Science, personal file at the Helping Individuals at Risk Committee and any emails or other documents referencing or pertaining to me containing my first and/or last name [complainant's full name] from the Faculty of Science, Helping Individuals at Risk Committee, Human Resources and the Office of Safe Disclosure and Human Rights. My employee ID is [Complainant's employee ID#].

[underlining mine]

[para 290] The Public Body adopted a narrow understanding of the request for records "from" the Faculty of Science, HIAR program, Office of Safe Disclosure, and Human Rights. The Public Body has taken the approach that records "from" those places only

refers to records located there at the time of the access request. Given the broad nature of the access request, there is no basis to infer that the Complainant intended to limit the request to records fitting a strict and narrow understanding of the word “from.”

[para 291] A reasonable interpretation of the Complainant’s access request is that she was seeking records that were from the places mentioned, in the conventional sense that they originated or passed through these locations at some point, regardless of where they were located at the particular time of the access request. In short, the Public Body has misconstrued the parameters of the request to refer to a location of information at a single point in time, rather than information that was handled by those departments and programs.

[para 292] I have reviewed information withheld as non-responsive with the reasonable interpretation of the access request described above in mind.

[para 293] I find that information marked as non-responsive on the following pages is non-responsive, and properly withheld. The content of the withheld information on these pages does not include the Complainant’s first or last name, or reference or pertain to her.

Pages: 103, 106, 480-486, and 492-499.

[para 294] Information withheld on the following pages is, in terms of its content, responsive to the access request regarding the type of information sought, i.e. it references or pertains to the Complainant or includes the Complainant’s first or last name:

Pages: 102, 104, 105, 107, 274, 275, 619, 624-627, 649 and 717.

[para 295] I consider whether the information on these pages also falls within the other parameters of the access request; specifically whether it is from one of the places specified in the access request.

[para 296] My reasons for finding that information on these pages is or is not from the places specified in the access request are included in the **Compendium** accompanying this Order. I find that pp. 102, 104, 105, 107, 274, 275, and 717 are within the parameters of the access request as being from the places specified in it.

Consideration of Mandatory exceptions to disclosure

[para 297] Since I have found some information withheld as non-responsive is responsive, I must also consider whether any mandatory exceptions to disclosure apply to any of the withheld information. If so, the redacted information must remain withheld.

[para 298] I find that pp. 104, 105, 107, and 717 contain third party personal information that is potentially subject to being withheld under section 17(1) of the Act, which is a mandatory exception to disclosure. I find that the Public Body is required to withhold some information under section 17(1) from p. 717, but not pp. 104, 105, and 107. My reasons appear in the **Compendium** accompanying this order.

[para 299] I do not find that any other mandatory exceptions to disclosure apply to information improperly withheld as non-responsive.

No further consideration of the application of discretionary exceptions to disclosure

[para 300] Some orders of this office have decided that when information initially regarded as non-responsive is ordered disclosed, a public body will have the opportunity to further withhold information under it, pursuant to discretionary exceptions to disclosure. See, for example, Order F2009-046 at para. 100. I do not find that such an order is appropriate in this case.

[para 301] Were I to make such an order, I would be inviting the Public Body to do the very thing that I found at the outset of this Order that it cannot: raise the application of discretionary exceptions to disclosure without a basis for doing so.

[para 302] Further, it is evident from the Public Body's liberal application of discretionary exceptions to disclosure to the records at issue, and its "reprocessing" of the responsive records (which included non-responsive information), that it has already turned its mind to the application of discretionary exceptions to disclosure to all of the information in the records at issue.

[para 303] In making such considerations, the Public Body elected to apply sections 24(1) and 20 to pp. 274 and 275 in its initial response to the access request, and did not seek to apply any further exceptions upon reprocessing. The Public Body did not initially apply, or assert upon reprocessing that it wished to apply, any discretionary exceptions to disclosure to information on pp. 102, 104, 105, 107 and 717.

[para 304] Since the Public Body has already considered the application of discretionary exceptions to disclosure on these pages, it would be contrary to the purposes of the Act for me to invite it to apply them further; and so I must not.

[para 305] The purposes of the Act are listed in section 2, and include the following:

(a) to allow any person a right of access to the records in the custody or under the control of a public body subject to limited and specific exceptions as set out in this Act,

(c) to allow individuals, subject to limited and specific exceptions as set out in this Act, a right of access to personal information about themselves that is held by a public body,

(e) to provide for independent reviews of decisions made by public bodies under this Act and the resolution of complaints under this Act.

[para 306] The right to ask for a review of a response to an access request is that of the person who requested access to information, as stated in section 65(1) of the Act:

65(1) A person who makes a request to the head of a public body for access to a record or for correction of personal information may ask the Commissioner to review any decision, act or failure to act of the head that relates to the request.

[para 307] The nature of discretionary exceptions to disclosure provides a public body met with an access request the ability to determine the scope of an applicant's access rights. Through the exercise of its discretion, a public body may limit them greatly, or not at all. It would be a poor right of review of such decisions were it the case that the one charged with conducting the review should invite a public body to further limit those access rights, beyond what it has already seen fit to. The purpose of the review is to see whether the access rights were properly fulfilled and limits to them properly established, not to see them unnecessarily diminished.

V. ORDER

[para 308] I make this Order under section 72 of the Act.

[para 309] I order the Public Body to release information improperly withheld to the Complainant. The details of the information to be disclosed are set out in the **Compendium** accompanying this Order under the heading **Information Withheld and Disclosed**.

[para 310] Regarding the release of information improperly withheld on the basis that it is subject to solicitor-client privilege, I consider that the withheld information may include information that the Public Body is required to withhold under mandatory exceptions to disclosure in the Act. As I have not been able to review the information, I cannot say for certain. Accordingly, prior to releasing the information to the Complainant, the Public Body shall consider whether any mandatory exceptions to disclosure apply to the information therein, and then provide those records to the Complainant with required redactions. If the Public Body finds that it must withhold the records in their entirety, it shall provide notice of the same to the Complainant.

[para 311] I will retain jurisdiction to review the application of mandatory exceptions to disclosure to information improperly withheld on the basis that is subject to solicitor-client privilege, in the event that the Complainant wishes to seek review of them.

[para 312] If the Complainant wishes to seek a review of the application of mandatory exceptions to disclosure to information improperly withheld on the basis that it subject to solicitor-client privilege, I order the Complainant to deliver a request for review to the Office of the Information and Privacy Commissioner within 60 days of receiving the redacted records, or notification that the Public Body is withholding the records in their entirety. The Complainant may use this Office's regular Request for Review form.

[para 313] In respect of my findings that the Public Body did not properly exercise discretion when withholding information under sections 18(3) and 24(1), I order the Public Body to reconsider withholding information under these sections, and to release to the Complainant further information that it concludes should not be withheld. In doing

so, the Public Body shall consider the Complainant's private interest in receiving information, and shall not consider its employees' expectations of confidentiality. If the Public Body makes no changes to information withheld under sections 18(3) and 24(1), it shall provide the Complainant with notice of the same.

[para 314] I will also retain jurisdiction to review the continued application of sections 18(3) and 24(1) (if any) following the Public Body's reconsideration of their application, in the event that the Complainant wishes to seek review of them.

[para 315] If the Complainant wishes to seek a review of the continued application of sections 18(3) and 24(1), I order the Complainant to deliver a request for review to the Office of the Information and Privacy Commissioner within 60 days of receiving further information that the Public Body releases, or notification that the Public Body has not made any changes to the application of sections 18(3) and 24(1). The Complainant may use this Office's regular Request for Review form.

[para 316] I order the Public Body to confirm that it has complied with this Order within 50 days of receiving a copy of it.

John Gabriele
Adjudicator
/bah

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

COMPENDIUM to ORDER F2021-12

April 6, 2021

UNIVERSITY OF ALBERTA

Case File Numbers 003170 and 004575

[para 1] This Compendium accompanies the main body of Order F2021-12. It contains my findings detailing which information the Public Body correctly and incorrectly withheld for **Issues E, H, and K**. It also contains the details of information that I order the Public Body to release to the Complainant in Order F2021-12.

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Issue E Compendium

[para 2] These reasons are part of the discussion of **Issue E** in the main body of this Order. The following paragraphs set out what information I find was and was not required to be withheld under section 17(1) of the *Freedom of Information and Protection of Privacy Act*, RSA 2000 C. F-25 (the Act).

Information previously withheld under section 17(1)

[para 3] The Public Body previously withheld information under section 17(1) from the following pages, but ceased relying on that section to withhold information after reprocessing the access request.

Pages: 87, 117, 128, 142-143, 150, 151, 201, 227, 251, 285-288, 290-291, 585, 591, and 638.

[para 4] Since section 17(1) is a mandatory exception to disclosure, I consider whether any information should not have been disclosed from the above pages.

Page-by-Page Discussion – information previously withheld under section 17(1)

Page 87

[para 5] Information withheld from this page consists only of a date. It is not personal information under the Act, and cannot be withheld under section 17(1).

Page 117

[para 6] Information initially withheld under section 17(1) on this page was also withheld under section 27(1)(a) as subject to solicitor-client privilege. For the reasons given in enumerated consideration 5, I cannot conclude that section 17(1) requires this information to be withheld.

Pages 128, 142-143, 150, 151, 201, and 227

[para 7] Information initially withheld under section 17(1) on these pages consists of records of performing employment duties. For the reasons in enumerated consideration 2, this information cannot be withheld under section 17(1).

Page 251

[para 8] Information initially withheld under section 17(1) from this page consists only of a diagram. It is not personal information under the Act, and cannot be withheld under section 17(1).

Pages 285-288

[para 9] Information initially withheld under section 17(1) on these pages forms part of a chain of e-mails regarding attending a lunch. Some of the withheld information is the Complainant's personal information, which cannot be withheld under section 17(1) since the Complainant is not a third party. The remaining information consists of records of performing employment duties.

For the reasons in enumerated consideration 2, this information cannot be withheld under section 17(1).

Pages 290-291 and 591

[para 10] Information initially withheld under section 17(1) on these pages consists of the Complainant's personal information, which cannot be withheld under section 17(1) since the Complainant is not a third party. The remaining information consist of records of performing employment duties. For the reasons in enumerated consideration 2, this information cannot be withheld under section 17(1).

Page 585

[para 11] Information previously withheld under section 17(1) on this page contains third party personal information. However, upon reviewing other records at issue, it is evident that this information is known to the Complainant, and that the Public Body would be aware of that. No presumptions or considerations under sections 17(4) or (5) apply such that disclosing this information to the Complainant is unreasonable. The Public Body is not required to withhold this information under section 17(1).

Page 638

[para 12] This page contains recommendations stemming from the Threat Assessment conducted about the Complainant. Information initially withheld under section 17(1) on these pages consists of the Complainant's personal information, which cannot be withheld under section 17(1) since the Complainant is not a third party. The remaining information consists of records of performing employment duties. For the reasons in enumerated consideration 2, this information cannot be withheld under section 17(1).

Information currently withheld under section 17(1)

[para 13] Information withheld under section 17(1) in the initial response to the access request appears on the following pages:

Pages: 77, 79, 80, 81, 82, 83, 84, 85, 88, 89, 90, 91, 92, 93, 110, 111, 120, 121, 123, 130, 131, 200, 202, 205, 206, 211, 212, 224-227, 228, 252-253, 293, 298, 305, 507, 510-511, 515, 518-521, 533, 564, 565-566, 572-573, 582, 593, 597-598, 599, 619-627, 633-634, 636, 639, 644, 645, 667, 707, 713, and 717.

[para 14] At inquiry, the Public Body also argued that section 17(1) requires it to withhold information from the following pages:

Pages: 64-66, 67, 68, 69, 70, 71-73, 491, 529-532, 534, 547-551, 552-554, 701, and 702.

[para 15] Since section 17(1) is a mandatory exception to disclosure, I will consider the application of it to the above pages, even though the Public Body only raised the issue of its application to these pages at inquiry.

Page-by-Page Discussion – information currently withheld under section 17(1)
Pages 64 - 67

[para 16] These pages contain agendas and notes from discussions at HIAR meetings, in the form of a chart. The agenda items and notes withheld under section 17(1) consist of references to people other than the Complainant, reported as Individuals At Risk (IARs). At times, the withheld information includes their names and the details of the report. For the reasons in enumerated consideration 4, the Public Body is required to withhold this information under section 17(1), with the following exception.

[para 17] Information in these records withheld under section 17(1) also contains information that would identify the Reporter. For the reasons in enumerated consideration 1, the Public Body is not required to withhold this information. Specifically, the Public Body should have disclosed the information in the chart that appears in the boxes to the right of the Complainant's name on p. 67.

Page 68

[para 18] This page contains briefing notes from a HIAR Case Team meeting. The information on this page consists of details about reports of IARs other than the Complainant. For the reasons in enumerated consideration 4, the Public Body is required to withhold this information.

Page 69

[para 19] The Public Body disclosed one heading on p. 69 to the Complainant; the heading is numbered as point 8. Information withheld under section 17(1) above the heading on the page contains the personal information of other third parties who were reported to HIAR. For the reasons in enumerated consideration 4, this information has been properly withheld. I consider information withheld under section 17(1) at and below the heading on the page, below.

