OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for
Prince Edward Island

Order No. FI - 11 - 001

Re: Department of Agriculture
Prince Edward Island Information and Privacy Commissioner
Karen A. Rose, Supernumerary Commissioner

June 14, 2011

Summary

Under the *Freedom of Information and Protection of Privacy Act* ("the *FOIPP Act*"), the Applicant asked the Public Body, the Department of Agriculture, for access to inspection reports relating to complaints against a particular companion animal establishment. The Public Body provided nine records to the Applicant, but refused access to information in seven records. The Public Body is relying upon section 15 of the *FOIPP Act*, that disclosure would be an unreasonable invasion of the personal privacy of third parties.

The Applicant raised section 8 of the *FOIPP Act*, claiming that the Public Body had conducted an inadequate search. The Commissioner found that, although the Public Body had fulfilled its duty of timeliness, it had not conducted an adequate search. The Commissioner concluded that it

would have been reasonable for the Public Body to communicate with the Applicant to clarify the status of one of the companies about which the Applicant sought records. In addition, the Commissioner found that the Public Body did not respond adequately when the Applicant raised questions about the record search. As a result, the Public Body did not fulfill its duty to assist the Applicant, and the Applicant's initial access fee was ordered refunded to her.

Regarding the section 15 issue, the Commissioner found that all of the information withheld in the records at issue was personal information in accordance with the *FOIPP Act*. Further, there were presumptions in favour of withholding personal information in the records at issue under clauses 15(4)(b) (law enforcement matter) and 15(4)(g) (name plus personal information) of the *FOIPP Act*.

The Applicant argued under clause 15(5)(a) of the *FOIPP Act* that disclosure was necessary for public scrutiny as the Public Body's handling of inspections and enforcement of the *Companion Animal Protection Act* have been publicly called into question. The Commissioner concluded that the desirability for public scrutiny, the fact that some of the information was already available to the public and the fact that some names of individuals were provided in their professional capacity only, rebutted the presumption against disclosure with regard to the name of the companion animal establishment owner and the names and phone numbers of individuals hired to perform a service for the Public Body. The Commissioner ordered the Public Body to give the Applicant access to that information.

The Commissioner did not order access to the personal information of complainants (this information was supplied implicitly in confidence) or employees of the companion animal establishment. The Applicant had not shown that disclosing this personal information was necessary for public scrutiny.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, cap F-15.01, ss. 1(i), 8(1), and 15; *Companion Animal Protection Act*, R.S.P.E.I. 1988, cap. c-14.1

Authorities Considered: **PE**: Orders PP-06-001, 06-005, 06-003, 05-001, 04-002, 03-004 and 03-003; **AB**: Orders F2010-022, F2009-001, F2008-009, F2007-029, F2004-008, 2001-020, 2001-016, 2001-01, 99-039, 99-038 and 98-020; **ON**: Order MO-2171; **BC**: Orders 30-1994 and 02-20; **NS**: Order FI-05-83 (2006)

Cases Considered: *University of Alberta* v. *Alberta (Information and Privacy Commissioner)*, 2010 ABQB 89; *French* v. *Dalhousie University* [2003] NSJ 44, (NSCA); *Dickie* v. *Nova Scotia* [1999] NSJ 116 (NSCA); *MacNeill* v *Privacy Comm*. 2004 PESCTD 69

I. FACTUAL BACKGROUND

[1] This review arises out of a request to access information submitted by an applicant ("the Applicant") under the *Freedom of Information and Protection of Privacy Act* (the "*FOIPP Act*"), dated August 20, 2009, and received by the Department of Agriculture ("the Public Body") on that date. Specifically, the request is for "Inspection reports resulting from complaints made concerning the business ‘Snookums', now known as 'PuppiesacrossCanada.com' ". The time period of the requested records was identified as January 2005 to present.

[2] The Public Body acknowledged receipt of the Applicant's request by letter dated September 18, 2009. The Deputy Minister of the Public Body responded to the Applicant, stating that a copy of the requested records was attached, but that some information had been severed from the records on the basis that disclosing the information would be an unreasonable invasion of third parties' personal privacy, pursuant to subsection 15(1) of the *FOIPP Act*.

[3] On October 30, 2009, the Applicant submitted an application to this office for a review of the Public Body's decision.

[4] On November 9, 2009, the former Information and Privacy Commissioner ("the former Commissioner") wrote to the Public Body requesting all records pertaining to the request for access. Two copies of the records were received in this office on December 7, 2009, a redacted copy and an unredacted copy.

[5] On December 21, 2009, the former Commissioner again wrote to the Public Body seeking submissions relating to the Public Body's reliance on section 15 of the *FOIPP Act*. The letter also raised concerns of the Applicant that information appeared to be missing from the records provided, that there should be more records of complaints, that there was a lack of veterinary reports and that details of complaints were not in the records provided. The former Commissioner's letter indicated that the Applicant specifically questioned how many complaints had been received by the Public Body. The Public Body was asked by the former Commissioner to address these concerns.

[6] The former Commissioner received the Public Body's signed response on January 26, 2010. In its submissions, the Public Body relied upon an additional clause of the *FOIPP Act*, namely, clause 18(1)(d), and asked that the Applicant not be made aware of this particular submission at that time. Therefore, one paragraph of the Public Body's submissions was severed from the copy forwarded to the Applicant on February 3, 2010. The former Commissioner requested a response to the Public Body's submissions from the Applicant by February 19, 2010. The Applicant's submissions were received by this office on that date. On February 24, 2010, the Public Body was invited to make a reply by March 12, 2010. The Public Body replied, stating that all records relating to the Applicant's request were provided and inviting the Applicant to make further requests if deemed necessary.

[7] By letter to the Public Body dated February 24, 2010, and copied to the Applicant, the former Commissioner advised the parties they would be contacted if additional details were required before issuing a decision. I took seizure of this matter on March 25, 2011.

Given that a section 8 issue was raised by the Applicant during submissions, I sought additional submissions from the Public Body in a letter dated April 4, 2011. I also sought additional information on the section 15 issue that was raised. Further, I sought clarification from the Public Body regarding whether it was still seeking to rely on clause 18(1)(d) of the *FOIPP Act*, which it had raised earlier, but had requested that the Applicant not be advised. I asked for more detailed submissions regarding clause 18(1)(d), if the Public Body was still going to rely on that clause of the *FOIPP Act*.

[8] The Public Body's submissions were received by this office on April 19, 2011. With regard to clause 18(1)(d), the head of the Public Body explained that at the time of his earlier submissions there had been a pending court case and the names of potential witnesses in the case were being withheld under clause 18(1)(d). The head of the Public Body advised that it had changed its position; the information no longer fell under clause 18(1)(d) of the *FOIPP Act* as the court case had been resolved. The head of the Public Body confirmed that the redacted information should be protected under subsection 15(1) of the *FOIPP Act*.

[9] A copy of the Public Body's submissions was provided to the Applicant with references to the withheld information severed. The Applicant was given an opportunity to respond to the new submissions. The Applicant forwarded a response to this office on May 13, 2011. A copy of the Applicant's submissions was provided to the Public Body on May 16, 2011. On May 25, 2011, the Public Body advised that it chose not to reply and was relying upon its earlier submissions. The Applicant was advised accordingly.

II. RECORDS AT ISSUE

[10] There were nine records provided to the Applicant by the Public Body, seven of which had information redacted pursuant to section 15 of the *FOIPP Act*. The seven records at issue are described as follows:

Record #2: Pet Establishment Action Form - redacted name and phone number of complainant;

Record #3: Inspection Report - redacted name of "owner of animals" and name of veterinarian hired by the Public Body;

Record #5: Pet Establishment Inspection Form - redacted name of veterinarian hired by companion animal establishment, and a name written above "Attending Owner, Operator or Representative";

Record #6: Inspection Report - redacted name of owner of animals and name and phone number of complainant;

Record #7: Inspection Report - redacted name of owner of animals;

Record #8: Untitled inspection report - redacted name and phone number of veterinarian hired by the Public Body; and

Record #9: Letter/report of veterinarian regarding inspection - redacted name, signature and phone number of veterinarian hired by the Public Body.

