



Office of the Information  
and Privacy Commissioner



**Head Office**  
#410, 9925 - 109 Street NW  
**Edmonton, Alberta**  
Canada T5K 2J8  
Tel.: (780) 422-6860  
Toll Free within Alberta: 310-0000  
Fax: (780) 422-5682  
Web: [www.oipc.ab.ca](http://www.oipc.ab.ca)  
Email: [generalinfo@oipc.ab.ca](mailto:generalinfo@oipc.ab.ca)

January 29<sup>th</sup>, 2013

[REDACTED]  
[REDACTED]

Alberta Federation of Labour  
10645 – 101<sup>st</sup> Street  
Edmonton, AB T5H 2S1

Dear [REDACTED]

**Re: Request for Review F6498/Public Body File 2012-G-0007**

This is further to my November 8<sup>th</sup>, 2012 letter. I have completed my review.

In summary, I did not agree with the Public Body's use of section 16 of the *Freedom of Information and Protection of Privacy Act* (the *Act*) and I have recommended to Executive Council (the Public Body) that it release the records to you.

In order to provide a complete explanation to the Public Body, my findings had to contain information on the content of the records at issue so I wrote to the FOIP Coordinator in a separate letter. I still wanted to provide you with my results so I prepared a summarized version for your information.

### **The Access Request**

You asked for:

Any and all communications related to the review of and/or changes to Alberta's *Labour Code* received by the Executive Council and/or the Premier's Office from the Construction Competitiveness Coalition or its affiliates, including PCL, Peter Kiewit Cons Co., JV Driver, Flint Energy, Ledcor, Merit Contractors Association, and the Progressive Contractors Association.

### **The Issue**

In response to your request, the Public Body refused to disclose seven pages of records. The records were denied based on section 16 of the *Act*.

The issue I addressed in this review was:

Does section 16 of the *Act* apply to the records/information?

## **The Act**

As you may be aware, section 16 of the *Act* has a test that must be met in order to allow a public body to refuse to disclose information to an applicant. The test has three parts and all three parts must be satisfied in order to authorize non-disclosure. The three parts are:

- a. The information must be the commercial, financial, labour relations, scientific or technical information of a third party;
- b. The information must have been supplied explicitly or implicitly in confidence; and,
- c. The disclosure must reasonably be expected to create one of the harms in section 16(1)(c).

## **The Public Body's Submission**

The Public Body argued that the information must not be released for the following reasons.

- The information in the records reveals commercial and labour relations information specific to the Third Party.
- There was a reasonable expectation of confidentiality by the Third Party with regard to the subject matter being discussed as well as details about the consultation process itself.
- The disclosure of the information would result in similar information no longer being supplied by the Third Party to the Public Body in the case of labour dispute resolution or legislative reform.
- The disclosure would harm the competitive position or interfere significantly with the negotiating position of the Third Party; it would result in undue financial loss to the Third Party; or, it would provide an unfair competitive advantage or financial gain to the Third Party's competitors.
- The disclosure of this information would also reveal the confidential position of the Third Party with regard to labour relations issues and labour reform.

I understand the Public Body consulted with the Third Party. The Third Party declined to give consent to the disclosure.

## **My Analysis**

I do not agree that the three part test in section 16 is met and I therefore do not think the provision applies to the information in the records.

### *Type of Information – Part (a)*

I found no commercial or labour relations information of the Third Party. (For the record, neither did I find financial, scientific or technical information of a third party). While there is reference made to a labour relations matter, it is very general, it does not relate to the Third Party specifically, and is not information intended to be caught under this provision.

None of the information refers to the management of personnel by the Third Party nor does it refer to relationships between workers, working groups, and the Third Party in a specific way. The information does not reveal any changes the Third Party may want vis a vis a labour relations issue nor does it reveal the Third Party's position on a labour relations matter.

### *Provided in Confidence – Part (b)*

The Public Body submits that the information was supplied in confidence.

There is no indication on the record that confidence was promised. Neither did I see any indication that confidence was asked for or expected.

That said, the Third Party may believe the matter was confidential and that that was agreed to by the Public Body. However, the provision runs two ways. Information must be provided *and* accepted in confidence. To be otherwise would invite all information-providers to expect confidentiality regardless of what they supplied to a public body. There are certainly circumstances where privacy must be allowed for and kept, however there was no reference to confidentiality at all in the documents.

Additionally, what the records discuss is not a matter one would generally expect a public body to keep in confidence.

*Disclosure Resulting in Harm – Part (c)*

As the other two parts of the test are not met, there is no need to analyze section subsection (c). All of the harms require that proprietary or sensitive information of a third party be contained in the records. There is no proprietary or sensitive information of a third party in the records.

**Conclusion and Recommendation.**

In my opinion, section 16 does not apply to the information in the records at issue. I recommended to the Public Body that the information be released to you with the exception of a few items that should be withheld under section 17 (harm to the personal privacy of an individual).

If the Public Body agrees with my conclusion, I have asked the FOIP Coordinator to write to the Third Party advising it of the new decision as soon as possible and in any event by February 12<sup>th</sup>. The Third Party has 20 days after a decision has been made to approach this Office. If the Third Party does not ask for a review from this Office, the Public Body may release the records.

If the Public Body does not agree with my conclusion and recommendation, I will advise you of that and what your next steps can be.

Thank you.

Yours truly,

  
Catherine Taylor  
Portfolio Officer

c. Ms. Elaine Dougan, FOIP Coordinator, Executive Council