[para 20] The Public Body withheld some information on p. 69, at and below the heading, under section 17(1) on the basis that it could identify the Reporter. For the reasons in enumerated consideration 1, the Public Body was not required to withhold this information.

[para 21] The Public Body also argues that the same information withheld on p. 69 that reveals the identity of the Reporter, also contains personal information about other third parties, and, for that reason, it cannot be disclosed under section 17(1). This argument applies in several ways depending on the third party to which it is applied.

[para 22] Some third parties are those who reported information to HIAR about the Complainant. Their personal information consists of the fact that they made a report. The content of the reports is their opinions and observations about the Complainant, and as such, is the Complainant's personal information, and not that of a third party. Further, it appears that these reports were made as a matter of an employment duty, under the HIAR program's mandate for Public Body employees to make reports. For the reasons in enumerated consideration 2, the Public Body is not required to withhold this information.

[para 23] The withheld information on p. 69 also contains third party personal information consisting of the Complainant's own views and opinions of those third parties, including allegations. For the reasons given in enumerated consideration 3, the Public Body is not required to withhold this information.

[para 24] Lastly, some of the information withheld under section 17(1) is information that describes steps the Public Body may take to address employment issues with the Complainant. This is not anyone's personal information and cannot be withheld under section 17(1).

[para 25] Together, the above findings hold that almost all of the information withheld under section 17(1) from p. 69 should have been disclosed. There is one exception to disclosure, discussed below:

- The words in the third sentence of second bullet under the heading; up to, but not including, the word "and." (The remainder of the sentence does not need to be severed under section 17(1))

[para 26] This information contains the personal view or opinion of one of the Public Body's employees about how to resolve a matter concerning the Complainant. As such, it is the employee's personal information. I find the consideration in section 17(5)(f) weighs in favour of withholding this information, and that there are no circumstances weighing in favour of disclosure. The Public Body was required to withhold this information.

Page 70

[para 27] With the exception of the appearance of the number "9", all information withheld under section 17(1) from p. 70 was also withheld on the basis that it is subject to solicitor-client privilege under section 27(1)(a). For the reasons in enumerated consideration 5, I cannot conclude that section 17(1) requires the Public Body to withhold this information.

Pages 71 - 73

[para 28] These pages contain briefing notes from a HIAR Case Team meeting. With the exception of headings, all of the information has been withheld. All of the information withheld under section 17(1) is of the same types as that below the heading on p. 69, discussed above. For the same reasons given in discussion of p. 69, I find that the Public Body is not required to withhold any of the information redacted under section 17(1) from this page.

Page 77

[para 29] This page contains an e-mail that the Information and Privacy Advisor describes as "notes to a file." Information withheld under section 17(1) would reveal the identity of the Reporter, the same as information on pp. 64 to 67. It also includes the Reporter's name. For the

reasons in enumerated consideration 1, the Public Body is not required to withhold this information under section 17(1).

[para 30] Some of the withheld information also consists of third party personal information provided by the Complainant. For the reasons given in enumerated consideration 3, the Public Body is not required to withhold this information.

[para 31] In light of the above, the Public Body was not required to withhold any information under section 17(1) from this page.

Pages 79 and 80

[para 32] These pages contain a completed HIAR report form. Information withheld from it under section 17(1) consists of the name and identity of the person who made the report, as well as the content of the report, consisting of a description of the Complainant's behavior.

[para 33] The report appears to have been made as a matter of employment duty, under the mandate that HIAR places on Public Body employees to make reports. For the reasons in enumerated consideration 2, the Public Body is not required to withhold this information.

[para 34] The content of the report is a description of the Complainant's behavior, and is not the personal information of any third party. The Public Body was not required to withhold this information.

[para 35] The withheld information also contains several general assertions about the Complainant's work performance, which are opinions about the Complainant, and, as such, are her personal information under section 1(n)(viii). The holder of the opinions is not specified.

[para 36] Some of the information withheld under section 17(1) is information that only describes steps the Public Body may take to address employment issues with the Complainant. This is not anyone's personal information and cannot be withheld under section 17(1).

[para 37] Lastly, I consider the first five words of the second point from the top of p. 80. The withheld information contains a description of a mental state of one of the Public Body's employees. It is the employee's personal information. There are no presumptions against disclosure under section 17(4). None of the enumerated factors in section 17(5) are relevant. I consider that the withheld information is not sensitive, and is reflective of a common state of mind that could be encountered by anyone under similar circumstances. I find this is a relevant consideration under section 17(5) in favour of disclosure. The information is benign and releasing it is not an unreasonable invasion of third party personal privacy.

[para 38] Taking all of the above into account, the Public Body was not required to withhold any information under section 17(1) from these pages.

Page 81

[para 39] Page 81 is an e-mail described as “notes to a file.” The information withheld under section 17(1) reveals the identity of someone, other than the Reporter, who contacted HIAR about the Complainant. The information withheld from this page is of the same type as that on pp. 79 and 80. For the same reasons given in discussion of those pages, the Public Body was not required to withhold any information under section 17(1) from this page.

[para 40] The information withheld under section 17(1) also contains allegations against a third party. However, the Complainant is the one who made the allegations. For the reasons given in enumerated consideration 3, the Public Body is not required to withhold this information under section 17(1).

Pages 82 and 83

[para 41] Pages 82 to 83 contain a completed HIAR report form. The Public Body argues that information withheld from it under section 17(1) identifies the Reporter. For the reasons in enumerated consideration 1, the Public Body is not required to withhold this information.

[para 42] The content of the report also contains the identity of someone other than the Reporter who made a report to HIAR about the Complainant. This information is of the same type as that on pp. 79 and 80. For the same reasons given in discussion of those pages, the Public Body was not required to withhold any information under section 17(1) from these pages.

Pages 84 and 85

[para 43] Pages 84 and 85 contain a typed statement describing a conversation between the Complainant and an employee of the Public Body. The statement is part of the HIAR report form that begins on pp. 82 and 83.

[para 44] Information withheld under section 17(1) contains the views and opinions that several others hold about the Complainant. This information is the Complainant’s personal information, and not that of a third party. It cannot be withheld under section 17(1). The report appears to have been made as a matter of employment duty, under the mandate that HIAR places on Public Body employees to make reports. For the reasons in enumerated consideration 2, the Public Body is not required to withhold this information.

[para 45] The withheld information also contains a description of the Complainant’s views and opinions of an employee of the Public Body, including allegations of wrongdoing on the part of the employee. This is the employee’s personal information under section 1(n)(viii). However, it is evident that this information was provided by the Complainant in the conversation described on these pages. For the reasons given in enumerated consideration 3, the Public Body is not required to withhold this information.

[para 46] The statement concludes with a description of steps that the Public Body may take in order to address several issues with the Complainant’s employment. This information is not personal information and cannot be withheld under section 17(1).

[para 47] Lastly, I consider that the information on these pages will reveal who provided the statement. However, since the statement is a description of a conversation with the Complainant, that person is already known to the Complainant, as is the content of the conversation. I find that this is a relevant consideration under section 17(5) sufficient to rebut any presumption against disclosure that may arise under section 17(4). The Public Body was not required to withhold this information.

[para 48] Taking all of the above findings into account, the Public Body was not required to withhold any information under section 17(1) from these pages.

Page 88

[para 49] With the exception of the appearance of the words “Note to File”, all information on p. 88 was withheld on the basis that it is subject to solicitor-client privilege under section 27(1)(a). For the reasons in enumerated consideration 5, I cannot conclude that section 17(1) requires this information to be withheld.

Page 89

[para 50] This page is a “Note to File.” It contains the identity of someone other than the Reporter who made a report to HIAR about the Complainant. It contains the same type of information mentioned in the discussion of p. 81. For the same reasons given for p. 81, the Public Body is not required to withhold this information under section 17(1).

Page 90

[para 51] All information on p. 90 has been withheld on the basis that it is subject to solicitor-client privilege under section 27(1)(a), save for the words “Note to File”. For the reasons in enumerated consideration 5, I cannot conclude that section 17(1) requires this information to be withheld.

Pages 91 and 92

[para 52] These pages contain the personal information of third parties captured in section 1(n)(i). For the reasons in enumerated consideration 4, the Public Body is required to withhold this information under section 17(1).

Page 93

[para 53] Page 93 is a “Note to File.” The Public Body argues that disclosure of information withheld under section 17(1) would reveal the identity of the Reporter. For the reasons in enumerated consideration 1, the Public Body is not required to withhold this information.

[para 54] The withheld information also contains the identity of another Public Body employee who contacted HIAR about the Complainant. Contacting HIAR appears to have been an employment duty. For the reasons in enumerated consideration 2, the Public Body was not required to withhold this information.

[para 55] Considering the above, the Public Body was not required to withhold any information under section 17(1) from this page.

Pages 110 and 111

[para 56] These pages contain notes from a meeting. Almost all of the information withheld under section 17(1) consists of third party views about the Complainant that is the Complainant’s personal information under section 1(n)(xiii), as well as other information that is the Complainant’s personal information, such as the status of her relations with her family and details of her personal life. This information is not third party information, and cannot be withheld under section 17(1).

[para 57] The second bullet from the top of p. 110 contains information about a third party’s dealings with the Public Body. However, other records indicate that the Complainant provided this information. For the reasons in enumerated consideration 3, the Public Body was not required to withhold this information.

[para 58] Taking all of the above findings into account, the Public Body was not required to withhold any information from these pages under section 17(1).

Pages 120, 121, and 123

[para 59] These pages contain a Threat and Risk Assessment Report (the Threat Assessment) about the Complainant.

[para 60] Information withheld under section 17(1) on pp. 120 and 121 contains the names of those who provided information to help in preparing the Threat Assessment. The records indicate that the third parties provided this information as part of their employment with the Public Body. For the reasons in enumerated consideration 2, their identities as the ones providing the information did not have to be withheld under section 17(1).

[para 61] Some of the information may also identify the Reporter. For the reasons in enumerated consideration 1, the Public Body is not required to withhold this information.

[para 62] The content of the withheld information includes the Complainant's personal information, including descriptions of her personal history. This is not third party information and cannot be withheld under section 17(1).

[para 63] The withheld information also contains third party personal information that was provided by the Complainant. For the reasons in enumerated consideration 3, the Public Body was not required to withhold this information.

[para 64] Taking all of the above into account, the Public Body was not required to withhold any information from pp. 120 and 121 under section 17(1).

[para 65] Page 123 contains the Threat Assessment's conclusion.

[para 66] The Public Body withheld information under section 17(1) from the first paragraph, relying sections 17(4)(g)(i) and (ii) for a presumption against disclosure. The withheld information contains background information used to form an opinion about whether the Complainant presents a risk to a third party. Much of the withheld information consists of details of the Complainant's personal life, which is not third party information and cannot be withheld under section 17(1).

[para 67] The withheld information also contains an opinion about whether the Complainant carries resentment toward a third party. This is the Complainant's personal information under section 1(n)(viii) and cannot be withheld under section 17(1). In light of the fact that the opinion was prepared by University Protective Services in its capacity as part of the Public Body, the opinion is that of the Public Body, and not any individual. The Public Body, as a public body, has no personal information; accordingly, the fact that it holds this opinion of the Complainant is not personal information, and cannot be withheld under section 17(1).

[para 68] The other information withheld under section 17(1) on p. 123 is third party information gathered through conversation with the Complainant, including the Complainant's views about others. For the reasons given in enumerated consideration 3, the Public Body was not required to withhold this information.

[para 69] The remainder of the information withheld under section 17(1) from p. 123 does not constitute personal information. It is only guidance and information related to the employment duties of several people dealing with the Public Body's issues with the Complainant, and an explanation of the duration and circumstances under which the Threat Assessment may be regarded as valid.

[para 70] Taking the above into account, the Public Body was not required to withhold any information from p. 123 under section 17(1).

Pages 130 and 131

[para 71] These pages contain the same information withheld under section 17(1) as the statement on pp. 84 and 85, discussed above. For the same reasons given for those pages, the Public Body is not required to withhold this information under section 17(1).

Page 200 and 202

[para 72] These pages are part of a chain of e-mails that includes p. 201. (No information was withheld under section 17(1) on p. 201).

[para 73] The Public Body only applies section 17(1) and sections 17(4)(g)(i) and (ii) to the third sentence of p. 200 and the final sentence in the e-mail on p. 202. The withheld information on p. 200 is a record of an employment activity. For the reasons given in enumerated consideration 2, the Public Body is not required to withhold this information.

[para 74] The last sentence of p. 202 is third party personal information, related to travel plans. The third party's name is present so section 17(4) applies. I see no circumstances that weigh in favour of disclosure under section 17(5). I find that section 17(1) requires the Public Body to withhold this information.

Pages 205 and 206

[para 75] These pages contain a chain of e-mails. Information withheld under sections 17(1) and 17(4)(g)(i) and (ii) consists of the work schedule of a Public Body employee. The withheld information is a record of an employment activity. For the reasons given in enumerated consideration 2, the Public Body is not required to withhold this information.

Page 211

[para 76] Information withheld under section 17(1) from this page consists of a personal cell phone number. The Public Body argues that disclosing it may identify the Reporter. As far as it may identify the Reporter, for the reasons given in enumerated consideration 1, the Public Body is not required to withhold this information.