[11] In response to queries from this office, the Public Body gave the following evidence:

1. With regard to veterinarians' names and phone numbers:

    a. the veterinarians named in Records 3, 8 and 9 were hired by the Public Body to do an inspection of the companion animal establishment; and
    b. the veterinarian named in Record 5 provided services to the companion animal establishment.

2. With regard to complainants' names and phone numbers:

    a. the caller referred to in Record 2 is a complainant;
    b. the caller referred to in Record 6 is a complainant; and
    c. the owner of animals referred to in Record 7 is a complainant.

3. With regard to names of owners and employees of companion animal establishments:

    a. the attending owner, operator or representative referred to in Record 5 is an employee of the companion animal establishment; and
    b. the full name of the owner of animals referred to in Records 3 and 6 is the owner of the companion animal establishment.

III. ISSUES

[12] The issues to be decided in this review are as follows:

(1) Did the head of the Public Body fulfill his duty to assist the Applicant pursuant to subsection 8(1) of the FOIPP Act?

(2) Did the head of the Public Body properly apply section 15 of the FOIPP Act in making his decision to deny access to certain information in the records at issue because disclosure of the information would be an unreasonable invasion of third parties' personal privacy?

IV. SUBMISSIONS, ANALYSIS AND FINDINGS

Issue 1: Did the head of the Public Body fulfill his duty to assist the Applicant pursuant to subsection 8(1) of the *FOIPP Act*?

[13] In addition to conducting reviews under Part IV of the *FOIPP Act*, clause 50(1)(g) permits the Commissioner to bring to the attention of the head of a public body any failure by the public body to assist applicants under section 8. Further, clause 50(2)(a) permits the Commissioner to investigate and attempt to resolve complaints that a duty imposed by section 8 has not been performed.

[14] The Applicant first raised the issue of the Public Body's duty to assist (inadequate record search) to the former Commissioner, who conveyed the Applicant's concerns to the Public Body in her letter dated December 21, 2009. The Applicant further elaborated on this issue in her submissions dated February 18, 2010, and later in her submissions dated May 13, 2011.

[15] The duty to assist is set out at subsection 8(1) of the *FOIPP Act*, as follows:

> *8. (1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.*

[16] The above-noted subsection 8(1) is identical to subsection 10(1) of Alberta's *Freedom of Information and Protection of Privacy Act*. Because Alberta's *Act* has been in force for more than 15 years, the duty to assist provision has enjoyed many years of analysis. The meaning of this duty has been defined over the years and applied to a myriad of circumstances.

[17] **A. Subsection 8(1), Burden of Proof:** It has been established in Alberta Orders 99-038 (paragraph 10), F2004-008 (paragraph 10) and, more recently, in Order F2010-022 (paragraph 12), and confirmed in Order 05-001 of this office, that a public body has the burden of proving that it has fulfilled its duty to assist an applicant pursuant to subsection 8(1). In the review before me, the initial evidence of the Public Body was as follows:

- all records relating to the access request were provided to the Applicant and no records were withheld;
- records related to "Puppies Across Canada" were not included as they were not requested; and
- the Applicant did not specifically request veterinary reports; however, any that were relevant to the request were provided.

As is indicated below, the Public Body elaborated upon this evidence.

[18] **B. Subsection 8(1), Duty to Assist**: In Order 05-001 of this office, I agreed with the British Columbia Information and Privacy Commissioner (B.C. Order 30-1994) that a public body fulfills its duty to assist an applicant when it makes every reasonable effort to search for records requested and, in a timely way, informs the applicant what it has done. Likewise, in Alberta, this subsection 8(1) obligation to conduct an adequate search (Alberta Orders 2001-016, paragraph 13, and F2007-029, paragraph 50) has been found

to include two components:

1. a requirement to search adequately; and

2. a requirement to provide information to an applicant to show that this duty has been fulfilled.

These requirements are the focus of the subsection 8(1) analysis in this review.

[19] **C. Adequacy of Search**: In order to determine whether an adequate search was conducted, the Commissioner requires evidence as follows:

1. who conducted the search;

2. steps taken by the public body to identify and locate records responsive to the applicant's access request;

3. the scope of the search (areas searched);

4. the steps taken to identify and locate all possible locations of records responsive to the access request; and

5. reasons the public body believes that no more responsive records exist than the ones that have been identified. (Alberta Order F2007-029, paragraph 66).

[20] **D. Subsection 8(1), Submissions of the Parties**: I asked the Public Body to provide me with information that would answer the foregoing questions in relation to the adequacy of the search it carried out. The head of the Public Body responded as follows:

- The FOIPP Coordinator for the Public Body passed the Applicant's request, verbatim, onto three employees of the Public Body in order for them to search for records: (i) the Regulatory Technician; (ii) the Legislation Specialist; and (iii) the supervisor. Only two employees found records. The head of the Public Body advised that these employees have no administrative support and have a basic filing system consisting of paper copies.

- The documentation was provided to the Applicant based on the Public Body's interpretation of the request.

- All records relating to "Snookums" were provided. Records related to "Puppies

Across Canada" were not included as they were not requested. "Snookums" is not now known as "Puppies Across Canada" as the Applicant indicated in her request. These two companies are separate entities, having different owners.

- No attempts were made to contact the Applicant as the request was direct and specific. It was determined that no further clarification was required. The Applicant asked for "inspections resulting from complaints", and these documents were provided.

- Under the Corporate/Business Names Registry, these businesses (Snookums and Puppies Across Canada) are two separate entities, having different owners and locations indicated for each. There is no documentation to indicate that one company took over the other. Also, based on the search of records conducted at the time of the request, there was no apparent connection between the two companies.

- A search for records relating to "Puppies Across Canada" was completed and documents were gathered. After the search was complete, it was determined that the companies were two separate legal entities.

[21] The Applicant's response to the Public Body regarding whether the head of the Public Body had fulfilled his duty to assist are summarized as follows:

- Nine records over a four-year period seems inadequate, especially since they are disconnected and incomplete, suggesting either an inadequate level of documentation amongst inspectors or that more records would have been discovered had a more thorough search been conducted. The Applicant points out that only two employees conducted this search, examining paper files only and without assistance.

- There was a need for clarification that the Public Body did not fulfill. To support this submission, the Applicant points out an inconsistency wherein the Public Body stated that it had provided veterinary reports, even though the Applicant did not specifically request them, but did not provide records related to Puppies Across Canada, because she did not specifically request them.

- The Applicant counters the Public Body's submission that Snookums and Puppies Across Canada are unrelated with evidence supported by exhibits, as follows:

    - the closure of Snookums referred to in Record #7, dated November 20, 2007, as "(foreclosure) of Snookums";

    - two newspaper articles of the Snookums owner shutting down and re-opening another business;

- the PEI Humane Society's public notice (2009) that it had not been invited by the Public Body to participate in any investigations since the business had changed from Snookums to Puppies Across Canada;

- three CBC news items of the closure of Puppies Across Canada and the arrest of its owner/operator;

- one CBC news item of the conviction of the owner/operator of Puppies Across Canada, with references to the Public Body allowing him to operate without a licence;

- one CBC news item wherein the Public Body's Agriculture Policy and Regulatory Division Director confirmed to the media that Puppies Across Canada was that same owner's business and that the Public Body's inspectors visited the site when he established the business in 2008; and

- a Hansard transcript showing that the Public Body's Deputy Minister was questioned about the same owner in the P.E.I. Legislature on April 12, 2011, and confirmed that this same owner had been operating for a number of years (i.e. Snookums), but was only recently put out of business (i.e. when Puppies Across Canada was shut down).

- This search is significantly different from another search by the Public Body for records responding to the Applicant's subsequent request. The Applicant points out that, although conducted for broadly the same type of records, the subsequent search involved eight people, including administrative staff. Records in that search included computer files (using key words), paper files, e-mails and telephone calls.

- The Applicant points out a further inconsistency in the Public Body's evidence. The Public Body indicates that this request was specific and did not require clarification. It is, therefore, not clear why the Public Body conducted a search for records of Puppies Across Canada, if it did not consider them relevant to this request.

[22] **E. Showing that Duty to Assist is Fulfilled:** The duty of a public body to give an applicant detailed information about its search is heightened when an applicant specifically raises questions or concern (Alberta Order F2009-001, paragraph 26 and Order F2010-022, paragraph 15). The Applicant raised multiple concerns about the Public Body's search. The Applicant's initial concerns were conveyed to the head of the Public Body by the former Commissioner by letter dated December 21, 2009. Later, in the Applicant's own submissions received February 19, 2010, she raised several points

relating to the Public Body's duty to search, as follows:

- The Applicant requested access to "inspection reports resulting from complaints made concerning the business 'Snookums', now known as 'PuppiesacrossCanada.com' ", which, as the Applicant points out, is also how the PEI Humane Society identifies these related entities. The Applicant then listed several company names, adding that it was not clear to her why the Public Body had provided some information relating to some of the companies, but not to others.

- The Applicant pointed out that there was a lack of veterinary reports in the records provided. The Applicant requested that the Public Body either confirm that it withheld such reports or that they do not exist because the Public Body did not include veterinarians in its investigations. If the latter explained the lack of reports, the Applicant asked that the Public Body confirm, in accordance with the *Companion Animal Protection Act*, that it did not determine any real health concern for any animal.

- The Applicant pointed out that Record 3 refers to a re-inspection of a facility, but that no record of an original inspection or veterinary report was provided. The Applicant asked that this record be provided.

- The Applicant pointed out that Record 5 indicates that a veterinarian was used, but that there was no veterinary report provided. The Applicant asked that this record be provided.

- The Applicant pointed out that Record 9 was a veterinary report, but that there was no accompanying inspection report. The Applicant asked that this record be provided.

- Given the significant number of complaints received by the Public Body, the Humane Society and other groups against this companion animal establishment, the Applicant requested an explanation for the paucity [of records] and lack of specifics in the records that were provided. The Applicant also requested an explanation as to why the original complaints were not provided.

- Finally, the Applicant asked that if none of these records exist or if they have been withheld the Public Body explain the reasons.

[23] The head of the Public Body responded to the Applicant's submissions by reiterating that "all records relating to the access request were provided to the Applicant and that no records were withheld".

[24] This particular aspect of the subsection 8(1) duty to assist has been the subject of several Alberta orders. As noted above, Alberta Order F2009-001 involves a circumstance where an applicant raised questions about the existence of specific records. At paragraph 23 of the order, the Adjudicator stated that the public body should have advised the applicant whether or not the particular records existed and, if not, why they did not exist. Because the public body in that review did not do so, it was found to have failed to meet its obligation of informing the applicant in a timely fashion about what it did to search for the requested records.

[25] The law on this part of the duty to assist is not limited to orders of Information and Privacy Commissioners. The Alberta Court of Queen's Bench addressed this duty in *University of Alberta* v. *Alberta (Information and Privacy Commissioner)*, 2010 ABQB 89 (at paragraphs 41 - 43 and 45). In that case, an applicant questioned why only five pages of records were provided to him by the public body (the University of Alberta). The Adjudicator found that even if the two professors who searched did not have emails, others might have if they had been asked to search. Given the breadth of the access request, the Adjudicator found that the university should have explained why it limited its search to only two individuals. She noted that perhaps the university did not extend its search because it was satisfied that responsive records never existed or that the only locations where they might exist is where they searched. The Adjudicator found that if that was the case, the university should have communicated its belief and the basis for its belief to the applicant.

[26] When the adjudicator's decision was judicially reviewed, the Court of Queens Bench found as follows:

> The University argues that it provided a full, complete and accurate response, and that it was unreasonable to find that it failed in the information component of the duty to assist. In particular, the University says that the Adjudicator unreasonably required it to explain why it believes no further responsive records exist and failed to describe the steps it took to identify the location of responsive records.

> The University's submissions set out the information it provided, and argues that it is not necessary in every case to give extensive and detailed information, citing, *Lethbridge Regional Police Commission*, F2009-001 at para. 26. This is not an entirely accurate interpretation as to what the case holds. While the Adjudicator indicated that it was not necessary in every case to give such detailed information to meet the informational component of the duty to assist, it concluded that it was necessary in this case. In particular, the Adjudicator said (at para. 25):
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> > In the circumstances of this case, I also find that this means specifically advising the Applicant of who conducted the search, the scope of the search, the steps taken to identify and locate all records and possible repositories of them, and why the Public Body believes that no more responsive records exist than what has been found or produced.
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> Similarly here the Adjudicator reasonably concluded that the informational component of the duty to assist included providing the University's rationale, if any, for not including all members of the Department in the search, for not using additional and reasonable keywords, and, if it determined that searching the records of other Department members or expanding the keywords would not lead to responsive records, its reasons for concluding that no more responsive records existed.
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> . . .
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> In my view, the Adjudicator's conclusion that the University either expand its search or explain why such a search would not produce responsive records was reasonable in the circumstances and based on the evidence.

[27] **F. Subsection 8(1), Adequate Search - Analysis and Findings**: In response to the Applicant's request, it is clear on the evidence that the Public Body worked quickly to locate responsive records and provide those records to the Applicant within the time frame outlined in the *FOIPP Act*. In this respect, the Public Body diligently carried out its duty to assist; however, as described above, the Public Body's duty to assist does not end there.

Records of Puppies Across Canada

[28] Despite the reference to both Snookums and PuppiesaccrossCanada.com in the Applicant's original request, only nine records were produced by the Public Body's

search. Although records relating to Puppies Across Canada were gathered by the Public Body, those records were never provided to the Applicant, nor was the Applicant advised of their existence. The Public Body's evidence is that it determined that the companies were two separate legal entities, so it provided records relating to Snookums only. No attempts were made by the Public Body to contact the Applicant to provide information or seek clarification of her request.

[29] There is evidence provided by the Applicant upon which I may conclude that Snookums and Puppies Across Canada are related to each other, the most salient being the public recognition that one particular person was the operator of both companies. Given the Public Body's apparent familiarity with these companies for inspection purposes, and further given that retail companion animal establishments are not numerous in Prince Edward Island, it would be surprising if Public Body employees were not aware of the connection between the two; however, it is not even necessary for me to draw such a conclusion in this review. The Applicant stated clearly in her request for access that Snookums and Puppies Across Canada were related companies. The Public Body was under a reasonable duty to contact the Applicant to explain its conclusion. Even if the Public Body did not agree, or even if these companies were not related, it would have been reasonable for the Public Body to advise the Applicant that it had located records relating to Puppies Across Canada, but that the two companies were separate entities with different owners. The Applicant could then have chosen to have records of Puppies Across Canada included or not.

[30] The evidence that records relating to Puppies Across Canada were located by the Public Body indicates, quite logically, that the Applicant's original request was perceived by the Public Body to include such records. Before the unilateral decision was made by the Public Body not to provide these records, it should reasonably have sought clarification from the Applicant, or at least notified her that it had concluded that Puppies Across Canada records were not responsive to her request.