[para 77] However, there is also a question of whether the cell phone number itself is "personal information." Personal information must be about an identifiable individual. There is no presumption that a cell number, on its own, that is not associated with an identifiable individual, constitutes personal information. See, for example, Order F2018-09. There is no information that identifies whose number it is. I consider though, that anyone could likely identify whose number it is, by calling it and learning who answers, should that occur. For this reason, I consider it personal information.

[para 78] I find that there are no presumptions against disclosure under section 17(4).

[para 79] The fact that a cell number allows anyone using it to contact the owner of the number is a relevant consideration under section 17(5). Cellular phones are an integrated facet of our daily personal lives. Given that disclosing it could enable personal contact, I consider that this consideration weighs in favour of withholding. I see no other factors that weigh in favour of disclosing this information. I find that section 17(1) requires the Public Body to withhold this information.

Page 212

[para 80] The Public Body relies on sections 17(1), and 17(4)(g)(i) and (ii), to withhold the last line from the chain of e-mails on this page. The information is a personal expression of appreciation from one coworker to another. A presumption under section 17(4)(g)(i) applies, and there are no circumstances weighing in favour of disclosure under section 17(5). I find that section 17(1) requires the Public Body to withhold this information.

Pages 224 - 227

[para 81] These pages contain a chain of e-mails. The information withheld under section 17(1) from p. 224 and carrying over for most of p. 225 is identical to the information on pp. 84 and 85, and, 130 and 131. Accordingly, under section 17(1) the Public Body is not required to withhold this information for the same reasons given for those pages.

[para 82] The Public Body asserts that the remainder of the withheld information on p. 225 and all of the information withheld under section 17(1) from p. 226 must be withheld for the same reasons it argued that the information on pp. 84 and 85, and 130 and 131 needed to be withheld. Information withheld under section 17(1) for these reasons is of the same type that appears on pp. 224 and 225, discussed above. For the same reasons why the Public Body is not required to withhold personal information on those pages, it is not required to withhold personal information of the same type from pp. 225 and 226.

[para 83] Some of the withheld information running from the bottom of p. 225 through pp. 226 and 227 differs from the other information discussed above in that it consists of discussions about how the Public Body may address some employment issues with the Complainant, and the names and e-mail addresses of those involved in the conversation. It is evident that this information consists of records of the performance of employment duties, and is not personal information. For the reasons in enumerated consideration 2, the Public Body is not required to withhold this information.

[para 84] Taking all of the above findings into account, the Public Body was not required to withhold any information under section 17(1) from these pages.

Page 228

[para 85] In its initial release to the Complainant, the Public Body withheld information from this page under section 17(1). Then, in its initial submission at inquiry, the Public Body stated that it was no longer relying on section 17(1) to withhold information from this page. Finally, in

its submission regarding the application of sections 18 and 20, the Public Body off-handedly remarked that the fact that section 17(1) was not applied was in error, and it should have been.

[para 86] The only information withheld under section 17(1) from this page is a name. Upon review, the name only appears to identify someone carrying out duties as part of their employment. For the reasons given in enumerated consideration 2, the Public Body is not required to withhold this information.

[para 87] Though the Public Body has not made specific submissions regarding why the name on this page is subject to section 17(1), upon consideration of the Public Body's approach to withholding information that could identify the Reporter, it appears that may be the reason why it is withheld. For the reasons given in enumerated consideration 1, the Public Body is not required to withhold this information.

Pages 252 and 253

[para 88] These documents consist of hand-written notes. The Public Body argues that section 17(1) requires information on these pages to be withheld for the same reasons given for pp. 130 and 131, and 224 and 225. For the same reasons given for those pages, the Public Body was not required to withhold this information under section 17(1).

Page 293

[para 89] Page 293 is part of a chain of e-mails. The Public Body relies on sections 17(1), and 17(4)(g)(i) and (ii), to withhold one sentence on p. 293. The Public Body asserts that the sentence is part of a third party's work schedule. The withheld information is a record of an employment activity. For the reasons given in enumerated consideration 2, the Public Body is not required to withhold this information.

Page 298

[para 90] These pages contain a chain of e-mails discussing submitting timesheets. The Public Body relies on sections 17(1) and 17(4)(g)(i) and (ii), to withhold names and e-mail addresses of employees included in the e-mail chain. Names are personal information under section 1(n)(i), and when appearing with an e-mail address, reveal the e-mail address of the named person. However, it is evident that the e-mail addresses are work e-mail addresses and that they were shared with the Complainant who also received the e-mail as part of her employment. For the reasons in enumerated consideration 2, the Public Body is not required to withhold this information.

Page 305

[para 91] This page is part of a chain of e-mails. The Public Body relies on section 17(1) to withhold the second last sentence on p. 305.

[para 92] In order to protect the personal information of the third party, in the following two paragraphs my reasons are written in a generalized fashion. I have determined that specific sections of the Act apply where noted, even if the precise subsection of a section is not specified in these reasons.

[para 93] I agree with the Public Body that the sentence contains personal information as defined in the Act, and that the employee could be identified in the context of the e-mails. I also find that a presumption against disclosure arises under section 17(4). None of the circumstances enumerated in section 17(5) apply. I see no other circumstances that weigh in favour of disclosure. Accordingly, I find that section 17(1) requires the Public Body to withhold this information. However, I also find that the third party personal information is easily severed from the rest of the sentence severed under section 17(1).

[para 94] Section 17(1) only requires the Public Body to withhold the words in the sentence after the word “member” and before the following comma. Section 17(1) does not require the other parts of the sentence to be withheld.

Page 491

[para 95] Page 491 is the same document as p. 67, and my findings for it are the same as for p. 67. The information in the boxes to the right of the Complainant’s name should not have been withheld; all other information withheld under section 17(1) should remain withheld.

Pages 507

[para 96] This document is part of a chain of e-mails. The Public Body relies on section 17(1) to withhold one sentence on p. 507. The withheld information refers to a named employee’s attendance at work. For the reasons in enumerated consideration 4, the Public Body is required to withhold this information.

Pages 510 and 511

[para 97] These pages are the same as pp. 290 and 291. The Public Body withholds the same information as on those pages under section 17(1). Since the Public Body no longer relies on section 17(1) withhold information from pp. 290 and 291. I conclude that the Public Body no longer relies on section 17(1) to withhold information from these pages either.

[para 98] My review of withheld information on these pages finds that the only personal information on them is that of the Complainant. Since the Complainant is not a third party, section 17(1) does not require the Public Body to withhold this information. The remainder of the withheld information is records of actions carried out in a business capacity. For the reasons in enumerated consideration 2, this information does not have to be withheld.

Page 515

[para 99] This page is part of a chain of e-mails. The Public Body relies on section 17(1) to withhold several statements.

[para 100] The statements contain the views and opinions of the third party writing them, which is that individual's personal information under section 1(n)(ix). It also that individual's opinion of another third party, which is that third party's information under section 1(n)(viii). None of the personal information relates to the Complainant. For the reason in enumerated consideration 4, the Public Body is required to withhold this information.

Pages 518 - 521

[para 101] These pages are part of a chain of e-mails. The information withheld under section 17(1) is the same information referenced in pp. 130 and 131, 224 and 225, and 252 and 253. For the same reasons given in discussion of those pages, the Public Body is not required to withhold this information.

Pages 529 - 532

[para 102] The Public Body has not made specific submissions with respect to why section 17(1) requires it to withhold information on these pages.

[para 103] These pages consist of HIAR Case Team meeting minutes. The information is that of other individuals whose behaviour was reported to HIAR, related details of the reports, and steps taken in response. For the reasons given in enumerated consideration 4, I find that section 17(1) requires the Public Body to withhold this information, with one exception.

[para 104] Section 17(1) does not require the Public Body to withhold the Complainant's name and the spaces next to it from p. 532. There is no third party personal information in these parts of p. 532.

Pages 533 and 534

[para 105] These pages contain a chain of e-mails.

[para 106] The Public Body relies on section 17(1) to withhold information from p. 533 that consists of names, business telephone numbers, e-mail addresses, and information related to the correct spelling of a name. This information is personal information under section 1(n)(i) of the *Act*. For the reasons in enumerated consideration 4, I find that the Public Body is required to withhold this information.

Pages 547 - 554

[para 107] The Public Body does not make any specific submission about to what information on these pages section 17(1) applies.

[para 108] These pages consist of notes from a HIAR Case Team Meeting. Much of the information concerns the details of reports made to HIAR about the behaviour of IARs other than the Complainant. For the reasons given in enumerated consideration 4, I find that section 17(1) requires the Public Body to withhold this information. This finding applies to all of the information in the chart part of these pages, except for information concerning the Complainant on the bottom of p. 552, and the top of p. 553.

[para 109] The information relating to the Complainant is the same type referred to in p. 67 that the Public Body argues will identify the Reporter. For the reasons given in enumerated consideration 1, the Public Body is not required to withhold this information. Specifically, the information in the boxes to the right of the Complainant's name did not need to be withheld.

Pages 564, 565 and 566

[para 110] These pages contain a chain of e-mails. The Public Body relies on section 17(1) to withhold information at the bottom of p. 564 and all of pp. 565 and 566. This information is the same as that appearing in documents 130-131, 224-225, and 518-521. For the same reasons given for those pages, the Public Body is not required to withhold this information under section 17(1).

Pages 572 - 573

[para 111] These pages are duplicates of pp. 290-291, and 510-511. For the same reasons given in discussion of those pages, the Public Body is not required to withhold this information.

Page 582

[para 112] This page is part of a chain of e-mails. The Public Body relies on section 17(1) to withhold information that is the same content withheld under section 17(1) from p. 293. For the same reasons given in discussion of p. 293, the Public Body is not required to withhold this information.

Page 593

[para 113] This page contains notes from a meeting. The Public Body relies on section 17(1) to withhold the last bullet on it. The Public Body argues that it contains third party personal information intertwined with the Complainant's personal information. The Complainant's personal information is generally described to be in the form of the third party's opinion about the Complainant. The Public Body has not set out which particular parts of the bullet are said to be personal information.

[para 114] Upon my review, I see that the name of a third party is present, but there is nothing further that constitutes third party personal information. The information withheld under section 17(1) does not contain any sort of opinion about the Complainant. Rather, the withheld information is instructions or recommendations made to an employee. Even with the name of the employee present, there is no personal dimension in the withheld information since the

instructions were given as part of employment duties. For the reasons in enumerated consideration 2, the Public Body is not required to it under section 17(1).

Pages 597 and 598

[para 115] These pages contain a chain of e-mails. The Public Body relies on sections 17(1) and 17(4)(g)(i) and (ii) to withhold information from p. 597 that are the views and opinions of one of its employees. The name of the employee is present as well. I agree that the withheld information is the employee's personal information. A presumption against disclosure arises under section 17(4)(g)(i).

[para 116] None of the enumerated circumstances in section 17(5) applies. I consider that it is relevant that the withheld information, while meeting the definition of "personal information," does not remotely consist of sensitive or intimate details of the employee. It also concerns the employee's approach to addressing matters that concern the Complainant. These factors weigh in favour of disclosure. I see no other circumstances that weigh in favour of withholding this information. For those reasons, I find that the presumption against disclosure has been rebutted, and that releasing this information is not an unreasonable invasion of third party personal privacy. Section 17(1) does not require the Public Body to withhold this information.

[para 117] The Public Body relies on section 17(1) to withhold information of another third party on p. 598. The withheld information is one sentence, and is said to consist of the views of the writer of the e-mail. Upon reviewing the sentence, I see no view in it. It is merely an explanatory piece of information touching on the order in which various people were informed of the information on p. 597, as a matter of the writer of the e-mail carrying out their job duties. For the reasons given in enumerated consideration 2, the statement does not consist of personal information. For that reason, the Public Body is not required to withhold this information.

Page 599

[para 118] This page is part of a chain of e-mails. The Public Body withheld information under section 17(1) that is said to consist of the opinions of one third party, about another. It consists of two sentences. The first contains the same type of information the Public Body withheld from p. 598. For the same reasons given for p. 598, the Public Body is not required to withhold this information under section 17(1).

[para 119] The second sentence consists of the same type of information withheld on p. 597. For the same reasons given for p. 597, the Public Body is not required to withhold this information under section 17(1).

Pages 619 - 627

[para 120] These pages contain notes from Campus Security.

[para 121] Information withheld on pp. 619 to 621 consists mostly of a list questions. Within the questions are references to several third parties; the Public Body withheld those references

under section 17(1). However, it is evident from a review of the records at issue that the Complainant knows the third parties and the personal activities referenced in the questions, and that the two are associated. These are relevant circumstances under section 17(5) that weigh in favour of disclosure sufficiently to rebut any possible presumption against disclosure under section 17(4). For these reasons, the Public Body is not required to withhold this information.

[para 122] The withheld information on p. 622 is the same content that appears on pp. 110 to 111. For the same reasons, and with the same exceptions to disclosure given for pp. 110 to 111, the Public Body is not required to withhold this information.

[para 123] Information withheld under section 17(1) on p. 623 is a sentence containing the same information about another employee that appeared on p. 305. For the same reasons given in discussion of p. 305, section 17(1) requires this information to be withheld. As in the discussion of p. 305, the information is easily severed from the record. Section 17(1) only requires the words after the information in brackets, and before the following semi-colon to be withheld. The rest of the sentence may be disclosed.