[31] The Public Body states that the documents provided were based on its interpretation of the Applicant's request; however, it is apparent that within the Public Body there were differing interpretations of this request. Based on the request as originally worded by the Applicant, records relating to Puppies Across Canada were searched and found but ultimately not provided. The Applicant was not advised of this fact until I specifically posed this question to the Public Body. It would have been reasonable in the context of the Public Body's duty to assist to contact the Applicant in the spirit of openness that underlies the *FOIPP Act*. On the contrary, the Public Body advises that no attempt was made to contact the Applicant at all, as clarification was not required. I find this to be an unreasonable conclusion under the circumstances.

[32] Based on the above analysis and the evidence before me, I find that the Public Body did not take adequate steps to identify and locate records responsive to the Applicant's access request. I remind public bodies that communication with applicants requesting access to records is an essential part of the freedom of information process, reflecting the transparency that forms the foundation of Part I of the *FOIPP Act*.

Informing the Applicant about the Search

[33] As I noted in Order 05-001 of this office, the amount of time searching for records is not determinative of the adequacy of a public body's search. What is determinative, however, is that a public body searches for what is requested (Alberta Order 99-039).

[34] I have already found that the Public Body, acting reasonably, should have communicated with the Applicant and informed her about the nature of the records relating to Puppies Across Canada in its custody and control. I also recognize that there is merit to the Applicant's argument that, given the history of the circumstances surrounding this particular companion animal establishment, it would have been reasonable for a greater number of employees to search their records and for electronic records to be searched, as well. It is not clear why the Public Body only had three employees conduct a search of the records requested. Again, it is incumbent upon the Public Body to explain why it did

so and why it concluded that those particular three employees were the only employees who would have records in their custody and control.

[35] I also find that the Public Body has failed the requirement to provide information to the Applicant to show that its duty to assist has been fulfilled. This failure began at an early point in the processing of the Applicant's request, when the Public Body failed to communicate to the Applicant that it possessed records relating to Puppies Across Canada. Given the background of the complaints surrounding the particular companion animal establishment named in the Applicant's request, it was reasonable for the Applicant to question why only nine records were found to be responsive. Once the records were provided to the Applicant, it was reasonable for her to ask whether some records were missing, as the *Companion Animal Protection Act* sets out a process that did not appear to be reflected in the records provided.

[36] The Public Body's response to the former Commissioner's December 2009 letter addressing the Applicant's concerns was not adequate. The Public Body failed to meet its obligation of informing the Applicant about what it did to search for the requested records.

[37] As noted above, once questions are raised by an applicant, a public body has a duty under section 8 of the *FOIPP Act* to respond adequately. The Applicant's questions were not raised during her initial request, but were raised, instead, during the initial steps of this review. It is clear that the Applicant was baffled by the small number of records provided to her under the circumstances and, naturally, sought an explanation from the Public Body. At that point, the Public Body was no longer "responding to a request" but, rather, was responding to the Commissioner as part of the review; in either circumstance, the Public Body was under a duty to respond openly, accurately and completely. It did not fulfill that duty.

[38] Throughout this review, the Public Body has reiterated that it has provided all records in

its custody and control pertaining to Snookums. The Public Body's evidence has been credible. I do not think this is a situation wherein the Public Body has purposefully withheld records from the Applicant. I agree with the Applicant that there are apparent gaps in the records, but I conclude that this is likely due to the investigatory processes and record-keeping practices of the Public Body. In addition, I conclude that the Public Body's failure to advise the Applicant of the existence of records relating to Puppies Across Canada was not an attempt to mislead, but rather the outcome of its decision that the two companies were not the same business.

[39] Aside from Order 05-001, this office has had minimal opportunity to provide guidance to public bodies regarding section 8 of the *FOIPP Act*. It is my hope that some of the analysis in this order will be incorporated into best practices of public bodies under the *FOIPP Act*.

[40] Now that I have concluded that the Public Body has failed to meet its duty to assist the Applicant, it is within my power to order that the Public Body expand its search. However, such an order would be fruitless in this review, as the Applicant, of her own volition, made an expanded request to the Public Body some time ago, that is currently moving through the *FOIPP Act* process. It is also within my power to order a refund of fees paid by the Applicant. Although the initial $5 fee paid by the Applicant is small, I will nonetheless order the Public Body to refund this nominal fee to the Applicant.

Issue 2: Did the head of the Public Body properly apply section 15 of the FOIPP Act in making his decision to deny access to certain information in the records at issue because disclosure of the information would be an unreasonable invasion of third parties' personal privacy?

[41] The Public Body is also relying on subsection 15(1) and clause 15(4)(b) of the *FOIPP Act* to support its decision to sever information from seven of the records at issue.

[42] Section 15 of the *FOIPP Act* is a lengthy section and has been the subject of several

decisions of this office. The relevant subsections to this review are set out below:

> 15. (1) The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.
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> (2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
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> (a) the third party has, in writing, consented to or requested the disclosure;
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> (e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council;
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> (4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
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> (b) the personal information was compiled and is identifiable as part of a law enforcement matter, except to the extent that disclosure is necessary to prosecute in respect of , or to continue or conclude, the matter;
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> (g) the personal information consists of the third party's name where
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> (i) it appears with other personal information about the third party, or
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> (ii) the disclosure of the name itself would reveal personal information about the third party;
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> . . .
>
> (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 shall consider all the relevant circumstances, including whether
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Prince Edward Island or a public body to public scrutiny;
>
> (b) the disclosure is likely to promote public health and safety or the protection of the environment;
>
> . . .

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

. . .

[43] Subsection 15(1) of the *FOIPP Act* places a mandatory obligation upon the Public Body, and one that requires careful consideration. If it is decided that disclosing personal information would be an unreasonable invasion of a third party's personal privacy, the Public Body must not disclose it to an applicant. As has been outlined in many orders of this office, beginning with Order 03-003, in order to apply this exception accurately, a two-step process should be followed.

[44] **Step One**: The public body should determine whether the information at issue is personal information pursuant to clause 1(i) of the *FOIPP Act*. If it is not personal information, section 15 does not apply, since no unreasonable invasion of personal privacy can occur in such circumstance.

[45] In the review before me, the Public Body's position is that the redacted information in the records at issue is personal information in accordance with the *FOIPP Act*. The Applicant has not disputed this in her submissions.

[46] **Findings Regarding Step One:** For the purposes of the definition of personal information found at clause (1)(i) of the *FOIPP Act*, the information at issue in the seven records described at Part III of this order may be divided into two categories: (i) names of individuals; and (ii) phone numbers of individuals. Pursuant to subclause 1(i)(i), "personal information" means recorded information about an identifiable individual, including the individual's name and home or business telephone number. Based on this definition, I find that all of the information at issue is personal information in accordance with clause 1(i) of the *FOIPP Act*.

[47] **Step Two**: If the information at issue is found to be personal information, a public body must decide if disclosure of the personal information will constitute an unreasonable invasion of privacy. This analysis is comprehensive in that it may involve the other

subsections of section 15 of the *FOIPP Act*.

[48] **Subsection 15(2), Deeming Provision**: First, an applicant may raise subsection 15(2), that describes circumstances deemed not to be an unreasonable invasion of a third party's personal privacy. If one of the exceptions in subsection 15(2) applies, the information at issue should be disclosed and there are no further steps.

[49] **Clause 15(2)(a), Argument*:*** The Applicant has raised clause 15(2)(a) of the *FOIPP Act*, that disclosure of certain personal information is not an unreasonable invasion of the third party's personal privacy because the third party has, in writing, consented to or requested the disclosure. She submits that implied consent is present for two types of personal information in this review: (i) names of witnesses; and (ii) names of complainants. Her three arguments under this clause are:

- If any of the named individuals intended to serve as witnesses to the court case, it follows that they consented to disclosure and, therefore, the provision of names for this request would not be unreasonable under clause 15(2)(a).

- The Applicant agrees that, generally, members of the public who make complaints should be able to do so with an expectation of confidentiality; however, she points out that many complainants in this case subsequently contacted the media, initiated legal proceedings, or made their complaints publicly known on the internet. The Applicant has provided two specific references to such internet publication; therefore, the Applicant submits, any complainants who voluntarily made their complaints known publicly have already provided disclosure under clause 15(2)(a).

- The Applicant states that several employees of the companion animal establishment were ultimately complainants. She therefore applies the deeming provision of clause 15(2)(a), even if said employees simply made their concerns known publicly using the same means demonstrated above.

[50] In response to the Applicant's argument regarding this deeming provision, the Public Body relies upon its original position, that disclosure of the personal information in the records at issue would be an unreasonable invasion of the named third parties' personal privacy.

[51] **Clause 15(2)(e), Argument**: The Applicant did not specifically cite clause 15(2)(e) of the *FOIPP Act* in her submissions; however, her arguments relating to the personal information of veterinarians hired by the Public Body (Records 3, 8, and 9) fall under this clause.

[52] Clause 15(2)(e) deems a disclosure of personal information not an unreasonable invasion of a third party's personal privacy if the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body, or as a member of the staff of a member of the Executive Council.

[53] In her earlier submissions, the Applicant points out that veterinarians conducting an investigation are appointed, remunerated and acting as agents of the Public Body, not as private citizens. She concludes this argument, stating, "Their role, the information that they provide, and their qualifications for doing so are not confidential but are part of inspections conducted in order to enforce compliance with the *Companion Animal Protection Act*."

[54] The Public Body's response to the Applicant's argument was, again, to emphasize its position that the records at issue were severed pursuant to the *FOIPP Act*.

[55] **Clause 15(2)(a), Analysis and Findings**: Because there is no evidence before me regarding which of the named complainants in Records 2, 6 and 7 were witnesses in a subsequent prosecution, I will not consider this particular argument. I will first consider the Applicant's argument regarding the personal information of complainants, which argument also applies to Records 2, 6 and 7 of the records at issue.

[56] The meaning of clause 15(2)(a) can be gleaned from its wording. This section stipulates that a third party's consent must be in writing in order for the disclosure of personal information to be deemed not to be an unreasonable invasion of a third party's personal

privacy. It follows from the wording of this clause that the third party must have consented, in writing, to the particular disclosure. This situation generally applies when a public body has contacted a third party to advise that it is considering disclosure of specified personal information of that third party and the third party consents. No such contact was made in this review, as it is not required. In order for the Applicant to succeed in her argument, she must provide proof that written consent was given by the particular third party complainant for the Public Body to disclose their names and/or phone numbers in these specific records. Evidence that a complainant publicly criticized the companion animal establishment does not satisfy this evidentiary requirement, even if it were the same complainant(s) named in the records at issue. This has not been proven.

[57] There is no evidence that any of the third parties have consented, in writing, to the disclosure of their names and/or phone numbers in the records at issue. As a result, I find that the deeming provision of clause 15(2)(a) of the *FOIPP Act* does not apply to the records at issue in this review.

[58] **Clause 15(2)(e), Analysis and Findings**: As noted above, Records 2, 8, and 9 contain the names and/or phone numbers of veterinarians hired by the Public Body. To fall under the deeming provision of clause 15(2)(e), the Applicant must show that the personal information concerns an officer, employee or member of a public body or a member of the staff of a member of Executive Council.

[59] Employee is defined at section 1 of the *FOIPP Act*, as follows:

> 1. In this Act
>
> (c) "employee", in relation to a public body, includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract with the public body;

[60] Veterinarians are hired by the Public Body to aid in inspections pursuant to subsection 6(7) of the *Companion Animal Protection Act*. The Public Body's evidence is that the

veterinarians referred to in Records 2, 8 and 9 were hired by the Public Body for that reason and clearly satisfies the criteria of performing a service for the Public Body under contract.

[61] To fall under the deeming provision of clause 15(2)(e), the Applicant must also show that the personal information relates to the veterinarians' classification, salary range, discretionary benefits or employment responsibilities.

[62] Order 03-004 of this office, which was confirmed on judicial review in *MacNeill* v *Privacy Comm*. 2004 PESCTD 69, dealt with what is currently clause 15(2)(e) of the *FOIPP Act*. Citing Alberta Order 98-020, the Commissioner stated, at page 11:

> . . . the [Alberta] Commissioner considered whether the names and job titles of government employees should be disclosed. He concluded that a job title or position would be considered "employment responsibilities" for the purposes of subsection 16(4)(e). Therefore, disclosure of job titles or the positions of government employees would not be an unreasonable invasion of their personal privacy. The employee's name was not subject to disclosure with the job title or position as it was held to be an unreasonable invasion of personal privacy. This conclusion was reiterated in Alberta Order 2001-01 [40].

[63] In addition, Order 03-004 made the following observation about the purpose of clause 15(2)(e), formerly 15(4)(e):

> The Public Body cites Alberta Order 2001-020. I agree with the Alberta Commissioner in that Order that one of the purposes of section 16(2)(e) [our section 15(4)(e)] is to allow the release of information about the employment benefits and responsibilities of public employees, allowing a degree of transparency in relation to the compensation and benefits provided to public employees [paragraph 20].

[64] As with the above-cited orders, the personal information at issue here is not about the veterinarians' classification, salary range, discretionary benefits or employment responsibilities; rather, it is about their names and/or phone numbers. Therefore, I find that clause 15(2)(e) of the *FOIPP Act* does not apply to the personal information in the

records at issue.

[65] Despite my findings that none of the deeming provisions of subsection 15(2) of the *FOIPP Act* apply to the personal information in the records at issue, I will still consider the Applicant's arguments from clause 15(2)(e) in my analysis of subsection 15(5) below.

[66] **Subsection 15(4)**: If subsection 15(2) of the *FOIPP Act* is found not to apply, as above, a public body should then determine whether any of the presumptions listed in subsection 15(4) applies. If so, disclosure of the information at issue is presumed to constitute an unreasonable invasion of a third party's privacy; however, this is merely a presumption. A factor under subsection 15(5) of the *FOIPP Act*, or a combination of factors, could rebut a presumption under subsection 15(4).

[67] **Clause 15(4)(b)**: The Public Body has raised clause15(4)(b), stating that the personal information in the records provided to the Applicant fall within the definition of a law enforcement matter.

[68] The Applicant disputes the Public Body's submission on this issue. Her argument is as follows:

- If by "law enforcement matter" the Public Body means the routine enforcement of the *Companion Animal Protection Act*, then withholding information is not supported by clause 18(4)(a) of the *FOIPP Act*, which distinguishes routine inspections in the enforcement of Acts from information gathered with the explicit intent to prosecute.

- Veterinarians are appointed by the Minister to assist in administering the *Companion Animal Protection Act* (section 5). There is nothing in that *Act* that necessitates or ensures confidentiality, or prohibits the release of information gathered in the enforcement of that *Act*, either in relation to appointed officers, or to the work that they carry out on behalf of the Public Body.

- The Public Body has provided no evidence to indicate that officers are appointed with an expectation of confidentiality, such as the type laid out in Order 06-005 (pp. 12-13).

- Since the Public Body is not citing clause 14(1)(b) of the *FOIPP Act*, officers presumably have no expectation of confidentiality in performing their duties under the *Companion Animal Protection Act*.

[69] **Clause 15(4)(b), Analysis and Findings**: In order to fall under the clause 15(4)(b) presumption, a public body must prove that the personal information in the records at issue was compiled and is identifiable as part of a law enforcement matter, except to the extent that disclosure is necessary to prosecute in respect of, or to continue or conclude, the matter. There is no evidence before me that disclosure of any of the information in the records at issue is necessary to prosecute or conclude any matter. Therefore, only the former part of the requirement of clause 15(4)(b) need be analyzed.