[para 124] Information withheld under section 17(1) on pp. 624 to 626, consists of information about Complainant's views and opinions of a third party. It is third party personal information that was provided by the Complainant. For the reasons given in enumerated consideration 3, the Public Body is not required to withhold this information.

[para 125] Information withheld under section 17(1) on p. 627 contains reference to the Complainant's allegations against a third party. For the reasons given in enumerated consideration 3, the Public Body is not required to withhold this information.

Pages 633, 634, and 636

[para 126] These pages are duplicates of pp. 120, 121, and 123, from the Threat Assessment. For same reasons given in discussion of pp. 120, 121, and 123 the Public Body is not required to withhold this information.

Page 639

[para 127] This page contains part of the recommendations stemming from the Threat Assessment. Under section 17(1), the Public Body withheld the name and place of work of a third party. The third party's name, where the third party works, and the association between the two are already known to the Complainant. The records reveal that the Complainant attended the same meetings as the third party from time to time and was acquainted with the third party socially. These considerations are relevant under section 17(5) and weigh in favour of disclosure. They are sufficient to rebut any presumption against disclosure under section 17(4). I find that the Public Body is not required to withhold this information.

Pages 644 and 645

[para 128] These pages are part of a chain of e-mails. The information withheld under section 17(1) is the same as on pp. 619 to 621. For the same reasons given in discussion of pp. 619 to 621, the Public Body is not required to withhold this information.

Page 667

[para 129] This page contains an e-mail. Under section 17(1), the Public Body withheld the name and employment ID information of a third party. This is personal information under sections 1(n)(i) and (iv). For the reasons given in enumerated consideration 4, I find that section 17(1) requires this information to be withheld.

Pages 701 and 702

[para 130] These pages contain a chain of e-mails. The information withheld under section 17(1) consists of the office locations and descriptions of brief periods of time when several Public Body employees were out of the office. Reasons why the employees were out of the office were not given. The information relates to performance of employment duties. For reasons given in enumerated consideration 2, the Public Body is not required to withhold this information.

Page 707

[para 131] This page is part of a chain of e-mails. The e-mails speak about the Complainant being away from work. A third party is also mentioned in information withheld under section 17(1). The third party's name and another piece of personal information about the third party, as defined in sections 1(n)(vi) and (vii), are withheld. For the reasons in enumerated consideration 4, section 17(1) requires the Public Body to withhold this information.

[para 132] I also note that by withholding third party information, a little of the Complainant's personal information is withheld. However, I find that it is so intertwined that more information cannot be revealed without unreasonably invading the third party's personal privacy.

Page 713

[para 133] This page contains a chain of e-mails. One e-mail contains a general message about employee vacation days. Information withheld under section 17(1) relates to personal information about an employee's family matters. The name of the employee has been provided to the Complainant in the record. For the reasons given in enumerated consideration 4, the Public Body is required to withhold this information.

Page 717

[para 134] This page contains an e-mail. The Public Body withheld third party names and accompanying employee ID information. This is personal information under sections 1(n)(i) and

(iv). For the reasons given in enumerated consideration 4, section 17(1) requires the Public Body to withhold this information.

Issue H Compendium

[para 135] These reasons are part of the discussion of **Issue H** in the main body of Order F2021-12. The following paragraphs set out to which records I find the Public Body properly or improperly applied sections 24(1)(a) and (b) of the *Freedom of Information and Protection of Privacy Act*, RSA 2000 C. F-25 (the Act).

[para 136] The Public Body withheld information from the following pages under sections 24(1)(a) and (b):

Pages: 3-10, 15, 16, 17, 64, 69-70, 88, 89, 90, 93, 108-109, 110-111, 113, 114, 115, 117, 120-121, 123, 125-126, 127-128, 129, 132, 133, 136, 142, 150, 151, 166-168, 170, 171, 173, 176, 189-199, 200-202, 203, 212, 213-218, 219-223, 224-227, 249, 250, 251, 252, 253, 254, 255, 274, 278, 285-288, 289, 290-291, 292, 293, 304, 305-306, 308, 311, 462, 465, 468, 472-473, 491, 510, 511, 512, 515, 516-521, 523-526, 529-532, 533-534, 537-538, 542, 552-553, 555-556, 559, 562-563, 564-566, 567-570, 572-573, 574-575, 576-579, 580-582, 585, 588, 590, 591, 593, 597-598, 599, 619-631, 633-634, 636, 638-639, 644-647, 649, and 650-652.

Boilerplate Language, Contact Information in E-mails, Information Identifying individuals involved in discussions, time and date of meetings.

[para 137] Regularly, the Public Body withheld boilerplate language about permitted uses of an e-mail. It also regularly withheld sign-offs and contact information that appears at the end of e-mails. As well, information that identifies when discussions and e-mails took place or were sent and who was involved has been withheld. These types of information are not captured under section 24(1) and have been improperly withheld. In every instance where the Public Body withheld them under section 24(1), it should not have.

Page-by-Page description – information withheld under section 24(1)

Pages 3 - 10

[para 138] The information withheld under section 24(1) on these pages was also withheld on the basis that it is subject to solicitor-client privileged under section 27(1)(a) and has not been provided to me for review. Thus, I am unable to determine if the Public Body properly applied section 24(1). I find that the Public Body has failed to meet the burden of proof to establish that section 24(1) applies to these records.

Pages 15 - 17

[para 139] These pages contain a chain of e-mails between several employees of the Public Body. The information withheld on p. 15 is information indicating that one e-mail was forwarded to another person. The body of the e-mail is not included and none of the information withheld forms the substance of a decision-making process. The withheld information is not captured under section 24(1). The Public Body improperly withheld this information under section 24(1).

[para 140] The information withheld under section 24(1) on pp. 16 and 17 contains a consultation and advice given in response to the e-mail on p. 15. This information is captured under sections 24(1)(a) and (b).

Page 64

[para 141] This page is an agenda for a HIAR Case Team meeting. It lists HIAR reports to be discussed, but does not contain the substance of any of the categories of information in sections 24(1)(a) and (b). The withheld information is merely factual information about the Complainant and the circumstances of the report. This page includes the reason for referring a report to the HIAR Case Team, but the reason given appears to be the outcome of the decision about whether or not to refer a report, not the process of making the decision itself. This information is not captured by sections 24(1)(a) or (b), and has been improperly withheld.

Pages 69 - 70

[para 142] These pages contains notes of a HIAR Case Team meeting.

[para 143] The information withheld on p. 69 under section 24(1) consists almost entirely of a recitation of facts, and not information captured by sections 24(1)(a) or (b). The only exception is the last sentence of the last paragraph. This sentence reveals a deliberation arising out of the facts on the part of the HIAR Case Team. This sentence is captured under section 24(1)(b).

[para 144] Information withheld under section 24(1) on p. 70 was also withheld under section 27(1)(a) on the basis that it is subject to solicitor-client privilege; as such it has not been provided to me for review. Since I cannot review it, I am unable to conclude that information has been properly withheld under section 24(1). I find that the Public Body has failed to meet the burden of proof to establish that it properly withheld information under section 24(1).

Page 88

[para 145] All information on this page withheld under section 24(1) was also withheld under section 27(1)(a) on the basis that it is subject to solicitor-client privilege. It was not provided to me for review, therefore I cannot conclude that information was properly withheld under it. I find that the Public Body has failed to meet its burden of proof to establish that information was properly withheld under section 24(1).

Page 89

[para 146] This page is a “Note to File.” Much the information withheld under section 24(1) is a recitation of facts, and is not captured by section 24(1); it has been improperly withheld.

[para 147] The only withheld information captured under section 24(1) on this page are the second, third, and fourth bullets from the bottom. The withheld information describes consultations, resulting recommendations, and deliberations between employees of the Public Body. This information is captured under sections 24(1)(a) and (b).

Page 90

[para 148] All information on this page withheld under section 24(1) was also withheld under section 27(1)(a) on the basis that it is subject to solicitor-client privilege. It was not provided to me for review, therefore I cannot conclude that information was properly withheld under section 24(1). I find that the Public Body has failed to meet its burden of proof to establish that information was properly withheld under section 24(1).

Page 93

[para 149] This page is a note from a file. It contains a factual description of events, but no information that is captured under section 24(1). This information has been improperly withheld under section 24(1).

Pages 108 - 109

[para 150] These pages are a “Note to File.” Information on p. 108 falls under two dates: February 22, and February 23. All of the information under February 22 is a recitation of facts and is not captured under section 24(1). This information has been improperly withheld under section 24(1).

[para 151] The withheld information under February 23 continues on to p. 109. The first two bullets under February 23 contain recommendations and deliberations of the Public Body’s employees. The last two bullets contain similar information. This information is captured under sections 24(1)(a) and (b). The third bullet is a statement of facts, and is not captured under section 24(1). It has been improperly withheld under section 24(1).

Pages 110 – 111

[para 152] These pages are notes from a meeting. They only contain factual statements about the Public Body’s observations about the Complainant. This information is not captured under section 24(1) and has been improperly withheld under it.

Page 113

[para 153] This page contains a “Note to File.” It records one employee consulting and receiving advice from another. This information is captured under sections 24(1)(a) and (b).

Page 114

[para 154] This page is a “Note to File.” Information withheld under section 24(1) consists of four bullet points. The first two bullet points only contain a recitation of facts. This information is not captured under section 24(1) and has been improperly withheld under it. The last two bullet points describe advice and deliberations. This information is captured under sections 24(1)(a) and (b).

Page 115

[para 155] This page is a note to file. It describes a request for information from one Public Body employee to another. However, there is nothing in it that fits in the definition of advice, proposals, recommendations, analyses or policy options under section 24(1)(a) or consultations or deliberations under section 24(1)(b). It is a request to exchange information only. This information has been improperly withheld under section 24(1).

Page 117

[para 156] The information withheld under section 24(1) on these pages was also withheld under section 27(1)(a) on the basis that it is subject to solicitor-client privilege and has not been provided to me for review. I am unable to determine if section 24(1) has been properly applied. I find that the Public Body has failed to meet the burden of proof to establish that section 24(1) applies to these records.

Pages 120, 121, and 123

[para 157] These pages are part of the Threat Assessment conducted about the Complainant.

[para 158] The information withheld under section 24(1) from pp. 120 and 121 consists of statements of fact and observations about the Complainant. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 159] Page 123 contains the conclusions reached about the Complainant in the Threat Assessment. Two blocks of information were withheld under section 24(1) on this page. The top block consists of a recitation of facts, which is not captured under section 24(1) and is improperly withheld under it. The second block of information spans three paragraphs. The first and second paragraph consist of analysis. The last paragraph consists of recommendations and advice for employees of the Public Body. This information is captured under sections 24(1)(a) and (b).

Pages 125 - 126

[para 160] These pages contain a "Note to File."

[para 161] With the exception of the last point on p. 125 and the points on p. 126, the information withheld under section 24(1) on these pages consists of consultations and deliberations about possible courses of action. This information is captured under section 24(1)(b).

[para 162] The last point on p. 125 and the points on p. 126 are decisions reached on courses of action, and are not captured under section 24(1) and has been improperly withheld under it.

Pages 127-128

[para 163] These pages contain several “Note to Files.” Information withheld under section 24(1) consists of advice, consultations, and deliberations about steps to take, and is captured under sections 24(1)(a) and (b).

Page 129

[para 164] This page contains an e-mail where one employee of the Public Body sends information to another and requests the recipient’s advice in light of it. The information withheld under section 24(1) is a consultation under section 24(1)(b).

Page 132

[para 165] This page is a “Note to File.” It contains a request for advice from one employee of the Public Body to another. The information withheld under section 24(1) is a consultation under section 24(1)(b).

Page 133

[para 166] This page contains a “Note to File.” With the exception of the second bullet point, the information withheld under section 24(1) consists of statements of facts, a decision about which course of action to take, and plans for a future meeting. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 167] The second bullet point contains recommendations and deliberations about steps to take in the future. This information is captured under sections 24(1)(a) and (b).

Page 136

[para 168] This page contains a “Note to File.” The information withheld from it under section 24(1) consists of details of a consultation and advice given between Public Body employees. This information is captured under sections 24(1)(a) and 24(1)(b).

[para 169] While I find that the information is captured under sections 24(1)(a) and 24(1)(b), I note that the Public Body initially withheld information under section 24(1)(b)(iii) which concerns consultations or deliberations that involve the staff of or a member of the Executive Council. There is no indication that the Executive Council was involved in any of the matters spoken about in the records of issue. Section 24(1)(b)(iii) does not apply to the information on this page.

Page 142

[para 170] These page contains a “Note to File.” With the exception of the second last bullet point, the information withheld from this page contains a statement of facts that recounts steps already taken regarding certain matters. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 171] The information in the second last bullet point on p. 142 contains deliberations about future steps to be taken by the Public Body’s employees. This information is captured under section 24(1)(b).

Page 150

[para 172] This page contains a “Note to File.” The information withheld from it under section 24(1) consists of a list of steps to be taken that resulted from a decision-making process, but does not form part of the decision-making process. This information is not captured under section 24(1) and has been improperly withheld under it.

Page 151

[para 173] This page contains a “Note to File.” Information withheld under section 24(1) records consultations and advice given between employees of the Public Body. This information is captured under sections 24(1)(a) and (b).