[70] Before I review orders of this office relating to clause 15(4)(b) of the *FOIPP Act*, I note that other provinces have considered this presumption in relation to administrative investigations.

[71] The Nova Scotia Appeal Court has set precedent for the process to be applied in a section 15 analysis under the *FOIPP Act* (Nova Scotia's section 20). In Order FI-05-83, decided in 2006, the Nova Scotia Review Officer had opportunity to consider a request for access to the name of a complainant in a child neglect report. The Review Officer applied section 20 (similar to our section 15) because personal information was involved. The Review Officer found that the complainant's personal information was compiled and was identifiable as part of an investigation into a possible violation of law.

[72] Ontario's Order MO-2171, issued in 2007, is also instructive. An applicant sought the name of a complainant who reported a by-law infraction at the applicant's address. The public body (City of Toronto) relied upon section 14 of their respective legislation (similar to our section 15). The Commissioner found that the information in the record was compiled and was identifiable as part of a law enforcement investigation undertaken into a possible violation of the law, specifically, the bylaw referred to in the City's representations. Therefore, the presumption was found to apply to the personal

information of the complainant.

[73] Order 02-20 of British Columbia, issued in 2002 by Commissioner David Loukidelis, is also instructive to this issue. The applicant was seeking access to the names of all complainants to the Law Society for the year 2000. The Law Society relied upon section 22 (similar to our section 15) to refuse the applicant access to the complainant personal information. The Commissioner found, at paragraph 31:

> . . . the name of an individual who complains to the Law Society is personal information compiled as part of an investigation into a possible violation of law. Jean Whittow's evidence supports the view that even the initial review of a complaint is part of an investigation for the purposes of this section. I accept that every complaint made to the Law Society is, to some extent, looked into and that the personal information supplied at the outset, as part of the complaint, is compiled as part of an "investigation". Accordingly, disclosure of the requested information is presumed to be an unreasonable invasion of third-party personal privacy under s. 22(3)(b).

[74] This office has considered the meaning of "law enforcement" in Orders 04-002, 06-003, 06-005 and PP-06-001. "Law enforcement" is defined at subclause 1(e)(ii) of the *FOIPP Act*, as follows:

> 1. In this Act,
>
> (e) "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

[75] The Public Body submits that the personal information in all of the records at issue was compiled and is identifiable as part of a law enforcement matter. The records themselves are the product of an administrative investigation. For the Public Body to succeed in this argument, it must show that the investigation at issue can result in a penalty or sanction imposed under a statute or regulation. It must also show that a formal process has been established to conduct the investigation.

[76] Investigations of companion animal establishments, upon which the records at issue are based, can result in penalties. The *Companion Animal Protection Act* outlines penalties for non-compliance, as follows:

> 15. Every person who fails to comply with this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not less than $200 and not more than $5,000. 2001,c.4,s.15.
>
> 16. (1) In addition to imposing the penalties prescribed by section 15, a judge, on conviction, may
>
> (a) make an order prohibiting the defendant from owning, having the custody or control of, or residing in the same place as a companion animal during any period that the court considers appropriate, but in the case of second or subsequent offence, for the lifetime of the defendant; or
>
> (b) make an order vesting in the Society
>
> (i) the ownership of all companion animals owned by the defendant, and
>
> (ii) the ownership of the companion animal in respect of which the prosecution has been commenced.
>
> (2) No person shall disobey an order made under subsection (1). 2001,c.4,s.16.

[77] The Public Body has also given evidence that the owner of the companion animal establishment who is the subject of the records at issue was found guilty in a court and sentenced to imprisonment. This outcome is clearly a penalty.

[78] The provisions of the *Companion Animal Protection Act*, combined with the forms that make up the records at issue, demonstrate that a formal process has been established by the Public Body to investigate possible violations of the *Companion Animal Protection Act*. Indeed, the Applicant's request is for inspection reports resulting from complaints, implying that a formal process is in place. It is evident from a review of the *Companion Animal Protection Act* and the records at issue, and from the evidence of the parties regarding the process of inspection and investigation of companion animal establishments, that regular inspections of companion animal establishments are

conducted by the Public Body and that a formal process has been established to do so. This process includes standard forms and procedures. Based on this evidence, I find that inspections under the *Companion Animal Protection Act* constitute a law enforcement matter in accordance with the *FOIPP Act*.

[79] As noted above, the Applicant disputes the Public Body's reliance upon clause 15(4)(b) of the *FOIPP Act*, pointing out that clause 18(4)(a) states that law enforcement records do not include reports prepared in the course of routine inspections by an agency that is authorized to enforce compliance with an Act of Prince Edward Island. The Applicant points out that the inspections have been conducted in order to enforce compliance with the *Companion Animal Protection Act*.

[80] In my view, the Applicant's argument on this point is untenable. Clause 18(4)(a) of the *FOIPP Act* states as follows:

> 18.(4) Subsections (1) and (2) do not apply to
>
> (a) a report prepared in the course of routine inspections by an agency that is authorized to enforce compliance with an Act of Prince Edward Island;

[81] Clearly, the exception for reports of routine inspections applies only to subsection (1) and (2) of section 18, as this is expressly stated in clause 18(4)(a); therefore, the Applicant may not rely on this exception within the context of section 15 of the *FOIPP Act*.

[82] The Public Body claims that all personal information in the records at issue fall under the clause 15(4)(b) presumption. Upon a review of the records at issue, I agree with the Public Body and find that all of the personal information redacted from the records at issue forms part of the law enforcement matter described above. Disclosure of the personal information satisfies the presumption of unreasonable invasion of the third parties' personal privacy pursuant to clause 15(4)(b) of the *FOIPP Act*. I will look to subsection 15(5) to determine whether this presumption is rebutted by the evidence.

[83] **Clause 15(4)(g), Analysis and Findings**: The Public Body did not raise this specific clause in its submissions; however, because section 15 is a mandatory exemption, it is incumbent upon me to address applicable subsections of section 15.

[84] Clause 15(4)(g) states that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information consists of the third party's name when it appears with other personal information, or if the disclosure of the name itself would reveal personal information about the third party. In Records 2 and 6, phone numbers are associated with the names of complainants. In addition, disclosing the name of the complainants in Records 2, 6 and 7 reveals that the individuals made a complaint against the companion animal establishment, thereby revealing further personal information.

[85] Clause 15(4)(g) has been addressed in an early decision of this office, Order 03-004, referred to above. In that review, the applicant sought the names and salaries of employees of a public body. Page 12 of that order states:

> I agree with the Public Body that subsection 15(2)(g)(i) applies to the employees' names in this case. There is no other conclusion one could reach, upon a reading of this subsection. Given that a name, a job title, and salary information are all personal information, combining the name with either of the other two items of personal information satisfies the presumption in subsection 15(2)(g)(i). Therefore, disclosure of the employees' names is presumed to be an unreasonable invasion of personal privacy. This presumption is rebuttable, and I must, therefore, analyse the submissions of the Applicant under subsection 15(3).

[86] As described above under clause 15(4)(b), the question of disclosure of complainant personal information under the *FOIPP Act* is one that has been considered in several provinces, and often relying upon the clause 15(4)(b) presumption. However, it is notable that clause 15(4)(g) has also been found to apply to such circumstances. Due to the identical wording of Alberta's section 17 to our section 15, I look to Alberta Order F2008-009. In the facts that underlie that order, an applicant sought access to disciplinary decisions involving the Calgary Police Service. Relying upon clause

17(4)(g) of the Alberta Act [identical to our clause 15(4)(g)], the Adjudicator found a presumption of unreasonable invasion of personal privacy of complainants. The Adjudicator found that disclosure of their names would reveal personal information about the complainants, such as the fact that they made a complaint (paragraph 37).