Pages 166 - 168

[para 174] These pages contain a chain of e-mails. The information withheld under section 24(1) describes a request for information from one employee of the Public Body to another, and deliberations about whether to provide the information. This information is captured under section 24(1)(b).

Page 170

[para 175] Information withheld under section 24(1) on this page was also withheld under section 27(1)(a) on the basis that it is subject to solicitor-client privilege and has not been provided to me for review. I am unable to determine whether information has been properly withheld under section 24(1), and find that the Public Body has failed to meet the burden of proof to establish that information was properly withheld under it.

Page 171

[para 176] This page contains an e-mail. The information withheld under section 24(1) consists of a request from one employee of the Public Body to another, to perform a task. The information does not contain advice, proposals, recommendations, analyses, policy options, consultations or deliberations. It is not captured under section 24(1) and has been improperly withheld under it.

Page 173

[para 177] This page contains an e-mail related to p. 171. The information withheld under section 24(1) on this page contains deliberations of one employee of the Public Body regarding the recommendation of another. This information is captured under sections 24(1)(a) and (b).

Page 176

[para 178] This page records the content of a voicemail. The information withheld under section 24(1) only refers to a preference expressed by one employee about who should attend a meeting in their absence. This information only reveals the identity of someone involved in a decision, or plans for future consultations. This information is not captured under section 24(1) and has been improperly withheld under it.

Pages 189 - 199

[para 179] Information withheld under section 24(1) on these pages was also withheld under section 27(1)(a) on the basis that it is subject to solicitor-client privilege and was not provided to me for review. I am unable to determine whether information has been properly withheld under section 24(1), and find that the Public Body has failed to meet the burden of proof to establish that information was properly withheld under it.

Pages 200 - 202

[para 180] These pages contain a chain of e-mails; the Public Body withheld them in their entirety under numerous sections, including section 24(1). The information in the e-mails describes two employees of the Public Body planning to exchange information. The withheld information does not contain the substance of any consultations, deliberations, advice, or other information captured under section 24(1). This information has been improperly withheld under section 24(1).

Page 203

[para 181] This page is part of a chain of e-mails. The information withheld under section 24(1) consists of deliberations by a Public Body employee about who should or should not attend a meeting and why. This information is captured under section 24(1)(b).

Page 212

[para 182] This page contains an e-mail from an employee of the Public Body. The sender of the e-mail is seeking feedback on a document from various other employees. The information withheld under section 24(1) is a consultation and is captured under section 24(1)(b).

Pages 213 - 218

[para 183] Information withheld under section 24(1) on these pages withheld also withheld under section 27(1)(a) on the basis that it is subject to solicitor-client privilege and has not been provided to me for review. I am unable to determine whether information has been properly withheld under section 24(1), and find that the Public Body has failed to meet the burden of proof to establish that information was properly withheld under it.

Pages 219 - 223

[para 184] These pages contain a chain of e-mails. The information withheld under section 24(1) on p. 219 continuing to the top of p. 220, as well as the following e-mail on p. 220, contain details of deliberations between employees of the Public Body about what steps to take in the future, and advice. This information is captured under sections 24(1)(a) and (b).

[para 185] Information withheld under section 24(1) from the last e-mail on p. 220, carrying over to the top of p. 221 consists of two paragraphs. The first paragraph is a statement of facts. The second paragraph contains two sentences. The first is a record of decision made about steps to take; the second is plans for a meeting. This information is not captured under section 24(1). It has been improperly withheld under section 24(1).

[para 186] The remaining information withheld under section 24(1) on p. 221 through p. 223 consists of advice and deliberations. This information is captured under sections 24(1)(a) and (b).

Pages 224 - 227

[para 187] These pages contain a chain of e-mails.

[para 188] The information withheld under section 24(1) on pp. 224 and 225 are recitations of fact. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 189] The Public Body withheld two blocks of information under section 24(1) from p. 226. The top block consists of boilerplate language regarding use of an e-mail. This information is not captured under section 24(1). It has been improperly withheld under section 24(1).

[para 190] The second block of withheld information on p. 226 contains two e-mail messages. The first e-mail describes a consultation between employees. This information is captured under section 24(1)(b). The second e-mail begins on p. 226 and carries over to p. 227. The information withheld under section 24(1) from this e-mail is discussion of which Public Body employee should forward information to other Public Body employees. This information is not captured by section 24(1) and has been improperly withheld under it.

Page 249

[para 191] This page contains notes from a meeting. The information withheld under section 24(1) consists of a record of consultations and deliberations between employees of the Public Body about how to proceed with a certain matter. This information is captured under section 24(1)(b).

Pages 250 to 252

[para 192] These pages contain notes from a meeting.

[para 193] The information withheld under section 24(1) at the top of p. 250 is a recitation of background facts, and is not captured under section 24(1). The withheld information on the bottom of the page, appearing below the eighth line, contains information about how to proceed with a certain matter. It is a decision and not captured under section 24(1). This information has been improperly withheld under section 24(1).

[para 194] The information withheld under section 24(1) on p. 251 is a diagram. It is factual information and not captured under section 24(1) and has been improperly withheld under it.

[para 195] The information withheld under section 24(1) on p. 252 is a recitation of facts and not captured under section 24(1). This information has been improperly withheld under section 24(1).

Pages 253 and 254

[para 196] These pages are notes from a meeting.

[para 197] The information withheld under section 24(1) on p. 253 consists of recommendations about how to manage a situation. It constitutes advice and deliberations, and is captured under section 24(1)(a) and (b).

[para 198] The information withheld under section 24(1) on p. 254 consists of steps to be taken to address a situation. This information constitutes decisions made, and is not captured under section 24(1). This information has been improperly withheld under section 24(1).

Page 255

[para 199] This page contains notes from a meeting. The beginning of the notes, from the top of the page through the first ten lines, consists of statements of fact, which are not captured under section 24(1). The remainder of the information appears to consist of decisions made with respect to steps taken or to be taken to deal with a certain matter. This information is not captured under section 24(1) and has been improperly withheld under it.

Page 274

[para 200] This page contains part of a chain of e-mails between the Human Resources Consultant and another human resources representative. Information withheld under section 24(1) is in two blocks. The block of information withheld nearer to the top of the page is a record of a decision. The block of information withheld lower on the page is a statement of facts disclosing who was consulted about a matter, but not containing the substance of any consultations. This information is not captured under section 24(1) and has been improperly withheld under it.

Page 278

[para 201] This page is an e-mail between the Human Resources Consultant and another employee. The information withheld under section 24(1) is a statement of fact indicating who was consulted about a matter, but does not contain the substance of any consultation. This information is not captured under section 24(1) and has been improperly withheld it.

Pages 285 - 288

[para 202] These pages contain a chain of e-mails from the Human Resources Consultant. The information withheld under section 24(1) is only a record of an exchange of information and does not contain the substance of any advice, recommendations, deliberations, or consultations, and is not captured under section 24(1). This information has been improperly withheld under section 24(1).

Page 289

[para 203] This page contains an e-mail from the Human Resources Consultant to another employee of the Public Body. The information withheld under section 24(1) indicates arrangements to consult with that employee, but the substance of any consultations are absent. This information is not captured under section 24(1) and has been improperly withheld under it.

Pages 290 - 291

[para 204] These pages containing a briefing note. Information withheld under section 24(1) on p. 290 sets out the factual background of certain events that were later the subject of deliberations and consultations. The substance of those deliberations and consultations are not contained in the information. As a statement of fact, this information is not captured under section 24(1) and has been improperly withheld under it, with one exception.

[para 205] Information in the first bullet on p. 291 contains a description of consultations between employees of the Public Body leading to a decision made. The withheld information from the seventh word of the third line through to the ninth word on the fifth line of the bullet point is captured under section 24(b). Information on the first bullet on p. 291, before those words, identifies who was involved, and information after consists of a decision made. This information is not captured under section 24(1) and is improperly withheld under it.

Pages 292 and 293

[para 206] These pages contain a chain of e-mails between the Human Resources Consultant and the Complainant's supervisor. Information withheld under section 24(1) is a record of consultations between them and is captured under section 24(1)(b).

Page 304

[para 207] This page contains an e-mail from the HIAR Case Team Coordinator to other employees of the Public Body. The information withheld under section 24(1) consists of plans to conduct consultations or deliberations, but does not contain the substance any consultations or deliberations. This information is not captured under section 24(1) and has been improperly withheld under it.

Pages 305 - 306

[para 208] These pages contain a chain of e-mails between the Human Resources Consultant and another employee of the Public Body. The information withheld under section 24(1) consists of consultations and deliberations between them. This information is captured under section 24(1)(b).

Page 308

[para 209] This page contains an e-mail between the Human Resources Consultant and representatives of the Complainant's union. The information withheld under section 24(1) reveals the substance of the Human Resource Consultant's consultations with other employees of the Public Body as well as deliberations vis-à-vis the Union about how to proceed with a certain matter. This information is captured under section 24(1)(b).

Page 311

[para 210] This page contains an e-mail between the Human Resources Consultant and another human resources employee of the Public Body. The information withheld under section 24(1) relates to the clarification of a factual matter, but does not contain any consultations, deliberation, or advice. This information is not captured under section 24(1) and has been improperly withheld.

Pages 462, 465, 468, 472, and 473

[para 211] These pages contain a chain of e-mails. The information withheld under section 24(1) are e-mails between two employees of the Public Body. In the e-mails, one employee consults with another about how to deal with an ongoing matter. This information is captured under section 24(1)(b).

Page 491

[para 212] This page contains an agenda from a HIAR Case Team meeting. The Public Body withheld most of the information as non-responsive. The information withheld under section 24(1) is agenda information that sets out matters for discussion, but not the substance of the discussion itself. It is plans for a meeting only and is not captured under section 24(1). This information has been improperly withheld under section 24(1).

Page 510

[para 213] This page contains a briefing note. The information withheld under section 24(1) consists only of a recitation of facts. This information is not captured under section 24(1) and has been improperly withheld under it.

Page 511

[para 214] This page is a duplicate of p. 510, with one additional comment added to it by an employee of the Public Body. The additional comment is a note of what one employee said to another, but does not constitute advice, recommendations, consultations, deliberations, etc. The withheld information on this page is not captured under section 24(1) and has been improperly withheld under it.

Page 512

[para 215] This page contains a chain of e-mails. The information withheld under section 24(1) contains advice given by a human resources consultant to another employee. This information is captured under section 24(1)(a).

Page 515

[para 216] This page contains a chain of e-mails. The information withheld under section 24(1) consists of deliberations between two employees of the Public Body about how to address an ongoing matter. This information is captured under section 24(1)(b).

Pages 516 - 521

[para 217] These pages contain a chain of e-mails between the Human Resources Consultant and several employees of the Public Body. The information withheld under section 24(1) on p. 516 consists of an exchange of information, and a request for an exchange of information, but does not contain any information captured under section 24(1). This information has been improperly withheld under section 24(1).

[para 218] Three blocks of information were withheld under section 24(1) on p. 517. The first block of information (closest to the top) and the third block (closest to the bottom) contain a

recommendation and advice from one employee of the Public Body to another, and consultations, respectively. This information is captured under sections 24(1)(a) and (b). The second block of information contains descriptions of exchanges of information and a request to exchange further information. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 219] Two blocks of information were withheld under section 24(1) on p. 518. The first block of information, closest to the top, contains a reference to an exchange of information. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 220] The second block of information on p. 518 is related to the information withheld on p. 519, and the first block of information withheld under section 24(1) on p. 520. All of this information is a recitation of facts and is not captured under section 24(1). This information has been improperly withheld under section 24(1).

[para 221] The second, and final, block of information withheld under section 24(1) on p. 520 relates to the information withheld on p. 521. The withheld information is an e-mail between the Human Resources Consultant and another employee of the Public Body. In the e-mail, there are deliberations about how to address an ongoing matter. This information is captured under section 24(1)(b).

Pages 523 - 526

[para 222] These pages contain a chain of e-mails between several employees of the Public Body.

[para 223] The information withheld under section 24(1) on pp. 523 to 526 consists of numerous consultations and deliberations between the employees about how to deal with an ongoing matter. This information is captured under section 24(1)(b).

Pages 529 - 532

[para 224] These pages consist of minutes from a HIAR case team meeting.

[para 225] The withheld information on pp. 529 - 531 is about HIAR cases concerning individuals other than the Complainant. As discussed above in **Issue E**, this information is the personal information of those individuals and is withheld under section 17(1). Therefore, I do not need to consider with it is also withheld under section 24(1).

[para 226] Information withheld under section 24(1) on p. 532 is not captured under it. The page contains a mostly blank chart and a few notes about the procedure of meeting, but there is no substantive information about a decision-making process. This information has been improperly withheld under section 24(1).

Pages 533 - 534

[para 227] These pages contain a chain of e-mails between two employees of the Public Body.

[para 228] Page 533 was withheld in its entirety under sections 17, 18, 24, and 27. The Public Body does not specify which section applies to which part of the document. The information consists of facts and requests to exchange information. None of the withheld information falls under section 24(1), and has been improperly withheld under it.

[para 229] The information withheld under section 24(1) on p. 534 does not contain any information that is captured under s. 24(1). It consists only of an expression of gratitude from one employee to another. This information has been improperly withheld under section 24(1).