[87] In my view, the presumption outlined in clause 15(4)(g) of the *FOIPP Act* applies to the names and phone numbers of complainants in Records 2, 6 and 7, for two main reasons. First of all, in Records 2 and 6, the personal information consists of the complainants' name where it appears with other personal information about the complainants, ie. phone number. Secondly, in all three records, the disclosure of the name itself reveals personal information about the third party, specifically, that the individual complained to the Public Body about the companion animal establishment.

[88] Despite the presumptions found above, I must examine subsection 15(5) of the *FOIPP Act* to determine whether these presumptions are rebutted by the evidence.

[89] **Subsection 15(5)**: Under subsection 15(5), before making its decision, a public body must still consider the relevant factors in favour of disclosure and balance them against those favoring nondisclosure. The factors set out in subsection 15(5) should be considered, but this list in not exhaustive. Other relevant factors may be considered, such as the following:

(i) disclosure of the information would promote the objective of providing citizens of the province with an open, transparent and accountable government;

(ii) a third party's refusal to consent to the release of their personal information;

(iii) the fact that an applicant is not required to maintain the confidentiality of personal information once it has been released to them;

(iv) if it is not possible for a public body to notify a third party under section 38;

(v) the fact that personal information is available to the public;

(vi) the fact that the applicant was previously given some other information;

(vii) whether, under the circumstances, it is practicable to give notice to the third parties is a relevant circumstance that weighs in favour of not disclosing the personal information of those third parties;

(viii) the fact that the names of individuals requested by the applicant were provided solely in their professional capacity;

(ix) the fact that the names of individuals requested by the applicant were contained in letters sent to the applicant's solicitor;

(x) if disclosure of the information would affect the applicant's career opportunities, it is a relevant circumstance that weighs in favour of disclosing a third party's personal information;

(xi) where a person who has obtained information in confidence uses that information as a springboard for activities detrimental to the person who made the confidential communication;

(xii) the existence of a power imbalance between the parties;

(xiii) the nature and content of the records; and/or

(xiv) the fact that the applicant has no pressing need of the third party personal information. [*French* v. *Dalhousie University* [2003] N.S.J. No. 44, (N.S.C.A.), and *Dickie* v. *Nova Scotia* [1999] N.S.J. No. 116 (N.S.C.A.)]

[90] **Clauses 15(5)(a), (b) and (f)**: The Applicant has raised clauses 15(5)(a) and 15(5)(f) in her submissions in support of disclosure of the personal information in the records at issue. The Public Body has raised clause 15(5)(b), pointing out that there is no public health issue that might necessitate disclosure of the personal information.

[91] Clause 15(5)(a) raises the question of whether disclosure of personal information in the records at issue is desirable for the purpose of subjecting the public body to scrutiny. The Applicant refers to three documents submitted by her to argue that the Public Body has not adequately included or effectively used animal welfare officers in enforcing the *Companion Animal Protection Act*. As an example, the Applicant points out that the Public Body's evidence that a veterinarian was hired by the companion animal establishment for an inspection seems highly irregular. The Applicant also submits that the Public Body's handling of inspections and enforcement of the *Companion Animal*

Protection Act has been publicly called into question, thereby creating a need for examination of all aspects of the Public Body's related activities. The Applicant adds that, "Openness and transparency of the PB's activities, including its efforts to include qualified appointed officers, is imperative to ensuring the improvements that it has publicly acknowledged are needed".

[92] Under clause 15(5)(f) of the *FOIPP Act*, a question arises about whether the name of complainants is personal information that has been supplied in confidence. The Applicant has accurately pointed out that there is no provision in the *Companion Animal Protection Act* that compels inspectors to preserve secrecy during their employment. The Applicant also submits that the Public Body has not provided evidence to indicate that officers are appointed with an expectation of confidentiality, and refers to Order FI-06-005 of this office.

[93] With specific regard to names and phone numbers of veterinarians hired by the Public Body, the Applicant argues that veterinarians conducting an investigation are appointed, remunerated and acting as agents of the Public Body, and not as private citizens; therefore, presumably, while in this capacity, their information is less personal. This argument will also be considered as a relevant circumstance in my analysis below.

[94] I have carefully considered both parties' submissions, the evidence provided and the provisions of the *FOIPP Act*, and applied these to the following categories of personal information, namely:

- complainant names and phone numbers;
- names and phone numbers of veterinarians hired by the Public Body;
- names of employees of the third party companion animal establishment; and
- name of owner of companion animal establishment

[95] Under each heading, I will make a final determination of whether disclosure of these categories of personal information would be an unreasonable invasion of the personal privacy of third parties to whom the information relates.

Analysis and Findings Regarding Complainant Names and Phone Numbers

[96] **Public Scrutiny:** With regard to complainant names and phone numbers, a review of two of the four cases in the discussion of clauses 15(4)(b) and (g) is informative.

[97] In Alberta Order F2008-009 (paragraph 102), cited above, the Adjudicator concluded that the applicant had not rebutted the subsection 15(4) presumption by showing that the factor relating to public scrutiny [our clause 15(5)(a)] applied to the complainant personal information at issue; however, the adjudicator did note that these decisions must be made on a case-by-case basis. At paragraph 97, the Adjudicator stated:

> The foregoing conclusions do not necessarily mean that the names of complainants (who are not acting in a government capacity) and other members of the public should never be disclosed in comparable situations. The determining factor in this inquiry is that the Applicant did not establish that disclosure of this information was desirable for the purpose of subjecting the activities of the Public Body to public scrutiny, as he did with respect to the personal information of police officers. As section 17(5)(a) (public scrutiny) does not apply to the personal information of members of the general public in this inquiry, it does not outweigh the presumption against disclosure under section 17(4)(g) (name plus personal information).

[98] Similarly, in Ontario's Order MO-2171, the Commissioner commented on the separation between scrutiny of a public body and scrutiny of a complainant, as follows:

> In complaint-driven processes such as the one resulting in the records in this appeal, a complainant makes a complaint, and then it is up to the City's bylaw enforcement unit to determine whether the complaint has validity, to pursue compliance with the bylaw, and to determine what actions must be taken to comply with the bylaw. Other than

> filing the complaint, the complainant is no longer involved in the process. *Accordingly, the rights asserted by the appellant, and the concerns expressed by her about the process, relate to the actions of the City, rather than those of the complainant*. [emphasis added]

[99] I have carefully considered the Applicant's subsection 15(5) arguments as they relate to the complainant personal information at issue. In my view, the public scrutiny the Applicant refers to relates to the actions of the Public Body, which must be separated from the names and other personal information of individuals who make complaints about companion animal establishments in the province of Prince Edward Island. Madame Justice Matheson (as she then was) made a succinct observation at paragraph 59 of the *MacNeill* decision, *supra*, when she stated:

> The Act does not attempt to prohibit public scrutiny of government expenditures or accountability. In fact it encourages scrutiny because it provides a means to obtain information which did not heretofore exist. It simply limits the information released to that relating to the public body's behaviour, rather than to personal information about individuals who are employed by the public body.

[100] In my view, disclosure of the complainant information at issue does not fulfill the purpose of subjecting the Public Body to public scrutiny. As a result, I attach no weight to the Applicant's argument under clause 15(5)(a) as it relates to names and phone numbers of complainants in the records at issue.

[101] **Confidentiality:** With regard to the complainants' expectation of confidentiality, a review of the two cases in the discussion of clauses 15(4)(b) and (g) above is also instructive.

[102] In Nova Scotia's Order FI-05-83, the Review Officer made the following finding:

> With regards to s. 20(2), I am convinced that the information was received in confidence from a citizen [our subsection 15(5)(f)]. I believe that releasing the name of complainants in situations of this nature will reduce the likelihood of reports being made to Community Services and impede

its work with respect to child protection.

[103] The Applicant desires the records at issue in their entirety so that she may have a clear idea of the processes followed by the Public Body during its investigations under the *Companion Animal Protection Act*. She concedes that, generally, members of the public who make complaints should be able to do so with an expectation of confidentiality. I agree with the Applicant in these particular circumstances.