Pages 537-538

[para 230] These pages contain a chain of e-mails between employees of the Public Body. The information withheld under section 24(1) on p. 537 contains of two paragraphs. The first paragraph contains only statements of fact. The second paragraph mentions plans for future meetings, but not the substance of any decision-making process. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 231] The information withheld under section 24(1) on p. 538 consists of consultations and deliberations between employees about how to proceed with a certain matter. This information is captured under section 24(1)(b).

Page 542

[para 232] This page contains several e-mails between the Human Resources Consultant and another employee of the Public Body. Two blocks of information were withheld from it under section 24(1). The first block of information, near the top, contains a record of deliberations at a HIAR meeting. This information is captured under section 24(1)(b).

[para 233] The second block of withheld information contains only a request to forward some information to another employee. This information is not captured under section 24(1) and has been improperly withheld under it.

Pages 552 - 553

[para 234] These pages contain minutes of a HIAR Case Team meeting. The pages are divided into rows and columns. The bottom row of p. 552 and the top row of p. 553 contain reference to the Complainant. This information was withheld under section 24(1).

[para 235] The information withheld under section 24(1) on p. 552 appears in six columns. All of the information in the first five withheld columns (from left to right) is statements of fact. The information in the sixth column is a decision. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 236] The information withheld under section 24(1) in the top row on p. 553 appears across six columns (left to right). Columns 2, 5, and 6 contain no information. The information in columns 1 and 3 consists of statements of fact. This information is not captured under section 24(1) and has been improperly withheld under it. Information in column 4 consists of plans to request information, and a bullet point beneath that. The bullet point describes a request for advice from another employee of the Public Body. The bullet point is captured under section 24(1)(a).

Page 555 - 556

[para 237] Information withheld under section 24(1) on these pages was also withheld under section 27(1)(a) on the basis that it is subject to solicitor-client privilege; as such it has not been provided to me for review. Since I cannot review it, I am unable to conclude that information has been properly withheld under section 24(1). I find that the Public Body has failed to meet the

burden of proof to establish that it properly withheld information under section 24(1) from this page.

Page 559

[para 238] This page contains e-mails between two of the Public Body's human resources employees. Information withheld under section 24(1) consists of a request for an update on whether a third employee has been made aware of a fact, and a statement of what can be expected from a third party involved in dealings with the Public Body. It is a request for information and an exchange of information. This information does not contain the substance of any decision-making process and is not captured under section 24(1). This information has been improperly withheld under section 24(1).

Pages 562 - 563

[para 239] Information withheld under section 24(1) on these pages was also withheld under section 27(1)(a) on the basis that it is subject to solicitor-client privilege; as such it has not been provided to me for review. Since I cannot review it, I am unable to conclude that information has been properly withheld under section 24(1). I find that the Public Body has failed to meet the burden of proof to establish that it properly withheld information under section 24(1) from these pages.

Pages 564 - 566

[para 240] The information withheld from these pages is the same content as that withheld on pp. 224 and 225. My conclusion regarding them is the same as for pp. 224 and 225. The information withheld on pp. 564 to 566 are recitations of fact. This information is not captured under section 24(1) and has been improperly withheld under it.

Pages 567 - 570

[para 241] These pages contain a chain of e-mails between the Human Resources Consultant and another employee of the Public Body. The information withheld under section 24(1) on pp. 567-569 consists of a request for information in the form of a briefing note and brief comments about adding details to it. It does not contain the substance of a decision making process. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 242] Four blocks of information were withheld under section 24(1) from p. 570. The information in the first two blocks consists of requests for information, and clarification of facts. The information in the fourth block is a statement of facts, in reply. None of this information contains the substance of any deliberations or any information captured under section 24(1). This information has been improperly withheld under section 24(1).

[para 243] The third block of information is a consultation and is captured under section 24(1)(b).

Pages 572 - 573

[para 244] These pages contain a briefing note. The information withheld under section 24(1) contains a recitation of facts. This information is not captured under section 24(1) and has been improperly withheld under it.

Pages 574 - 575

[para 245] These pages contain a chain of e-mails between a human resources employee of the Public Body a representative of the Complainant's Union. The information withheld under section 24(1) on p. 574 consists of a request made to a union representative, and a note to another employee of the Public Body that the request was made. The withheld information does not contain any information captured under section 24(1). This information has been improperly withheld under section 24(1).

[para 246] The information withheld under section 24(1) on p. 575 consists of statements of fact and possible plans for further discussion with someone about a particular matter. None of this information is captured under section 24(1) and has been improperly withheld under it.

Pages 576 - 579

[para 247] These pages contain the same e-mail messages as pp. 285 to 288; my decision on these pages is the same as for those pages. The information withheld under section 24(1) consists of an e-mail that was forwarded from one employee to the Human Resources Consultant. The withheld information is only a record of an exchange of information and does not contain the substance of any deliberations or consultations and is not captured under section 24(1). This information is improperly withheld under section 24(1).

Pages 580 - 582

[para 248] These pages contain a chain of e-mails between the Human Resources Consultant and an employee of the Public Body. The information withheld under section 24(1) on pp. 580 and 581 consists of consultations between the two. This information is captured under section 24(1)(b).

[para 249] The information withheld under section 24(1) on p. 582 is a request for information. This information is not captured under section 24(1) and has been improperly withheld under it.

Page 585

[para 250] This page contains an e-mail between the Human Resources Consultant, several employees of the Public Body, and a union representative. The information withheld under section 24(1) consists of six paragraphs. Paragraphs one through four, and six, are statements of fact. Paragraph five is a request for information about scheduling a meeting. None of the information is captured under section 24(1). This information has been improperly withheld under section 24(1).

Page 588

[para 251] This page contains notes from meetings between several employees of the Public Body. The information withheld under section 24(1) consists of four paragraphs, each in the form of a list of bullet points. The bullets in the first paragraph, and the first three bullets in the second paragraph contain statements of fact. The final note in the second paragraph lists decisions made about steps to be taken regarding a certain matter. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 252] The first bullet in the third paragraph contains a statement of fact. The remaining bullets list information the Public Body would like to know. The fourth paragraph contains only a statement of fact. This information is not captured under section 24(1) and has been improperly withheld under it.

Pages 590 and 591

[para 253] These pages contains notes from a meeting. The information withheld under section 24(1) on p. 590 contains eight bullet points. The first five bullet points are statements of fact. The last three are decisions about steps to be taken to address an ongoing matter. The information withheld on p. 591 consists of statements of fact. This information is not captured under section 24(1) and has been improperly withheld under it.

Page 593

[para 254] This page contains notes from a meeting between the Human Resources Consultant and several employees of the Public Body. The information withheld under section 24(1) consists of five bullet points, followed by two blocks of information prefaced by boxes instead of bullets. The first five bullet points are statements of fact. The information following the boxes are decisions about steps to be taken to address an ongoing matter. This information is not captured under section 24(1) and has been improperly withheld under it.

Pages 597 - 598

[para 255] These pages contain a chain of e-mails. The information withheld under section 24(1) consists of statements of the thoughts and opinions of several employees about their willingness to proceed with proposed courses of action. This information consists of deliberations between employees of the Public Body. This information is captured under section 24(1)(b).

Page 599

[para 256] This page contains an e-mail. The information withheld under section 24(1) consists of a statement from an employee about their willingness to proceed with a proposed course of action. This information consists of deliberations between employees of the Public Body. This information is captured under section 24(1)(b).

Pages 619 - 631

[para 257] These pages contain notes from the Public Body's University Protective Services unit. The notes were used to prepare a risk assessment about the Complainant, and to determine how to prepare recommendations regarding the Complainant's HIAR case. Each page is formatted as a chart, containing two columns and various numbers of rows.

[para 258] The left column on each page contains dates related to the information in the right column. Occasionally, the left column contains a very brief description of the source of the information in the right column. None of this information is captured under section 24(1). The information in the left column on these pages is improperly withheld under section 24(1).

[para 259] The rest of the discussion of these pages applies to information in the right column.

[para 260] The right column on each page contains “comments” that form the substance of the notes. For convenience, I consider the information on each page by row, from the top of the page to the bottom.

[para 261] Information withheld under section 24(1) from p. 619 includes the first four rows and most of the information at the bottom of the fifth row. The information withheld from the first four rows is statements of fact. The first three words withheld from the fifth row is also a statement of fact. This information is not captured under section 24(1) and is improperly withheld under it.

[para 262] The remaining information withheld from the fifth row on p. 619, continues through pp. 620 and 621, and concludes with the first row on p. 622. All of the redacted information consists of deliberations and consultations between employees of the Public Body. This information is captured under section 24(1)(b).

[para 263] The information withheld below the first row of p. 622 continues to the first row on p. 623. The withheld information consists of statements of fact and is not captured under section 24(1). This information has been improperly withheld under section 24(1).

[para 264] The information withheld in the second row on p. 623 consists of statements of fact and an exchange of information between employees as well as a request for information. This information is not captured under section 24(1). This information is improperly withheld under section 24(1).

[para 265] The information in the third row of p. 623 continues through the first row of p. 624. This information consists of advice and deliberations between employees of the public body. This information is captured under sections 24(1)(a) and 24(1)(b).

[para 266] The information withheld under section 24(1) in row three on p. 624, and all information withheld under section 24(1) on p. 625 consists of statements of fact, and exchanges of information between employees. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 267] The information withheld under section 24(1) in the first row of p. 626 consists of recommendations developed for the Public Body to address an ongoing matter. This information is captured under section 24(1)(a).

[para 268] Information was withheld under section 24(1) from p. 627 in rows two through six.

[para 269] Information in the second row of p. 627 consists of five sentences. The third and fourth sentences contain recommendations for the Public Body on how to proceed with an ongoing matter; this information is captured under section 24(1)(a). The first and second sentences contain statements of fact; the fifth sentence contains information related to organizing a meeting. The information in the first, second, and fifth sentences is not captured under section 24(1). It has been improperly withheld under section 24(1).

[para 270] Information withheld under section 24(1) in the third and fourth rows of p. 627 reference sharing an unspecified copy of something with another employee of the Public Body, and return of the same. It is a record of an exchange of information. This information is not captured under section 24(1). It has been improperly withheld under section 24(1).

[para 271] Information withheld under section 24(1) in the fifth row on p. 627 contains a reference to a meeting where recommendations, considerations, and strategies were discussed, but the substance of the discussion is not included. The information consists of six sentences. The first, second, and fifth sentences consist of statements of facts. The third sentence starts with a statement of fact, and, after the eighth word, ends with a decision made regarding steps to take. The fourth and sixth sentences describe decisions made about what steps to take. None of this information is captured under section 24(1). It has been improperly withheld under section 24(1).

[para 272] The information withheld under section 24(1) in the sixth and last row of p. 627 consists of two sentences. The first is a statement of fact; the second is a decision made. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 273] Information was withheld under section 24(1) from all three rows on p. 628. The information in the first row is a record of a request for information. It is not captured under section 24(1) and has been improperly withheld under it.

[para 274] Information withheld under section 24(1) in the second row on p. 628 consists of two e-mail messages between employees of the Public Body. The first message contains deliberations about how to proceed with a certain matter. This information is captured under section 24(1)(b). The second message contains recommendations on how to address an ongoing matter. This information in the second message is captured under section 24(1)(a).

[para 275] Information withheld under section 24(1) in the third row on p. 628 consists of the beginning of an e-mail exchange between employees of the Public Body. The exchange continues on to pp. 629 and 630. The information withheld in the third row of p. 628 consists of three paragraphs. The first paragraph reveals the date and time of the e-mail and who sent it. The second paragraph is a statement of facts. The third paragraph contains two sentences. The first is a record of a decision made about steps to take; the second is plans for a meeting. This information is not captured under section 24(1). It has been improperly withheld under section 24(1).

[para 276] The information withheld under section 24(1) on p. 629 continues from p. 628 through the first row of p. 630. The information consists of consultations, deliberations, and recommendations made between employees of the Public Body about how to address an ongoing matter. This information is captured under sections 24(1)(a) and (b).

[para 277] Information was also withheld under section 24(1) from rows two through six on p. 630.

[para 278] Information withheld under section 24(1) in the second row on p. 630 contains a communication between employees of the Public Body. The communication consists of a consultation between them, and advice given. This information is captured under sections 24(1)(a) and 24(1)(b).

[para 279] Information withheld under section 24(1) in the third row on p. 630 contains an e-mail message between employees of the Public Body. The e-mail forwards a link to information as part of a request for an updated assessment of a situation. This information is a consultation. It is captured under section 24(1)(b).

[para 280] Information withheld under section 24(1) in the fourth row on p. 630 contains a record of information sharing between employees in the first sentence, and decisions made on steps to be taken in an ongoing matter in the four points that follow. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 281] Information withheld under section 24(1) in the fifth and sixth rows on p. 630 contains statements of fact. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 282] Information was withheld under section 24(1) from the first five rows of p. 631. The information in the first row consists of statements of fact. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 283] Information withheld under section 24(1) in the second and third rows on p. 631 is related to planning a meeting, and does not include any substantive information captured under section 24(1). It has been improperly withheld under section 24(1).