[104] In Order 02-20 of British Columbia, at paragraph 40, the Commissioner found that a member of the public who complains to the Law Society about a lawyer, provides their personal information to the Law Society for that restricted purpose and with a reasonable expectation that the personal information is received and will be kept confidential.

[105] Addressing the Applicant's contention that some of the complainants may have already consented to the disclosure of their personal information via internet comments or other chosen means, I wish to point out Commissioner Loukidelis' comments in said Order 02-20, as follows:

> [Para 41] This conclusion is not affected by the fact that a complainant is warned that the lawyer will receive, as a matter of procedural fairness, a copy of the complaint and personal information of the complainant. This limited disclosure does not preclude the conclusion that, as between the complainant and the world, the personal information is supplied in confidence.

[106] Although I agree with the Applicant that there is no provision in the *Companion Animal Protection Act* that protects the confidentiality of complaints, I also note that there is nothing in the *Companion Animal Protection Act* that excepts the *FOIPP Act* from application. Individuals who complain about companion animal establishments in good faith help to ensure the protection of companion animals. Ensuring the confidentiality of their personal information will encourage such good faith complaints to continue to be made. As a result, I find that the complainants had a reasonable expectation of confidentiality in providing their personal information to the Public Body. This factor

favours the presumption of unreasonable invasion of complainants' personal privacy.

[107] With regard to complainant names and phone numbers, I conclude that there is insufficient evidence to rebut the presumptions established in clauses 15(4)(b) and (g) of the *FOIPP Act*. I therefore confirm the Public Body's decision to redact the complainants' names and phone numbers in Records 2, 6 and 7.

Names and Phone Numbers of Veterinarians Hired by the Public Body

[108] **Confidentiality:** The Applicant has raised Order 06-005 in her submissions, relying upon two main arguments: (i) the *Companion Animal Protection Act* does not specifically stipulate secrecy in relation to the work of inspectors; and (ii) the Public Body has not provided evidence that officers have an expectation of confidentiality. In Order 06-005, it was found that the Public Body had not provided sufficient evidence that the information at issue had been supplied in confidence; however, that review did not involve personal names of employees (they were not requested), but only business names and owners of eating establishments. Personal information of public body service providers was not an issue.

[109] I do not find Order 06-005 particularly relevant to the personal information at issue. The confidentiality issue in this order was in the context of a clause 14(1)(b) argument. Order 06-005 did deal with clause 15(4)(b), as well, and I have applied the test for "law enforcement matter" set out in that order; however, on the confidentiality issue, I agree with the Applicant that there is no evidence that the names and phone numbers of the veterinarians in the records at issue were supplied in confidence.

[110] **Professional Capacity**: As noted above, the Applicant submits that the veterinarians hired by the Public Body are not acting as private citizens and not entitled to the same privacy protection. There is no doubt that public body employees are entitled to privacy protection, as Madame Justice Matheson (as she then was) found in the *MacNeill* case,

supra, at paragraph 55:

> The Act covers public employees and they are entitled to the same protection of personal information as any other resident of this province.

[111] However, it is a notable distinction that the *MacNeill* case involved the names and exact salaries of individual employees of a public body.

[112] With regard to the names of veterinarians employed by the Public Body, it is relevant that these names are provided in their professional capacity as providing a service to the Public Body. As the adjudicator stated in Alberta Order F2008-009:

> In the third decision (under Tab 6), the complainants are government officials who were acting in their employment capacity during the events that gave rise to the complaint. I do not find that the disclosure of their names or other personal information would unreasonably invade their personal privacy. Only the fact that they made the complaint and information about the nature of the complaint is conveyed. As they were conducting government business, and there is no personal dimension to their activities, the information other than their names is not personal information at all (Order F2006-030 at para. 12).

[113] In the review before me, the Applicant is seeking names and phone numbers of employees in their professional capacity only. I give this factor considerable weight in favor of disclosure of this personal information.

[114] **Other Evidence**: Aside from the initial subsection 15(4) presumption, no evidence has been provided in favor of the Public Body's position. Although I agree with the Public Body that disclosure is not likely to promote public health or safety, there is no evidence that the third party veterinarians provided their names in confidence pursuant to clause 15(5)(f). Pursuant to clause 15(5)(e), no evidence has been provided that any of the third parties would be exposed unfairly to financial or other harm. Further, under the provisions of clause 15(5)(g), no evidence has been provided that the personal information is likely to be inaccurate or unreliable. In addition, no evidence has been provided under clause 15(5)(h) that disclosure of the information at issue may unfairly

damage the reputation of any person referred to in the record.

[115] Based on the above analysis, I conclude that disclosing the names and phone numbers of the veterinarians hired by the Public Body would not amount to an unreasonable invasion of third parties' personal privacy pursuant to section 15 of the *FOIPP Act*. There was no personal aspect to the veterinarians' activities in providing a service to the Public Body.

Names of Employees of the Third Party Companion Animal Establishment

[116] With regard to the names of employees of companion animal establishments, the Applicant submits that several of these individuals were ultimately complainants who may have given their implied consent to disclosure by virtue of agreeing to be witnesses in the court proceeding against the companion animal establishment. Even if these employees did not make official complaints to the Public Body, the Applicant submits they would have nonetheless consented to disclosure as many employees of the companion animal establishment made their concerns known publicly. I have already addressed this argument above with regard to complainant personal information and have concluded that this argument has no merit.

[117] The two employees named in Record 5 were hired by the companion animal establishment. Disclosure of their names will contribute nothing to the public scrutiny suggested by the Applicant. Although they have been identified on a public record, they have no connection to the Public Body.

[118] I find that the Applicant has not met her burden of rebutting the presumption that disclosure of the employee names in Record 5 is an unreasonable invasion of the employees' personal privacy. The accountability achieved by the Public Body in disclosing the remainder of the information in this record is adequate to promote the objective of public scrutiny raised by the Applicant while still protecting the personal privacy of these third parties.

Name of Owner of Companion Animal Establishment

[119] In two of the records at issue, Records 3 and 6, the name of the owner of the companion animal establishment is recorded on the inspection form. This name is a matter of public record. In addition, this particular personal information has been available to the public via newspaper and television news. I give this factor significant weight in deciding that there is sufficient evidence to rebut the presumptions established in subsection 15(4) of the *FOIPP Act*.

V. ORDER

[120] Based on the evidence and submissions provided to me, I find:

1. The head of the Public Body did not fulfill his duty to assist the Applicant under section 8 of the *FOIPP Act*.

2. The head of the Public Body did not properly apply section 15 of the *FOIPP Act* in making his decision to refuse access to certain information in the records at issue, specifically, names and phone numbers of veterinarians hired by the Public Body and the name of a business owner.

3. The head of the Public Body properly applied section 15 of the *FOIPP Act* in making his decision to refuse access to certain information in the records at issue, specifically, names and phone numbers of complainants, and names of employees of a third party business.

[121] I therefore order the head of the Public Body:

1. To refund the $5 fee paid by the Applicant when she first made her request for access;

2. To provide an unredacted copy of Record 3, Record 8 and Record 9 to the Applicant; and

3. To disclose the names of the business owner and "owner of animals" in Record 3 and Record 6.

[122] I confirm the decision of the Public Body to redact the name and phone numbers of complainants in Record 2, Record 6 and Record 7, and the names of employees of the third party business in Record 5, on the basis of subsection 15(1) of the *FOIPP Act*.

[123] In accordance with subsection 68(1.1) of the *FOIPP Act*, the head of the Department of Agriculture shall not take any steps to comply with this order until the end of the period for bringing an application for judicial review of the order under section 3 of the *Judicial Review Act*.

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Karen A. Rose
Supernumerary Information and Privacy Commissioner