[para 284] Information withheld under section 24(1) in the fourth row on p. 631 contains notes from a meeting. The notes describe decisions made and contain statements of fact. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 285] Information withheld under section 24(1) in the fifth row on p. 631 contains two sentences. The first sentence describes sharing information between colleagues; the second describes plans for a future telephone call between employees. This information is not captured under section 24(1). It has been improperly withheld under section 24(1).

Pages 633 - 634, and 636

[para 286] These pages are the same as pp. 120, 121, and 123; they contain a copy of the Threat Assessment. My decision for these pages is the same as for pp. 120, 121, and 123.

[para 287] The information withheld from pp. 633 and 634 consists of statements of fact. This information is not captured under section 24(1) and has been improperly withheld under it.

[para 288] Page 636 contains the conclusions reached about the Complainant in the Threat Assessment. Two blocks of information were withheld on this page under section 24(1). The top block consists of a recitation of facts and is not captured under section 24(1). This information is improperly withheld under section 24(1).

[para 289] The second block of information spans three paragraphs. The information withheld from the first and second paragraphs consists of analysis. The last paragraph consists of recommendations and advice for employees of the Public Body. This information is captured under sections 24(1)(a) and (b).

Pages 638 - 639

[para 290] These pages contain an addendum to the Threat Assessment. The information withheld under section 24(1) contains the recommendations made as a result of the threat assessment. This information is captured under section 24(1)(a).

Pages 644 - 647

[para 291] These pages contain a chain of e-mails between University Protective Services and various employees of the Public Body.

[para 292] The information withheld under section 24(1) on p. 644 carries over to the top block of withheld information on p. 645 and is prefaced by language indicating that it contains advice and/or recommendations. The withheld information consists of suggestions on how to carry out a certain task. It is captured under sections 24(1)(a) and (b).

[para 293] The second, and final block of the information withheld under section 24(1) on p. 645 consists of two paragraphs. The paragraphs consist of deliberations between University Protective Services and an employee of the Public Body, about what steps to take in the future in order address a certain matter. This information is captured under section 24(1)(b).

[para 294] One block of information was withheld under section 24(1) on p. 646. The information withheld under section 24(1) consists of deliberations between employees. This information is captured under section 24(1)(b).

[para 295] Three blocks of information were withheld under section 24(1) from p. 647. The first block of information is an expression of appreciation between employees of the Public Body and is not captured under section 24(1); it is improperly withheld under it. The second block of information consists of consultations and deliberations between employees of the Public Body. This information is captured under section 24(1)(b). The third block of information consists of deliberations between employees of the Public Body and a record of advice given. This information is captured under sections 24(1)(a) and (b).

Page 649

[para 296] This page contains an e-mail between University Protective Services and an employee of the Public Body. The information withheld under section 24(1) consists of four paragraphs. The second paragraph contains statements of fact. This information is not captured under section 24(1) and has been improperly withheld under it. The other three paragraphs describe advice and consultations between employees of the Public Body. This information is captured under sections 24(1)(a) and (b).

Pages 650 - 652

[para 297] These pages contain a chain of e-mails between a human resources partner, University Protective Services, and another employee of the Public Body. Three blocks of information were withheld under section 24(1) on p. 650. The first two blocks consist of statements of fact. The third consists of a request for information and an exchange of information. This information is not captured under section 24(1) and is improperly withheld under it.

[para 298] The information withheld under section 24(1) on pp. 651 and 652 consists of advice and deliberations about the next steps to take to address a certain matter. This information is captured under sections 24(1)(a) and (b).

Issue K Compendium

[para 299] These reasons are part of the discussion of **Issue K** in the main body of Order F2021-12. In the main body, I found that the Public Body withheld some responsive information as non-responsive. The reasons that follow detail my conclusions about whether information was properly withheld as non-responsive from the following pages:

Pages: 102, 104, 105, 107, 274, 275, 619, 624-627, 649 and 717.

Page-by-Page Description – information withheld as non-responsive

Pages 102, 104, 105, and 107

[para 300] Page 102 contains notes to a file. It does not specify which file it belongs to or who prepared the notes. However, it is evident that this page is related to pp. 103 to 107. Information on those pages indicates that the notes on p. 102 were prepared by the HIAR Case Team Coordinator.

[para 301] Page 102 lists e-mails sent by an employee of the Public Body in anticipation of an upcoming “pre-protocol” meeting. The term “pre-protocol” undoubtedly refers to Protocol 91. The e-mails are numbered as attachments 1 through 9 to the list on p. 102. The content of the e-mails, and attachments to each one are described on p. 102.

[para 302] Page 103 is an e-mail that matches the description given for attachment 1 on p. 102. It was composed by the HIAR Case Team Coordinator. The description of attachment 1 on p. 102 and the body of the e-mail on p. 103 describe that the e-mail on p. 103 contained an attachment. The document on p. 104 matches the description of the attachment.

[para 303] Page 105 is an e-mail from University Protective Services to the HIAR Case Team Coordinator. It matches the description of attachment 3 on p. 102.

[para 304] Page 106 is an e-mail from the HIAR Case Team Coordinator to another employee of the Public Body. It matches the description of attachment 7 on p. 102. The description of attachment 7 on p. 102 and the body the e-mail on p. 106 describe that the e-mail on p. 106 contained an attachment. The document on p. 107 matches the description of the attachment.

[para 305] It is evident that the information in pp. 102, 104, 105, and 107 was prepared, sent, and received by the HIAR Case Team Coordinator and forms part of the HIAR team’s files. Not only do the e-mails include the HIAR Case Team Coordinator, but the attachments on pp. 104 and 107 contain the sort of information that the HIAR Case Team Coordinator describes forwarding to other parts of the Public Body with a view to determining whether to engage protocol 91. She states, in her shared affidavit,

13. I did not initially speak with the Reporter, but became aware of this information from [name of HIAR Coordinator], who spoke with the Reporter on January 26, 2016, and informed me of the conversation on or shortly after January 27, 2016. I was [name of HIAR Coordinator]’s supervisor at the time.

14. In accordance with the HIAR Policy and Procedure, as a case involving a potential harm to others, the matter was referred to the HIAR Case Team.

15. On February 11, 2016, the HIAR Case Team met, and discussed [the Complainant's] case. The team discussed several next steps regarding the matter which at the time were focused on addressing any risk of potential harm to another member of the University community.

16. On this same date, I also received a call from [name of the Human Resources Partner], Human Resources Partner for the Faculty of Science (the Faculty where the Complainant was employed). [The Human Resources Partner] contacted me and stated that [the Complainant] had exhibited some concerning behaviours in the workplace, and that he was concerned for her well-being. Although I do not recall specifically, I believe that during this conversation I may have informed [the Human Resources Partner] about the fact that the HIAR Program had received information indicating that [the Complainant] may suffer from [condition attributed to the Complainant]. I would have shared this information on a "need to know" basis, so that [the Human Resources Partner] was aware of the concerns regarding [the Complainant] and as a potential explanation for her behaviour. [The Human Resources Partner] and I then brainstormed how best to connect [the Complainant] to supportive resources due to the concerns for her well-being. We agreed that I would ask [name of an employee at the Office of Safe Disclosure] to reach out to [the Complainant] and advise her of the supports that were available to her through the University's Employee Family Assistance Program.

17. Over the next several days, I corresponded with in-house University Legal Counsel to discuss issues regarding [the Complainant's] case and to continue to assess the potential level of risk posed by [the Complainant] to herself and in the University community. A Protocol 91 Team was assembled to deal with the case, due to the concern about the threat of violence, and as such I also corresponded with members of the Protocol 91 Team. The Protocol 91 Team met on February 19, 2016, and determined that additional information was required in order to determine the level of risk posed by [the Complainant]. The Protocol 91 Team decided that additional information would be sought regarding [the Complainant's] behaviour in the workplace, and that a Certified Threat Assessor from University Protective Services ([name of the Threat Assessor]) would conduct a Threat Assessment.

[para 306] Additionally, the e-mails on pp. 103, 105, and 106 are dated February 18, 2016, one day before the Protocol 91 Team met, as stated by the HIAR Case Team Coordinator, in the passage above.

[para 307] Upon reviewing the information withheld as non-responsive from these pages and the above statement, as well as the message on p. 201, it is clear the information in them

originated from HIAR, and was then sent elsewhere. It may be that the Public Body located these records in a Protocol 91 file, but they are nevertheless information from the HIAR program. As such, I find that this information is within the scope of the access request, and should not have been withheld as non-responsive.

Pages 274 and 275

[para 308] The Public Body determined that information on these pages was non-responsive because they contain information from the Protocol 91 file. However, that information is contained in an e-mail between the Human Resources Consultant and another human resources employee of the Public Body. The record is captured in the terms of the access request as being from Human Resources. The fact that the same information may exist in a Protocol 91 file does not change that. An access request does not have to request records from every place where they exist in order to bring them within its scope.

Pages 619 and 624 to 627

[para 309] The Public Body marked information as non-responsive on these pages because it is information from a Protocol 91 file. The information withheld as non-responsive from these pages is contained in documents that are notes from University Protective Services. There is no indication that that this information was from any of the departments or programs named in the access request. I find that it is outside of the parameters of the request.

Page 649

[para 310] This page contains an e-mail from an employee working in University Protective Services to another employee working in University Protective Services. There is no indication that this information was from any of the departments or programs named in the access request. I find that it is outside of the parameters of the request.

Page 717

[para 311] This contains an e-mail between the Complainant's supervisor and another employee of the Public Body. It is from the Complainant's supervisor at the Faculty, and is therefore from the Faculty. As such, it is within the parameters of the access request.

Consideration of Mandatory Exceptions to Disclosure of Responsive Information

[para 312] Since I have found that the Public Body improperly withheld information as non-responsive, prior to concluding that it should be disclosed to the Complainant, I consider whether any mandatory exceptions to disclosure apply to the information.

[para 313] I find that third party personal information appears on the following pages and consider whether section 17(1) requires that it be withheld.

Pages: 104, 105, 107, and 717.

Pages 104, 105, and 107

[para 314] These pages contain some information that will identify the Reporter and other Public Body employees who contacted HIAR about the Complainant. For the same reasons given in enumerated considerations 1 and 2 in **Issue E**, and the **Appendix**, the Public Body is not

required to withhold information identifying the Reporter or other employees who contacted HIAR about the Complainant under section 17(1).

[para 315] These pages also contain third party personal information that is already known to the Complainant. Some of this information is the Complainant's own views or opinions of the third party. For the reasons in enumerated consideration 3 given in **Issue E**, the Public Body is not required to withhold this information.

[para 316] Lastly, these pages contain the same third party personal party information as that appearing on p. 639, described in the **Compendium** under **Issue E**. While it is third party personal information, the Complainant is familiar with the third party, and already knows the information. The Public Body is not required to withhold this information under section 17(1).

Page 717

[para 317] The application of section 17(1) to information on this page is discussed above in **Issue E**. I find that the Public Body was required to withhold the information it withheld under section 17(1).

Information Withheld and Disclosed

[para 318] The following paragraphs set out which information remains withheld and which information I order to be disclosed to the Complainant.

Information that Remains Withheld

[para 319] All information withheld from the following pages was properly withheld and shall not be disclosed to the Complainant:

Pages: 68, 166-168, 172, 173, 212, 308, 480-486, 492-499, 507, 512, 529-531, 547-551, 554, 561, 580, 581, 703-705, 707, 713-716, 724, 725, 727, and 728.

Information to be Disclosed to the Complainant

[para 320] All information withheld from the following pages was improperly withheld and shall be disclosed to the Complainant:

Pages: 3-10, 73-85, 87, 88, 90, 93-102, 104, 105, 107, 110, 111, 115, 116, 117, 119-122, 124, 126, 130, 131, 143-147, 149, 150, 155, 158, 161-165, 169-171, 176, 189-201, 205, 206, 213-218, 224, 225, 227, 228, 229, 250, 251, 252, 254, 255, 274, 275, 278, 285-290, 298, 304, 311, 313, 314, 318-321, 391-393, 433, 450, 510, 511, 516, 518, 519, 537, 555, 556, 559, 560, 562-569, 572-579, 582, 585-588, 590, 591, 593, 625, 631, 632, 633-635, 648, 650, 667, 701, 702, 722, and 723.

Information Identifying the Reporter withheld under section 17(1)

[para 321] All information withheld under section 17(1) that identifies the Reporter shall be disclosed to the Complainant, unless it remains properly withheld under another section of the Act in the table below.

Boiler Plate Language, Contact Information in E-mails, Information Identifying individuals involved in discussions, time and date of meetings withheld under section 24(1)

[para 322] These types of information are not captured under section 24(1) and have been improperly withheld under it. Accordingly, this information shall be disclosed to the Complainant. This applies even where such information appears in a block information that I otherwise order withheld under section 24(1), in the table below, or in paragraph 319, above.

[para 323] The only exception to disclosure of these types of information withheld under section 24(1) is where I find that it remains withheld under a section other than section 24(1), in the table below.

Table of Partial Disclosure of information on a single page

[para 324] The following table sets out information to be disclosed to the Applicant that appears on pages where other information should remain withheld. In some cases, this will result in partial disclosure of withheld information on a page. In other cases, given that the Public Body frequently withheld information under multiple sections of the Act and as non-responsive, all information ordered disclosed for being improperly withheld on one or more bases, may remain properly withheld on another.

Page #	Information to be disclosed	Information that remains withheld
16	All information withheld under s. 27(1).	All information withheld under s. 24(1).
17	All information withheld under s. 27(1).	All information withheld under s. 24(1).
64	All information withheld under ss. 18(3), 20(1), 24(1), 27(1), and as non-responsive.	All information withheld under s. 17(1).
65	All information withheld as non-responsive.	All information withheld under s. 17(1).
66	All information withheld as non-responsive.	All information withheld under s. 17(1).
67	The following information withheld under s. 17(1): <ul style="list-style-type: none"> - Information in the chart that appears in the boxes to the right of the Complainant’s name. <p>All information withheld under ss. 18(3), 20(1), 24(1), 27(1), and as non-responsive.</p>	All information withheld under s. 17(1) except for information described in the preceding column.
69	All Information withheld under s. 17(1), except for information described in the next column. <p>All Information withheld under s. 24(1) except for information described in the next column.</p> <p>All information withheld under ss. 18(3), 20(1), 27(1) and as non-responsive.</p>	The following information withheld under s. 17(1): <ul style="list-style-type: none"> - All information above point 8 on the page. - The words in the third sentence of second bullet under point 8; up to, but not including, the word “and.” (The remainder of the sentence does not need to be withheld under section 17(1)).

		<p>The following information withheld under s. 24(1):</p> <ul style="list-style-type: none"> - The last sentence of the last paragraph.
89	<p>All information withheld under s. 24(1), except for information described in the next column.</p> <p>All information withheld under ss. 17(1), 18(3), and 27(1).</p>	<p>The following information withheld under s. 24(1):</p> <ul style="list-style-type: none"> - The second, third, and fourth bullets from the bottom.
91	All information withheld under ss. 24(1) and 27(1).	All information withheld under s. 17(1).
92	All information withheld under ss. 24(1) and 27(1).	All information withheld under s. 17(1).
108	<p>All information withheld under s. 24(1), except for information described in the next column.</p> <p>All information withheld under ss. 20(1) and 27(1).</p>	All information withheld under s. 24(1) appearing under the date “February 23.”
109	<p>All information withheld from the third bullet under s. 24(1).</p> <p>All information withheld under ss. 20(1) and 27(1).</p>	All information withheld under s. 24(1) from the first, second, fourth, and fifth bullets.
113	All information withheld under s. 20(1).	All information withheld under s. 24(1).
114	<p>All information withheld under s. 24(1) except for information described in the next column.</p> <p>All information withheld under ss. 18(3), 20(1), and 27(1).</p>	<p>The following information withheld under s. 24(1):</p> <ul style="list-style-type: none"> - All information withheld under s. 24(1) from the last two bullet points.
123	<p>All information withheld under s. 24(1) except for information described in the next column.</p> <p>All information withheld under ss. 17(1), 20(1) and 27(1).</p>	All information withheld under s. 24(1) from the second block of information withheld under s. 24(1).
125	The following information withheld under s. 24(1):	All information withheld under s. 24(1) except for information in the preceding

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	<p>- The last point on the page.</p> <p>All information withheld under s. 20(1).</p>	column.
127	All information withheld under ss. 17(1) and 20(1).	All information withheld under s. 24(1).
128	All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).	All information withheld under s. 24(1).
129	All information withheld under s. 20(1).	All information withheld under s. 24(1).
132	All information withheld under s. 20(1).	All information withheld under s. 24(1).
133	<p>All information withheld under s. 24(1) except for information described in the next column.</p> <p>All information withheld under s. 20(1).</p>	The second bullet point withheld under s. 24(1).
136	All information withheld under s. 20(1).	All information withheld under s. 24(1).
142	<p>All information withheld under s. 24(1) except for information described in the next column.</p> <p>All information withheld under ss. 17(1), 18(3), and 27(1).</p>	The second last bullet point withheld under s. 24(1).
151	All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).	All information withheld under s. 24(1).
202	All information withheld under ss. 18(3), 20(1), 24(1), and 27(1).	All information withheld under s. 17(1).
203	All information withheld under s. 20(1).	All information withheld under s. 24(1).
211	All information withheld under ss. 18(3) and 27(1).	All information withheld under s. 17(1).
219	All information withheld under s. 20(1).	All information withheld under s. 24(1).
220	<p>The following information withheld under s. 24(1):</p> <p>- Information from the last e-mail on p. 200, carrying over to the top of p. 221.</p> <p>All information withheld under s. 20(1).</p>	All information withheld under s. 24(1) except for information described in the preceding column.
221	The following information withheld	All information withheld under s. 24(1)

	<p>under s. 24(1):</p> <ul style="list-style-type: none"> - Information withheld in the second paragraph of the e-mail carrying over from p. 220. <p>All information withheld under s. 20(1).</p>	<p>except for information in the preceding column.</p>
222	All information withheld under s. 20(1).	All information withheld under s. 24(1).
223	All information withheld under s. 20(1).	All information withheld under s. 24(1).
226	<p>All information withheld under s. 24(1) except for information described in the next column.</p> <p>All information withheld under ss. 17(1), 18(3), 20(1) and 27(1).</p>	<p>The following information withheld under s. 24(1):</p> <ul style="list-style-type: none"> - The first e-mail in the second block of information withheld under s. 24(1).
249	All information withheld under s. 20(1).	All information withheld under s. 24(1).
253	All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).	All information withheld under s. 24(1).
291	<p>All information withheld under s. 24(1) except for information described in the next column.</p> <p>All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).</p>	<p>The following information withheld under s. 24(1):</p> <ul style="list-style-type: none"> - Information from the seventh word of the third line through to the ninth word on the fifth line of the first bullet point.
292	All information withheld under s. 20(1).	All information withheld under s. 24(1).
293	All information withheld under ss. 17(1) and 20(1).	All information withheld under s. 24(1).
305	<p>All information withheld under s. 17(1) except for information described in the next column.</p> <p>All information withheld under s. 20(1).</p>	<p>The following information withheld under s. 17(1):</p> <ul style="list-style-type: none"> - The words in the sentence withheld under s. 17(1) after the word “member” and before the following comma. <p>All information withheld under s. 24(1).</p>
306	All information withheld under s. 20(1).	All information withheld under s. 24(1).

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462	All information withheld under s. 27(1).	All information withheld under s. 24(1).
465	All information withheld under s. 27(1).	All information withheld under s. 24(1).
468	All information withheld under s. 27(1).	All information withheld under s. 24(1).
472	All information withheld under s. 27(1).	All information withheld under s. 24(1).
473	All information withheld under s. 27(1).	All information withheld under s. 24(1).
491	The following information withheld under s. 17(1): - Information in the chart that appears in the boxes to the right of the Complainant's name. All information withheld under ss. 18(3), 20(1), 24(1), 27(1), and as non-responsive.	All information withheld under s. 17(1) except for information described in the preceding column.
515	All information withheld under ss. 18(3), 20(1), and 27(1).	All information withheld under ss. 17(1) and 24(1).
517	The following information withheld under s. 24(1): - The second block of information withheld under s. 24(1).	All information withheld under s. 24(1) except for information described in the preceding column.
520	All information withheld under section 24(1) except for information described in the next column. All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).	The following information withheld under s. 24(1): - The second block of information withheld under s. 24(1).
521	All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).	All information withheld under s. 24(1).
523	All information withheld under s. 20(1).	All information withheld under s. 24(1).
524	All information withheld under s. 20(1).	All information withheld under s. 24(1).
525	All information withheld under s. 20(1).	All information withheld under s. 24(1).
526	All information withheld under s. 20(1).	All information withheld under s. 24(1).
532	The following information withheld	All information withheld under s. 17(1)

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	<p>under section 17(1):</p> <ul style="list-style-type: none"> - The Complainant’s name and the spaces to the right of it. <p>All information withheld under s. 24(1).</p>	<p>except for information described in the preceding column.</p>
533	<p>All information withheld under ss. 24(1) and 27(1).</p>	<p>All information withheld under ss. 17(1) and 18(3).</p>
534	<p>All information withheld under ss. 24(1) and 27(1).</p>	<p>All information withheld under ss. 17(1) and 18(3).</p>
538	<p>All information withheld under s. 20(1).</p>	<p>All information withheld under s. 24(1).</p>
542	<p>All information withheld under s. 24(1) except for information described in the next column.</p> <p>All information withheld under s. 20(1).</p>	<p>The following information withheld under s. 24(1):</p> <ul style="list-style-type: none"> - The first block of information withheld under s. 24(1).
552	<p>The following information withheld under s. 17(1):</p> <ul style="list-style-type: none"> - All information to the right of the Complainant’s name in the chart. <p>All information withheld under ss. 18(3), 20(1), 24(1), and 27(1).</p>	<p>All information withheld under s. 17(1) except for information described in the preceding column.</p>
553	<p>The following information withheld under s. 17(1):</p> <ul style="list-style-type: none"> - All information in the top row of the chart. <p>All information withheld under s. 24(1) except for information described in the next column.</p> <p>All information withheld under ss. 18(3), 20(1), and 27(1).</p>	<p>All information withheld under s. 17(1) except for information described in the preceding column.</p> <p>The following information withheld under s. 24(1):</p> <ul style="list-style-type: none"> - The bullet point in the fourth column in the top row of the chart.
570	<p>All information withheld under s. 24(1) except for information described in the next column.</p>	<p>The following information withheld under s. 24(1):</p> <ul style="list-style-type: none"> - The third block of information withheld under s. 24(1).
597	<p>All information withheld under ss.</p>	<p>All information withheld under ss. 16</p>

	17(1) and 27(1).	and 24(1).
598	All information withheld under ss. 17(1) and 27(1).	All information withheld under ss. 16 and 24(1).
599	All information withheld under ss. 17(1) and 27(1).	All information withheld under ss. 16 and 24(1).
619	All information withheld under s. 24(1) except for information described in the next column. All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).	The following information withheld under s. 24(1): - Information after the first three words in the fifth row in the right column on p. 619. All information withheld as non-responsive.
620	All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).	All information withheld under s. 24(1) in the right column on p. 620.
621	All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).	All information withheld under s. 24(1) in the right column on p. 621.
622	All information withheld under s. 24(1) except information described in the next column. All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).	The following information withheld under s. 24(1): - Information withheld under s. 24(1) from the first row of the right column on p. 621.
623	All information withheld under s. 24(1) except information described in the next column. All information withheld under s. 17(1) except for information described in the next column. All information withheld under ss. 18(3), 20(1), and 27(1).	The following information withheld under s. 24(1): - Information withheld under s. 24(1) from the third row of the right column on p. 623. The following information withheld under s. 17(1): - The words after the information in brackets, and before the following semi-colon, in the sentence withheld under s. 17(1).
624	All information withheld under s. 24(1) except information described in the next column. All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).	The following information withheld under s. 24(1): - Information withheld under s. 24(1) from the first row of the right

		<p>column on p. 624.</p> <p>All information withheld as non-responsive.</p>
626	<p>All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).</p>	<p>All information withheld under s. 24(1) in the right column on p. 626.</p> <p>All information withheld as non-responsive.</p>
627	<p>All information withheld under s. 24(1) except information described in the next column.</p> <p>All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).</p>	<p>The following information withheld under s. 24(1):</p> <ul style="list-style-type: none"> - The third and fourth sentences of the second row in the right column of p. 627. <p>All information withheld as non-responsive.</p>
628	<p>All information withheld under s. 24(1) except information described in the next column.</p> <p>All information withheld under ss. 20(1) and 27(1).</p>	<p>The following information withheld under s. 24(1):</p> <ul style="list-style-type: none"> - Information in the second row of the right column of p. 628.
629	<p>All information withheld under ss. 20(1) and 27(1).</p>	<p>All information withheld under s. 24(1) in the right column of p. 629.</p>
630	<p>All information withheld under s. 24(1) except information described in the next column.</p> <p>All information withheld under ss. 20(1) and 27(1).</p>	<p>The following information withheld under s. 24(1):</p> <ul style="list-style-type: none"> - All information withheld under s. 24(1) in rows two and three of the right column of p. 630.
636	<p>All information withheld under s. 24(1) except for information described in the next column.</p> <p>All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).</p>	<p>The following information withheld under s. 24(1):</p> <ul style="list-style-type: none"> - All information withheld under s. 24(1) from the second block of information withheld under s. 24(1).
638	<p>All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).</p>	<p>All information withheld under s. 24(1).</p>
639	<p>All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).</p>	<p>All information withheld under s. 24(1).</p>

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644	All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).	All information withheld under s. 24(1).
645	All information withheld under ss. 17(1), 18(3), 20(1), and 27(1).	All information withheld under s. 24(1).
646	All information withheld under s. 20(1).	All information withheld under s. 24(1).
647	All information withheld under s. 24(1) except for information described in the next column. All information withheld under s. 20(1).	The following information withheld under s. 24(1): - The second and third blocks of information withheld under s. 24(1).
649	All information withheld under s. 24(1) except for information described in the next column. All information withheld under s. 20(1).	The following information withheld under s. 24(1): - The first, third, and fourth paragraphs of information withheld under s. 24(1). All information withheld as non-responsive.
651	All information withheld under s. 20(1).	All information withheld under s. 24(1).
652	All information withheld under s. 20(1).	All information withheld under s. 24(1).
717	All information withheld as non-responsive.	All information withheld under s. 17(1).

John Gabriele
 Adjudicator
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